

Preliminary submission to the South Australian Royal Commission into Domestic, Family and Sexual Violence.

About Full Stop Australia

Full Stop Australia is grateful for the opportunity to make a preliminary submission to South Australia's Royal Commission into Domestic, Family and Sexual Violence (the **Royal Commission**).

Full Stop Australia is a nationally focused not-for-profit organisation which has been working in the field of sexual, domestic, and family violence since 1971. We started as Sydney Rape Crisis—the first service in Australia dedicated to providing support to survivors of sexual violence. Today, we perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma.
- Conduct best practice training and professional services to support frontline workers, government, and the corporate and not-for-profit sectors.
- Advocate for laws and systems better equipped to respond to, and ultimately prevent, sexual, domestic and family violence.

Our advocacy is guided by the lived expertise of over 700 survivor-advocates in our [National Survivor Advocate Program \(NSAP\)](#). The NSAP gives victim-survivors of gender-based violence a platform to share their experiences to drive positive change. Through the NSAP, survivor-advocates can access opportunities to share their stories in the media, weigh in on Full Stop Australia's submissions to Government, and engage directly with Government. We are committed to centring the voices of victim-survivors in our work and advocating for laws and systems that genuinely meet their needs.

About this submission

This submission was prepared by Emily Dale, Head of Advocacy and Taran Buckby, Legal & Policy Officer. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at emilyd@fullstop.org.au.

This is a brief, high-level submission whose objective is ensuring sexual violence remains a priority as the Royal Commission's work progresses. This submission does not contain a comprehensive set of recommendations to the Royal Commission. Noting that the Royal Commission is inviting submissions until September, Full Stop Australia intends to make a more substantive and detailed submission next month.

The scale and impacts of sexual violence

Sexual violence is currently occurring at unacceptable rates, and its impacts on victim-survivors can be lifelong. Yet, evidence tells us that response, policing, justice, support and service systems across Australia are not resourced, structured or sufficiently integrated to work effectively and holistically to support victim survivors and address sexual violence.

Sexual violence is prevalent in the community

The latest Australian Bureau of Statistics (**ABS**) Personal Safety Survey shows that 22% of Australian women have experienced sexual violence since the age of 15.¹ Meanwhile, the latest Australian Child Maltreatment Study, which surveyed 8,500 Australians aged 16-65+, found that 1 in 3 girls and 1 in 5 boys experience child sexual abuse.²

The impacts of sexual violence are severe and far-reaching

According to research by VicHealth, intimate partner violence is responsible for more preventable ill-health and premature death in women under the age of 45 than any other of the well-known risk factors, including high blood pressure, obesity and smoking.³ Women who have been exposed to violence are at greater risk of developing a range of health problems, including stress, anxiety, depression, pain syndromes, phobias and somatic and medical symptoms, and report poorer physical health overall.⁴

Sexual violence remains vastly underreported

The latest ABS data on sexual violence shows that only 8% of women who were sexually assaulted by a male perpetrator in the ten years leading up to the survey ever reported to police.⁵

¹ Australian Bureau of Statistics. (2021-22). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

² Mathews B et al. (2023) 'The Prevalence of Child Maltreatment of Australia: Findings from a National Survey.' *Med J Aust*. 218 (6).

³ VicHealth. (2008). *Violence against women in Australia as a determinant of mental health and wellbeing*. Victorian Health Promotion Foundation. https://www.vichealth.vic.gov.au/sites/default/files/ResearchSummary_VAW.pdf.

⁴ World Health Organization. (2000). *Women and Mental Health: An Evidence Based Review*. World Health Organisation, Geneva.

⁵ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimisation*. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

Convictions for sexual violence are extremely rare, meaning the overwhelming majority of perpetrators of these serious crimes are not held accountable

According to data analysis by the ABC, of the over 140,000 reports of sexual assault made to Australian police in the ten years leading up to 2017, only roughly 30% led to an arrest, summons, formal caution or other legal action.⁶

Research in state jurisdictions highlights that these figures may not represent the full scale of the problem. For example, recent NSW Bureau of Crime Statistics and Research (**BOCSAR**) analysis found that the figure is even lower—with only 15% of sexual violence matters reported to police resulting in charges laid.⁷ Even fewer matters result in a conviction. According to BOCSAR, only 8% of contemporary child sexual assault incidents reported to New South Wales police end in a conviction.⁸ The number is lower for reported historic sexual assault incidents (7%) and lower again for reported adult sexual assault incidents (6%).⁹

Victim-survivors of sexual violence feel disempowered and retraumatised by the justice system

Victim-survivors who reported sexual violence to police and engaged with the Court process have told us they lacked agency, choice and support, and were made to feel like they were the ones on trial. Clearly, the justice system is not working for victim-survivors of sexual violence.

Victim-survivors in Full Stop Australia's NSAP have told us about the impacts of inadequate systemic responses to sexual violence:

"There needs to be consideration given to the way that sexual violence intersects with other systems... There is so much siloing in the way sexual violence is managed by different systems. It would be fantastic to see all systems improving together and recognising the different roles they all play in the lives of victim survivors (including children)."¹⁰

⁶ Ting, Inga, Scott, Nathaniel and Palmer, Alex. 'Rough Justice: How police are failing survivors of sexual assault.' *ABC*. 28 January 2020. <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364>.

⁷ Gilbert, Brigitte. (2024). *Attrition of sexual assaults from the New South Wales criminal justice system*. NSW Bureau of Crime Statistics and Research. https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB170-Summary-attribution-sexual-assaults.aspx.

⁸ Ibid.

⁹ Ibid.

¹⁰ This experience was shared with Full Stop Australia for a recent submission to the Australian Law Reform Commission Inquiry into Justice Responses to Sexual Violence. For the full submission and findings see [here](#).

The need for a specialist response to sexual violence

Full Stop Australia believes a specialist response to sexual violence, which meets the unique needs of sexual violence survivors, is needed. Currently, sexual violence can become subsumed into broader conversations about domestic, family and sexual violence. This occurs in public discourse and government strategies to combat these forms of violence.

Sexual violence is a distinct form of violence that occurs both within and outside of domestic and family violence—with unique impacts and recovery needs. While sexual violence in the context of domestic violence is a critical concern, with evidence demonstrating significant impacts and prevalence, without a focus on sexual violence in other contexts, the needs of victim survivors will not be fully attended to.

We ask that the Royal Commission recognise the need for a distinct specialist response to sexual violence, as a foundation of its work. A specialist response to sexual violence requires:

- Sustainable funding of specialist sexual violence services. As set out below, these are distinct from domestic and family violence services. They are an important pillar of recovery for survivors—both in the immediate aftermath of crisis, and years later.
- A significant investment in recovery and healing services to provide victim survivors with the supports they require immediately and into the future.
- A dedicated strategy for the prevention of sexual violence. This helps ensure the unique impacts, challenges and recovery needs accompanying sexual violence remain in focus.
- A dedicated workforce plan for the sexual violence sector. This helps ensure the demand for specialist sexual violence services can be met by an adequately trained and supported expert workforce.

Sustainable funding for specialist sexual violence services

A specialist response to sexual violence requires sustainable funding of dedicated sexual violence services. These services offer a range of supports to victim-survivors of sexual crimes—including trauma- and sexual violence-informed counselling, advocacy, social work support, medical care and forensic examination. Providing victim-survivors of sexual crimes access to these services is critical to ensure they are supported to recover, heal and thrive.

Some of the ways in which sexual violence services are distinct from, and meet bespoke needs compared to, domestic and family violence services include:

- Sexual violence support services respond to abuse in a wide range of relationships and over the course of a person’s lifetime. Sexual violence services support many clients who have experienced sexual violence outside of familial and intimate relationships, whilst domestic and family violence services are geared towards crisis that occurs around separation.
- Sexual violence support services do not only respond to clients in crisis, but also meet long-term counselling and support needs, to help people heal from violence and abuse over time. People impacted by sexual violence can access sexual violence services at any time in their lives. Victim-survivors may dip in and out of services throughout their lives to support their healing journey. Specialist sexual violence counselling and support services work with clients to address the deep impacts of trauma. Trauma-informed counselling delivered by sexual violence services focuses on emotional safety and stabilisation, trauma processing, addressing the impacts of sexual violence, resourcing people with coping mechanisms and developing and enhancing client support networks.

Currently, dedicated services for sexual violence in South Australia are limited and underfunded, with long wait lists for counselling support. This has significant impacts on sexual violence survivors, particularly people based in rural, regional and remote areas. It places the goal of recovery in jeopardy, forcing people who have experienced sexual violence to simply survive, rather than thrive.

Sustainable funding for specialist sexual violence services includes funding services that meet the needs of diverse communities—so priority populations disproportionately at risk of sexual violence have access to culturally safe support that responds to their unique experiences and needs.

A dedicated sexual violence prevention strategy and workforce plan

Finally, to meaningfully address sexual violence—and recognise the reality that sexual and domestic violence service systems remain distinct and siloed—there needs to be a dedicated sexual violence prevention strategy and workforce plan.

The sexual violence strategy and workforce plan should be co-designed with victim-survivors of sexual violence and the specialist sexual violence sector.

Australian Law Reform Commission Inquiry into Justice Responses to Sexual Violence.

Submission by Full Stop Australia
June 2024



Full Stop Australia acknowledges the Traditional Custodians of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them, their cultures and their Elders past and present.

About Full Stop Australia

Full Stop Australia thanks the Australian Law Reform Commission (**ALRC**) for inviting us to contribute to its inquiry into justice responses to sexual violence (**Inquiry**).

Full Stop Australia is a nationally focused not-for-profit organisation, which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma;
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector; and
- Advocate to governments and in the media for laws and systems that better respond to, and ultimately prevent, gender-based violence.

This submission was prepared by Taran Buckby, Legal Policy Officer, and Emily Dale, Head of Advocacy. Questions about it can be directed to emilyd@fullstop.org.au.

Our approach to this submission

A safer and fairer justice system

The recommendations in this submission aim to make the justice system safer and fairer for everyone. This means a justice system that treats victim-survivors of sexual violence with respect, provides them with choice and agency, recognises the harm caused to them, and holds all people who use sexual violence to account.

The Government's referral of the Inquiry to the ALRC recognises that, currently, justice systems across Australia aren't working as they should to address sexual violence. We know that:

- **Sexual violence is prevalent in the community.** The latest Australian Bureau of Statistics (**ABS**) Personal Safety Survey shows that 22% of Australian women have experienced sexual violence since the age of 15.¹ Meanwhile, the latest Australian Child Maltreatment Study, which surveyed 8,500 Australians aged 16-65+, found that 1 in 3 girls and 1 in 5 boys experience child sexual abuse.²
- **The impacts of sexual violence are severe and far-reaching.** According to research by VicHealth, intimate partner violence is responsible for more preventable ill-health and premature death in women under the age of 45 than

¹ Australian Bureau of Statistics. (2021-22). *Personal Safety, Australia*. ABS.

<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

² Mathews B et al. (2023) 'The Prevalence of Child Maltreatment of Australia: Findings from a National Survey.' *Med J Aust*. 218 (6).

any other of the well-known risk factors, including high blood pressure, obesity and smoking.³ Women who have been exposed to violence are at greater risk developing a range of health problems, including stress, anxiety, depression, pain syndromes, phobias and somatic and medical symptoms, and report poorer physical health overall.⁴

- **Sexual violence remains vastly underreported.** The latest ABS data on sexual violence shows that only 8% of women who were sexually assaulted by a male perpetrator in the ten years leading up to the survey ever reported to police.⁵
- **Convictions for sexual violence are extremely rare—meaning the overwhelming majority of perpetrators of these serious crimes are never held to account.** According to data analysis by the ABC, of the over 140,000 reports of sexual assault made to Australian police in the ten years leading up to 2017, only roughly 30% led to an arrest, summons, formal caution or other legal action.⁶ NSW Bureau of Crime Statistics and Research (**BOCSAR**) analysis found that the figure is even lower in NSW—with only 15% of sexual violence matters reported to police resulting in charges laid.⁷ Even fewer matters result in a conviction. According to BOCSAR, only 8% of contemporary child sexual assault incidents reported to New South Wales police end in a conviction.⁸ The number is lower for reported historic sexual assault incidents (7%) and lower again for reported adult sexual assault incidents (6%).⁹
- **Victim-survivors of sexual violence feel disempowered and retraumatised by the justice system.** Victim-survivors who reported sexual violence to police and engaged with the Court process have told us they lacked agency, choice and support, and were made to feel like they were the ones on trial. Clearly, the justice system is not working for victim-survivors of sexual violence.

Victim-survivor experience: 'There needs to be consideration given to the way that sexual violence intersects with other systems... There is so much siloing in the way sexual violence is managed by different systems. It would be fantastic to see all systems improving together and recognising the different roles they all play in the lives of victim survivors (including children). For example, Police may do an excellent job of their police work, only to send increasing numbers of victim survivors into a badly broken justice system.'

³ VicHealth. (2008). *Violence against women in Australia as a determinant of mental health and wellbeing*. Victorian Health Promotion Foundation. https://www.vichealth.vic.gov.au/sites/default/files/ResearchSummary_VAW.pdf.

⁴ World Health Organization. (2000). *Women and Mental Health: An Evidence Based Review*. World Health Organisation, Geneva.

⁵ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimisation*. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

⁶ Ting, Inga, Scott, Nathaniel and Palmer, Alex. 'Rough Justice: How police are failing survivors of sexual assault.' ABC. 28 January 2020. <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364>.

⁷ Gilbert, Brigitte. (2024). *Attrition of sexual assaults from the New South Wales criminal justice system*. NSW Bureau of Crime Statistics and Research. https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB170-Summary-attrition-sexual-assaults.aspx.

⁸ Ibid.

⁹ Ibid.

The recommendations in this submission aim to reimagine the justice system so that it delivers true justice to all victim-survivors of sexual violence, and holds all people who use sexual violence to account. It is underpinned by the following objectives:

- Maximising victim-survivor autonomy and choice, by recognising that there is no 'right' way to seek justice following sexual violence, and ensuring access to a range of support options.
- Ensuring victim-survivors are given relevant information, in a timely manner, to make informed choices about how to engage with the justice system.
- Recognising the drivers and consequences of sexual violence, and ensuring this knowledge is embedded throughout the justice system.
- Increasing practical support, so victim-survivors are assisted to engage with the justice system if they choose to do so.
- Increasing the accessibility of the justice system for all victim-survivors, by recognising diverse needs and experiences—including that some communities experience unique barriers to being heard and believed, and may not trust the justice system or see it as a safe place.
- Strengthening the rule of law—a foundational principle of our justice system, which says that no one is above the law, and everyone must abide by the law—by ensuring everyone who uses sexual violence is held accountable.

Victim-survivor experience: 'Victims need to feel a level of agency in the justice system process. They need to feel empowered. They need to feel like they have choice and understanding of what's happening, not like it's happening to them.'

Victim-survivor experience: 'Victims of sexual violence are only asking for a balanced, fair and equitable system. One based on modern evidence-based information. Currently, liberty takes precedence over autonomy. The accused over the victim. The current system is based on outdated values and beliefs. [The original] purpose [of the justice system] was for peerage-protection. Women and children were seen as property and not afforded rights... [We must stop] relying on myths and victim blaming, [and instead] strive to seek the truth and appropriately protect the entire community, not just a few. The legal system has a responsibility to ensure violent crime has consequences and that people are held [accountable] for those crimes. To fail in that, as it is currently doing, is to be negligent in its duty of care to society, to abuse its power and to protect and enable violence. I refuse to call this institution the justice system. There is no justice found here.'

Policy solutions informed by clinical practice and lived expertise

This submission has been informed by the expertise of Full Stop Australia's Clinical and Client Services Team. This team is comprised of trauma-specialist counsellors who support people impacted by sexual violence across the country.

It also draws on the lived expertise of survivor-advocates in our National Survivor Advocate Program (**NSAP**)—a program made up of over 600 survivor-advocates, which facilitates the sharing of experiences of gender-based violence to drive positive change. We are committed to centering the voices of victim-survivors in our work, and advocating for laws and systems that genuinely meet their needs.

In preparing this submission, we sought the views of Full Stop Australia’s clinical staff and survivor-advocates in the NSAP in the following ways:

- We conducted interviews with, and sought written feedback from, Full Stop Australia’s clinical staff—who have experience supporting victim-survivors of sexual violence, including through the criminal justice system.
- We conducted a survey of members of the NSAP with lived experience of sexual violence (the **ALRC Survey**), to gather information about their experiences of the justice system following sexual violence and ideas for change. 56 survivor-advocates responded to Full Stop Australia’s ALRC Survey, and three survivor-advocates contacted us directly to provide feedback via email. ALRC Survey respondents provided feedback anonymously.
- We conducted a targeted consultation with five members of the Advisory Group to the NSAP, about the issues raised by the ALRC’s Inquiry. The Advisory Group is a 12-member panel of survivor-advocates with diverse life experiences and lived expertise of gender-based violence. The Advisory Group members who participated in this consultation are Jayke Burgess, Harrison James, Samantha Schulte, Jocelyn Dracakis and one person who chose not to be named.
- We drew on responses to previous surveys, which also focused on experiences related to sexual violence victimisation, completed by members of the NSAP. Responses to surveys were all anonymous.

The ALRC Survey was completed by victim-survivors with diverse lived experiences:

- 91% (n=51) respondents identify as ‘Woman/Female’.
- Most respondents are aged between 30-39 years old (32%, n=18).
- 64% (n=36) identify as ‘heterosexual or straight’ and 20% (n=11) identify as ‘bisexual’.
- 4% (n=2) identify as Aboriginal and/or Torres Strait Islander.
- 9% (n=5) speak a language other than English at home.
- Nearly half of respondents surveyed currently live with a disability and/or chronic health condition (45%, n=25).
- 61% (n=34) live in a metropolitan area, and 40% (n=22) live in a regional/rural or remote area.

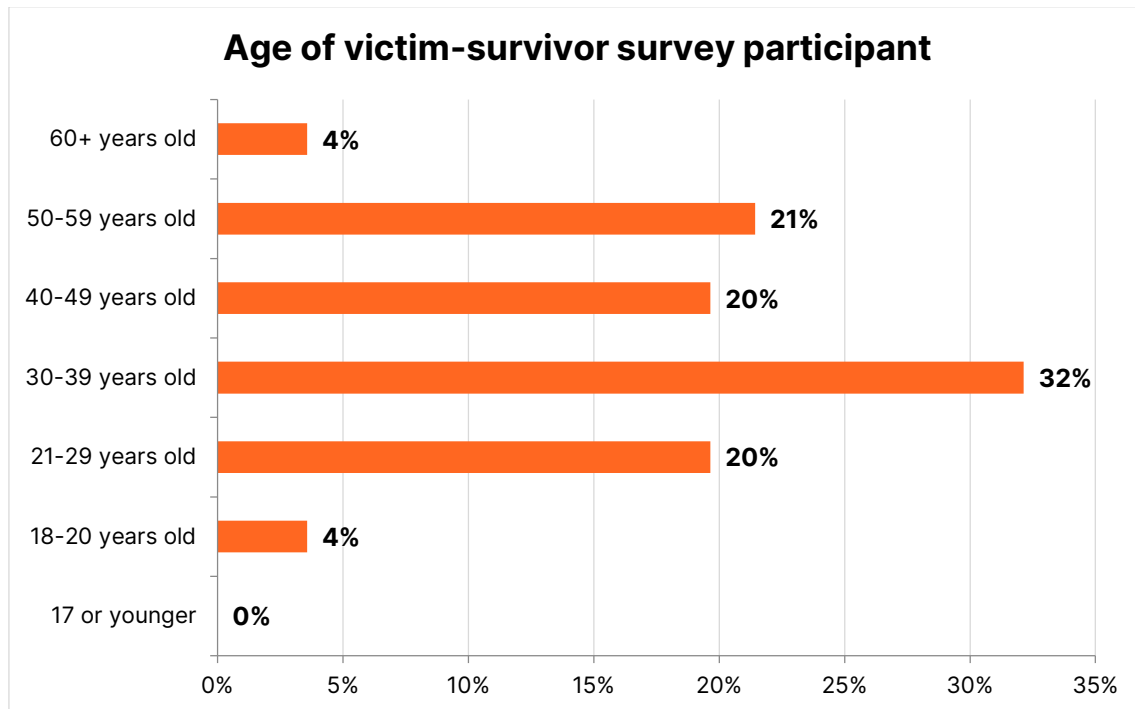


Figure 1: Responses to ALRC Survey question: 'What is your age?' 56 total responses.

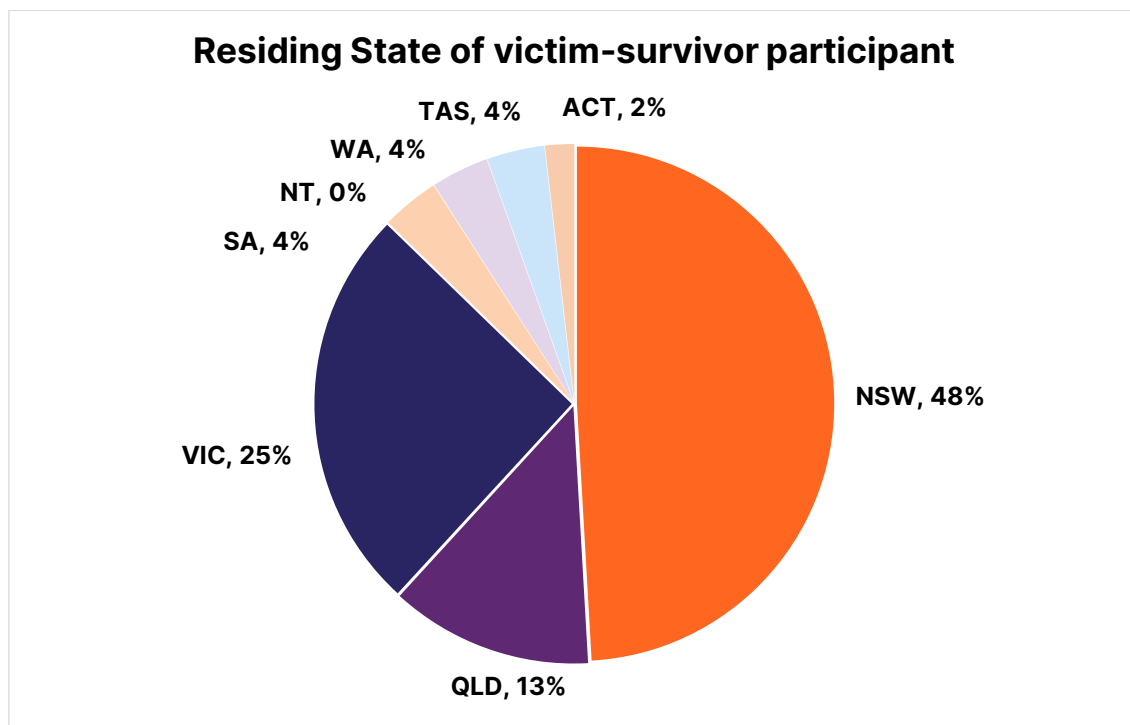


Figure 2: Responses to ALRC Survey question: 'Which state or territory do you live in?' 56 total responses.

The ALRC Survey, and other surveys cited in this submission, used 'purposeful sampling' to gather information. Purposeful sampling is a non-random sampling technique commonly used in qualitative research, which involves selecting participants based on

specific characteristics that align with the research objectives. Unlike random sampling, purposeful sampling focuses on deliberately selecting individuals or cases that can provide rich data. This approach ensures that the chosen participants possess the knowledge, experiences, and perspectives most relevant to the research being conducted. Graphs and survivor-advocate testimony presented in this submission are not intended to be statistical information. Rather, they have been used in this submission to give voice and a platform to victim-survivors of sexual violence—to support the objective of incorporating victim-survivor voices into conversations about legal and justice system reform, and ensure responses to sexual violence meet the needs of a diverse range of victim-survivors.

Our approach to the questions asked by the ALRC

The ALRC has published the *Issues Paper: Justice Responses to Sexual Violence* (**Issues Paper**) to guide stakeholder feedback. The Issues Paper contains 56 questions.

A note on terminology

This submission uses the terms 'victim-survivor' and 'people with lived experience of sexual violence' to refer to people who have experienced sexual violence. It uses the term 'survivor-advocate' to refer to people in Full Stop Australia's NSAP, who provided the invaluable feedback informing this submission.

Recommendations

A summary of our recommendations for improving justice system responses to sexual violence is as follows.

Reporting the experience of sexual violence safely

Recommendation 1: 'Integrated sexual violence hubs' should be made accessible to victim-survivors across the country, to give them a single place where they can access all the support they need following sexual violence. Hubs should be separate to police stations, to ensure they're accessible by all victim-survivors, regardless of whether they choose to report to police or not. Support available at hubs should include:

- Healthcare.
- Therapeutic supports, such as counselling.
- Forensic testing.
- Legal advice.
- Access to 'sexual violence system navigators' (see Recommendation 3).
- Supports should be culturally safe and accessible.

Recommendation 2: All victim-survivors of sexual violence should have access to free legal advice to help them understand the justice system process, exercise the right to privacy during the reporting process, and apply for victims compensation or other forms of redress. Legal advice should be:

- Available from before a victim-survivor decides whether to report to police. This would ensure victim-survivors are informed of their rights and options when reporting to police, and know what to expect from the justice system.
- Free to all victim-survivors of sexual violence who can't afford to engage legal representation.
- Integrated with other supports, so victim-survivors can access all the services they need in one place after experiencing sexual violence.
- Trauma-informed. Lawyers working with victim-survivors of sexual violence should be required to have specialist training on trauma responses and the dynamics of gender-based violence.

Recommendation 3: Fund access to 'sexual violence system navigators' for all victim-survivors of sexual violence, to increase practical support to victim-survivors navigating the justice system and seeking support from key services following sexual violence. Unlike existing limited schemes (e.g. the NSW Witness Assistance Service), 'system navigators' would be available to support victim-survivors prior to, and throughout, engaging with the justice system. System navigators would assist victim-survivors to navigate the justice system by:

- Providing timely information about justice options and processes.
- Supporting victims to exercise their rights.
- Linking victims with necessary supports, such as medical, legal and counselling, and act as a liaison point with these services.
- Supporting victim-survivors at the point of initial reporting to police.
- Reducing emotional and administrative burden on survivors, by liaising with actors in the justice system such as police and prosecutors.

Recommendation 4: Fund peer support programs across the country, so victim-survivors can access the support and expertise of others with lived experience of sexual violence. Increasing access to sexual violence peer support in rural, regional and remote areas should be a priority.

Recommendation 5: Provide mandatory training related to the dynamics and drivers of sexual violence, risk factors requiring intervention, and how trauma can impact victim-survivors, to all first responders. Training should address how to link victim-survivors appropriately and safely with necessary support. The target groups for this training could include health professionals, paramedics and counselling staff.

Recommendation 6: Create a national, government-funded website with accessible information about support options and justice system processes related to sexual violence. Because approaches to sexual violence differ across states and territories, the website would need to direct users to state- and territory-specific information, as well as services operating in the victim-survivor's district or region.

Recommendation 7: Make online reporting options accessible to victim-survivors across Australia, by creating this option in states and territories where it doesn't yet exist and addressing shortfalls in existing models. Online reporting options should:

- Allow victim-survivors to choose how they want to engage with the process.
- Make it clear what the potential outcomes of reporting through an online reporting option are, and what further steps (if any) victim-survivors must take if they want police to launch an investigation.
- Make it clear who will receive the report and in what timeframe the victim-survivor can expect a response.
- Be appropriately resourced to enable timely responses to those who have consented to being contacted.
- Enable ongoing, secure, and (if the victim-survivor wants) anonymous communication between the victim-survivor and police in relation to the disclosure.
- Be co-designed with specialist sexual assault services and victim survivors, to ensure trauma-informed and victim-centric design.
- Refer victim-survivors to support services.

- Be accessible to victim-survivors from a range of lived experiences, including forms in a range of languages and easy read forms.
- Specify that all questions are optional.
- Be well publicised—so victim-survivors are aware that recording their experience online is an alternative, or a first step, to reporting formally to police.

Recommendation 8: Increase access to safe, trauma-informed and timely forensic examinations by:

- Mapping out current gaps in access to forensic examinations (geographic areas where it is not feasible for victim-survivors to access timely, appropriate forensic examinations).
- Addressing workforce barriers resulting in under-supply of professionals qualified to conduct forensic medical examinations.
- Using phone and videocall technology to support timely and trauma-informed access to forensic medical examinations, especially in rural, regional and remote areas.
- Giving victim-survivors the right to specify the gender of their forensic examiner.
- Engaging victim-survivors in follow-up to check wellbeing and provide additional support after forensic examinations.
- Locating all forensic practitioners in the health system, to ensure a patient-first approach to people who wish to undergo forensic testing.
- Ensuring forensic examinations without a police report are accessible in all states and territories.
- Ensuring that forensic medical examinations in all jurisdictions address risks posed by non-fatal strangulation and concussion.

Recommendation 9: Fully and sustainably fund sexual violence specialist services in every jurisdiction that provide tailored support to priority populations, to ensure the justice system is accessible to everyone.

Improving police responses to sexual violence

Recommendation 10: Provide victim-survivors with access to integrated support services co-located with police across the country by rolling out Victoria’s Multi-Disciplinary Centres model in other states and territories. We recommend co-locating police with integrated services *in addition to* establishing ‘integrated sexual violence hubs’ without police presence (see Recommendation 1). This is to ensure integrated support is available to all victim-survivors, regardless of whether they want to report to police.

Recommendation 11: Co-locate ‘sexual violence system navigators’ (see Recommendation 3) with police at police stations. This will help ensure victim-survivors

reporting sexual violence have access to sexual violence-specialist support and help understanding the justice system when reporting to police.

Recommendation 12: Develop a mandatory, nationally uniform code of practice to help standardise a trauma-informed approach to working with complainants of, and investigating, sexual offences in police forces across the country. The code of practice, which would be adopted by police forces across the country, should cover:

- Requirements to provide victims with clear information about the reporting process, possible outcomes, and police contact details, from the outset.
- How to respond in a trauma-informed way to reports of sexual violence and take statements from victim-survivors of sexual violence.
- Requirements to provide regular updates to victim-survivors on the progress of their matters, including ensuring updates are provided in a trauma-informed way.
- A trauma-informed process for providing victim-survivors with reasons for discontinuing an investigation or deciding not to proceed with charges.
- Timeframes for key interactions and clarity regarding who is responsible for communicating with the victim-survivor.
- Trauma-informed processes for linking victim-survivors with support services.

Recommendation 13: Conduct a review of policing practice across the country, with a view to ensuring victim-survivors' right to privacy is protected in all police work, and establishing a best-practice approach to seeking access to victim-survivors' personal information.

Recommendation 14: We support the calls by the [Make Police Investigate](#) campaign for a legally enforceable duty of care owed by police to victim-survivors, legally mandated minimum standards for police investigations, and regular independent oversight of police decision-making in sexual offence cases. Independent case reviews should be conducted by a body or agency independent from police, on every case that has not proceeded to charge, every three months—with public reports released on the outcome of these reviews and police required to act on case review findings.

Recommendation 15: Develop a best-practice standardised approach to training for all police officers across the country, in all jurisdictions, who may receive a report of sexual violence or interact with victim-survivors. This includes both general duties and specialist police. Training should be mandatory and updated regularly. It should include both induction modules and continuing professional development. The training program should be co-designed with people with lived experience of sexual violence and specialist sexual violence services. Training should cover:

- The impacts of trauma—for example, how trauma can affect memory and victim-survivors' responses.

- How to work with, interview and take statements from victim-survivors in a trauma-informed way.
- Victims' rights under jurisdiction applicable Charters of Victims Rights.
- The drivers and consequences of sexual violence.
- The impacts of the criminal justice process on victim-survivors.
- Evidence and substantive sexual violence law.
- Vicarious trauma management.
- Challenging rape myths that continue to result in victim-survivors having poor experiences in the justice system.

Recommendation 16: Recognise that policing sexual violence requires a specialist approach and allocate commensurate resources to it. This involves increasing the workforce of sexual violence specialist units, and requiring that all sexual offences be investigated by specialist units.

Recommendation 17: Ensure that police responses to sexual violence cater to diverse experiences and needs by:

- Addressing systemic racism within police forces across the country, which continues to impact Aboriginal and Torres Strait Islander people and communities. In particular, address the enduring problem of misidentification of Aboriginal women.
- Developing a culturally informed and responsive approach to working with Aboriginal and Torres Strait Islander people, particularly in remote and regional areas.
- Mandating specific police training on experiences of sexual violence among victim-survivors from Aboriginal and Torres Strait Islander, culturally and linguistically diverse (**CALD**) and LGBTQ+ communities, and victim-survivors with disability.
- Embedding Aboriginal and Torres Strait Islander, CALD, LGBTQ+ and disability liaison officers with appropriate specialist training within sex crimes police units across the country.

Recommendation 18: Sexual violence training for police forces across the country must involve hearing from people with lived experience of sexual violence, who have reported to police and gone through the justice system. This is critical for building understanding among police of what the justice system is like for victim-survivors and how best to support them.

Recommendation 19: There should be robust data collection and regular reporting on the impact of initiatives aimed at improving police responses to sexual violence. Reporting should cover police attitudes, their handling of sexual violence matters, reasons why matters reported to police did not proceed to charge, reasons why sexual violence reported to police did not result in a conviction, victim-survivor experiences in

the justice system, and charge and conviction rates. Initiatives to improve policing should then be modified in response to this evidence base.

The trial process

Recommendation 20: Access to 'special measures' to reduce retraumatisation for victim-survivors giving evidence in Court should be made consistent across jurisdictions, so victim-survivors have access to equal protection regardless of where their matter is heard. Victim-survivors should be entitled to access these measures in all jurisdictions—rather than access being discretionary, as it currently is in some jurisdictions.

Recommendation 21: All victim-survivors of sexual violence should be entitled to give pre-recorded evidence if they want to, including:

- Using an audiovisual recording of their police interview as all or part of their evidence-in-chief.
- Giving the balance of their evidence at a pre-trial hearing.
- Ensuring all evidence given in Court is recorded for use in future proceedings.

Victim-survivors should be given full and informed choice about whether to pre-record evidence—including being able to choose when the pre-recording takes place, receiving legal and other support prior to recording evidence, and having possible downsides of recording evidence explained to them. If a victim-survivor's police interview is recorded, this process should be supported by a witness intermediary.

Recommendation 22: Urgent steps must be taken to address irrelevant, invasive and otherwise improper cross-examination, which retraumatizes victim-survivors and undermines the quality of evidence. Full Stop Australia recommends testing the viability of using 'specialist questioners' to elicit evidence from victim-survivors—as an alternative to victim-survivors being questioned by the prosecution and defence. In the meantime, we support the use of ground rules hearings, informed by the expertise of witness intermediaries, to address entrenched, fundamentally unjust and retraumatizing aspects of giving evidence.

Recommendation 23: Prosecutors across the country should follow the approach of the NSW Office of the Director of Public Prosecutions by calling expert evidence about memory and responsive behaviour research in sexual violence trials. This will help ensure criminal trials are informed by a well-established evidence base on the effect of trauma on memory, and the variety of responses victim-survivors may have to trauma.

Recommendation 24: Full Stop Australia supports mandatory jury directions to counteract common rape myths and misconceptions about trauma responses. Jury directions in all jurisdictions should be based on the directions in the Jury Directions Act

2015 (Vic), which offers the most comprehensive approach to jury directions. Jury directions should be required to be given at the outset of every sexual violence trial, and in addition, be repeated during the trial as often as needed to correct misconceptions about consent and sexual violence in real time.

Recommendation 25: Full Stop Australia supports juror education prior to trial to address and counteract common misconceptions about sexual offending and trauma.

Recommendation 26: Further research should be done on the impact of 'juryless' trials and 'professional' jurors on justice outcomes for victim-survivors and the fairness of sexual offence trials for all. Among other things, research should test victim-survivor views and experiences in 'professional juror' and 'juryless' trials, and the impact of these measures on conviction rates.

Recommendation 27: Restrictions on cross-examination and the admissibility of evidence should be consistent across jurisdictions. This provides victim-survivors with equal protection regardless of where the offending occurred. To this end, we recommend addressing the following deficiencies:

- The Northern Territory should align with other states and territories—and community expectations—by amending its law to specify 'sexual reputation' evidence is never admissible.
- All jurisdictions should make it mandatory for judicial officers to intervene in relation to improper questions.
- All jurisdictions should take an equally comprehensive approach to the types of questions recognised as 'improper.'
- Restrictions on statements relating to the reliability of particular classes of complainants that apply in Victoria should be applicable in all jurisdictions.

Recommendation 28: All jurisdictions should introduce a provision specifically requiring the Court to disallow questions with no basis other than to reinforce myths, stereotypes and misconceptions about sexual violence.

Recommendation 29: All jurisdictions should appropriately limit the admissibility of 'sexual experience' evidence and align with the following:

- All jurisdictions should adopt an approach to 'sexual experience' evidence no less restrictive than NSW law.
- All jurisdictions should strengthen their approach to considering victim-survivors' interests when considering the admissibility of 'sexual experience' evidence. This includes whether the probative value of the evidence outweighs distress, humiliation and embarrassment to the victim-survivor; the risk evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility; and the need to respect the victim-survivor's personal dignity and privacy.

- More clarity is needed on the distinction between 'sexual reputation' and 'sexual experience' evidence. Evidence of a victim-survivor's past sexual activities could be relevant to both their 'sexual experience' and their 'sexual reputation.' It should be clear how restrictions on these forms of evidence interact, to ensure they are working as intended.

Recommendation 30: All victim-survivors of sexual violence should have standing to intervene in relation to cross-examination, and applications to admit evidence, that affect them. To support legislative reform, Full Stop Australia recommends making this form of legal support freely available to victim-survivors through publicly funded legal services. This would promote victims having greater agency and awareness of matters that affect them in sexual violence proceedings.

Recommendation 31: Adopt a uniform approach to the disclosure of victim-survivors' counselling, therapeutic and other records across jurisdictions. The approach should prioritise the privacy and agency of victim-survivors, recognise the confidentiality of all health information and professional records, and ensure victim-survivors feel safe to access services. In all jurisdictions:

- A victim-survivor's consent should be explicitly required to disclose their confidential communications.
- Privilege should not only apply to counselling and therapeutic records. It should capture all communications and records related to a victim-survivor's health and therapeutic care, as well as communications and records held by social workers, drug and alcohol rehabilitation services, and specialist domestic, family or sexual violence services.
- When deciding whether to admit medical records, Courts should be required to consider the healthcare, recovery and safety needs of victim-survivors of sexual violence.
- Victim-survivors should have standing to intervene in relation to applications to admit their confidential records.
- Privilege should also apply to civil proceedings, where the relevant evidence was found to be privileged in a criminal matter.
- There should be publicly funded legal support for people impacted by applications for relevant records.

Recommendation 32: All jurisdictions should adopt a broader approach to the admissibility of tendency and coincidence evidence in both adult and child sexual offence matters. The approach should be based on uniform legislation in NSW, ACT, NT and TAS, with the following changes to increase admissibility of tendency and coincidence evidence:

- Applying the presumption of 'significant probative value' to all sexual offence matters (i.e. matters involving both adult and child complainants)—not only child sexual offence matters.
- Expanding the presumption of 'significant probative value' so it applies to both tendency and coincidence evidence.

Recommendation 33: Establish sexual violence specialist Courts for the hearing of all sexual offence matters. Full Stop Australia supports a specialist Court model that:

- Makes training on sexual violence, the impacts of trauma and provision of trauma-informed approaches mandatory for all judicial officers, lawyers and Court staff. The training program should be co-designed with people with lived experience of sexual violence and frontline sexual violence services.
- Specifically requires everyone working in the Courts to use trauma-informed practice.
- Specialist Courts could operate within the existing Court system.

Sentencing

Recommendation 34: Amend legislation in all jurisdictions to clarify that the character of an offender should not be considered a mitigating factor in sentencing for child or adult sexual offences.

Recommendation 35: Invest in the development of evidence-based behaviour change programs for sexual offenders, both inside correctional facilities and in the community. This should include culturally appropriate behaviour change programs, and programs delivered on Country.

Civil proceedings and other justice processes

Recommendation 36: More work is needed to assess the potential impacts of restorative justice on victim-survivors. A victim-centric approach should be taken to assessing the suitability of restorative justice in sexual offence matters, including:

- Extensive consultation with victim-survivors.
- In-depth assessment of victim-survivors' experiences with restorative justice in sexual offence matters, in jurisdictions where this option exists. This includes tracking victim-survivors' views on this option over a period of time—not just in the immediate aftermath of participating in such a scheme.

Recommendation 37: Undertake a holistic review of Victims Compensation Schemes in all jurisdictions, which:

- Considers opportunities for greater alignment between schemes in different jurisdictions, to ensure equal access to justice and support among victim-survivors across the country.
- Reviews amounts payable under various schemes, in consultation with victim-survivors. Compensation amounts should align with community expectations, adequately recognise harm and meet victim-survivors' ongoing recovery needs.
- Identifies and addresses unjust barriers preventing victim-survivors from accessing Victims Compensation. Among other things, South Australia should align its approach with other jurisdictions by applying the civil standard of proof to Victims Compensation applications.

Recommendation 38: To strengthen protection and support available to victim-survivors of sexual violence in the justice system, we recommend amending Victims Charters in all jurisdictions to give victim-survivors a mechanism to enforce or pursue their rights.

Recommendation 39: Victims Charters in all jurisdictions should provide victim-survivors of sexual violence with the following rights:

- Victims should be updated on the progress of their matters as a matter of course. Currently, some victims are only updated on the progress of their investigation upon request.
- Victims should be informed of an offender's impending release from custody as a matter of course. Currently, some victims are only informed upon request.
- Victims should have a right to have their views considered on matters that impact their safety, such as bail and parole decisions.
- Victims should have a right to request an independent review of decisions by police or the prosecution to discontinue or not file charges.
- Victims should have the right to special measures in Court, including the right to pre-record their evidence.
- Victims should have the right to specify the gender of their forensic examiner.
- Victims should have the right to be allocated a 'system navigator' to support their journey through the justice system and accessing services following sexual violence.
- Victims should have the right to legal representation and advice in relation to matters that affect them in the criminal justice system.

Other matters

Recommendation 40: An affirmative standard of consent should be adopted in legislation in all Australian states and territories. This would entrench standards of respect, safety, and mutual and ongoing communication as cornerstones of all sexual interactions, and improve clarity regarding the operation of the criminal law and obligations of all parties to sexual encounters.

Reporting the experience of sexual violence safely

Our feedback in this section addresses Questions 1 to 4 in the Issues Paper. It sets out changes that would improve victim-survivors' experience the first time they report sexual violence, or seek information about how to do so.

The experience a victim-survivor has the first time they report sexual violence is critical. This can determine whether they decide to move forward in the justice system, and how supported they feel doing so. Improving victim-survivors' experience of their first report can therefore help to address low reporting and high attrition rates for sexual violence—ensuring that more matters make it through the justice system.

'Integrated sexual violence hubs' where victim-survivors can go to access all the support they need

Full Stop Australia recommends increasing access to 'integrated sexual violence hubs' across the country, to ensure victim-survivors can access all the supports they need in one place.

Victim-survivors should be able to access the following supports at these hubs:

- Healthcare.
- Therapeutic supports, such as counselling.
- Forensic testing.
- Legal advice. We have addressed below the types of legal support we think victim-survivors should be able to access.
- Access to the 'system navigators' recommended below, to provide social work and advocacy support (see Recommendation 3).
- Supports should be culturally safe and accessible. For example, victim-survivors who need it should be able to access interpreting services.

Hubs could be modelled off Victoria's Orange Door program, which supports victim-survivors of domestic and family violence:

*'In Orange Doors, several organisations, including family violence services, child protection and Aboriginal services, work together to respond to the needs of victim survivors, perpetrators and families. The Orange Door is a 'front door' into services. Partner agencies work together in multidisciplinary teams to assess and prioritise the needs and goals of clients. People can receive crisis support from the Orange Door and be referred to other services. The Orange Door model does not include police.'*¹⁰

To build integrated hubs in each state and territory, we recommend adding key services to, and building the capacity of, existing integrated support models—rather than

¹⁰ Victorian Law Reform Commission (VLRC). (2021). *Improving the Justice System Response to Sexual Offences*. https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf.

building entirely new infrastructure. For example, in NSW, Sexual Assault Services within NSW Health already integrate access to healthcare, forensic testing, counselling support and Court support. In Victoria, integrated counselling, advocacy and medical care is accessible at 15 Centres Against Sexual Assault located across Victoria. Unfortunately, these services are under extreme pressure, and many have wait times of six months or more for people who desperately need immediate support. We also note that currently, access to integrated supports varies by jurisdiction—for example, in, WA, the Northern Territory, Tasmania and South Australia, there is no equivalent statewide integrated support model for victim-survivors of sexual violence.

Victim-survivors have expressed strong support for increasing access to integrated service delivery— including co-location of health, counselling and legal services. The overwhelming majority of respondents to a survey we issued in May 2023 about accessing legal services following sexual violence¹¹ (90.7%, n = 39/42) provided feedback that it would be helpful if legal services were co-located with other supports so they could be accessed early, easily and safely. Several participants said they would have found it helpful if they could have accessed all relevant services in one place immediately after experiencing sexual violence (or when they first engage with service systems in relation to sexual violence).

Victim-survivor experience: *'Much easier for a person to navigate the entire process with everything in the one place.'*

Victim-survivor experience: *'It would be most beneficial if everything was in one place. Police, counsellors, legal and advocates, trauma informed survivors.'*

Victim-survivor experience: *'It would be nice if Trauma Counsellors and Legal Services worked hand in hand to offer continuity of care. A lot of Trauma counsellors aren't familiar with the heaviness of the legal system and a lot of legal services aren't familiar with the way trauma manifests.'*

Integrated hubs would also support information sharing between different services, so victim-survivors aren't required to re-tell their story multiple times when accessing support. Victim-survivors told us they would highly value this.

NSAP Advisory Group Member: *"Why don't we have a system of sharing information [between government agencies and services] so survivors don't have to repeat their story?"*

¹¹ Full Stop Australia surveyed members of the NSAP in May 2023 about their experiences seeking legal advice following sexual violence. The purpose of this survey was to inform our submission to the Attorney General's Department on *Trauma-Informed Legal Services for Victims and Survivors of Sexual Assault*. In total, 43 survivor-advocates responded to that survey. Our submission to the Attorney General's Department is available [here](#).

NSAP Advisory Group Member: *‘There needs to be collaboration between different stakeholders that receive reports. Currently, the weight is on a survivor’s shoulders to relay information at every stop. Instead, services should be transmitting information to each other.’*

NSAP Advisory Group Member: *‘The need for people to retell their trauma over and over again [to access different supports] is horrific. It’s not okay to require survivors to tell their story over and over again. Not needing to repeat our stories a million times would help address retraumatisation.’*

These hubs should be separate to police. This gives victim-survivors choice and agency when seeking help following sexual violence. It is important that victim-survivors who don’t want to report to police, or don’t see police as a safe place, have the same access to integrated support as others—particularly noting reporting rates are currently so low—only 8%.¹² As noted by Djirra and Springvale Monash Legal Service, police may deter some victim-survivors from reporting:

‘Many people may not feel comfortable... because of the presence of police and child protection. For example, the fear of children being removed is strong in Aboriginal communities, given both past and present practices of removal. [According to] Djirra, [this is] “unfortunate, but the trust has gone in that regard.”’¹³

‘Some young people may not feel confident to come if police are involved... [so] integrated models in other settings [should be explored].’¹⁴

We also recommend co-location between police and support services in the section on *Multi-Disciplinary Hubs* below. For clarity—and for the reasons above—our recommendations below on co-location between police and frontline sexual violence services are a supplement, not an alternative, to ‘integrated sexual violence hubs’ without police presence recommended in this section.

¹² Australian Bureau of Statistics, above n 5.

¹³ VLRC, above n 10. Citing VLRC Consultations 20 (Members of Barwon Southwest RAJAC and Barwon Southwest Dhek Dja Action Group) and 30 (Djirra).

¹⁴ VLRC, above n 10. Citing Submission 55 (Springvale Monash Legal Service).

Recommendation 1: *'Integrated sexual violence hubs' should be made accessible to victim-survivors across the country, to give them a single place where they can access all the support they need following sexual violence. Hubs should be separate to police stations, to ensure they're accessible by all victim-survivors, regardless of whether they choose to report to police or not. Support available at hubs should include:*

- *Healthcare.*
- *Therapeutic supports, such as counselling.*
- *Forensic testing.*
- *Legal advice.*
- *Access to 'sexual violence system navigators' (see Recommendation 3).*
- *Supports should be culturally safe and accessible.*

Access to legal support for all victim-survivors of sexual violence

Expanding access to legal advice is another way of ensuring victim-survivors are adequately supported to report sexual violence safely. This section deals with the importance of victim-survivors being able to access legal advice prior to and during the reporting process—to demystify the justice system and ensure victim-survivors are fully informed of their rights and options. Below in this submission, we have dealt separately with other parts of the justice system in which access to legal representation is important—including in the leadup to, and during, the Court process.

Research shows that victim-survivors 'experience distress from feeling confused by and peripheral to the legal process... [which can impact their] confidence in the legal process—a factor which is crucial in encouraging wider community confidence to report sexual offences.'¹⁵ Survivor-advocates in Full Stop Australia's NSAP who completed our survey told us they experienced barriers accessing legal advice after experiencing sexual violence.¹⁶

¹⁵ RMIT and KPMG. (July 2023). *'This is my story. It's your case, but it's my story.'* Interview Study: Exploring justice system experiences of complainants in sexual offence matters'. Research commissioned by BOCSAR.

¹⁶ Above n 11.

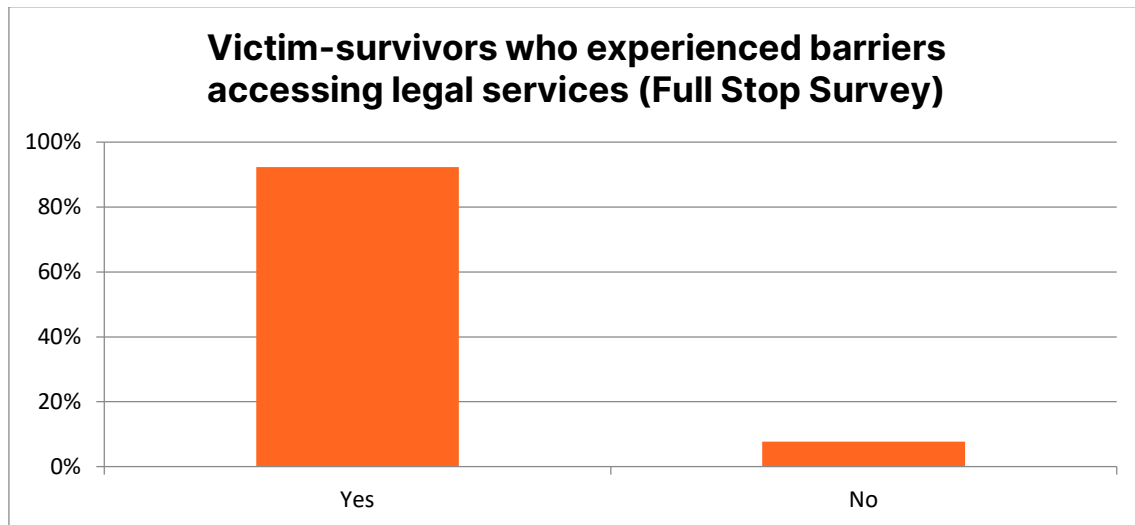


Figure 3: Responses to May 2023 survey question: 'Did any barriers prevent you from accessing legal assistance?' (31 total responses)

Victim-survivors told us that barriers such as cost, limited access to services in rural areas, long wait lists, and lack of a clear pathway to legal services made it either difficult or impossible to access legal assistance.

Victim-survivor experience: *'[In a] regional area [there may be] conflicts of interest even when services are locally available.'*

Victim-survivor experience: *'Sometimes I had questions, which were very simple, but was consistently told that I could not be given legal advice over the phone. Waitlists for any help are ridiculously long, adding to the distress. I found it incredibly difficult to get any advice whatsoever, and was consistently referred from one place to another.'*

Victim-survivor experience: *'Often very long waiting lists of 6 months or more.'*

Of the victim-survivors who were able to access legal advice following sexual violence, many didn't find it trauma-informed. 92% (n = 24/26) of respondents to our May 2023 survey about accessing legal services following sexual violence¹⁷ said that legal services could have been delivered in a more emotionally or physically safe, sensitive or otherwise trauma-informed way.

¹⁷ Ibid.

Victim-survivor experience: *'While my legal team were experts in their field, I didn't get the sense that they fully understood the nature of the trauma I had experienced, and particularly the intersections between the different forms of violence involved, i.e., gendered, sexual and workplace. I also had the sense that I wasn't even believed by my legal team, which was tough to experience, although I appreciate they were objective senior professionals doing their jobs and trying to make sure I at least had access to a fair process. It was a highly distressing experience though to not feel believed and it's difficult even now to write about.'*

Victim-survivor experience: *'I did not receive a trauma informed response from my legal team, or from the legal system process that I went through, despite the best efforts of my own legal team to provide me with a highly skilled professional service, which they certainly did deliver. I also found the legal system process that I went through to be highly adversarial, which was extremely difficult to experience while I was in an already suicidal state due to the trauma I had experienced. This compounded my distress and I'm grateful to have survived this.'*

Victim-survivors told us they would have benefited from legal advice on justice system processes, their rights and legal options, and preparing to give a statement to police. They said this would have made them feel like they had more agency, and were more empowered, moving through the justice system.

Victim-survivor experience: *'A lawyer appointed from the outset is a game changer for convictions and will minimise women withdrawing their cases, getting confused and isolated.'*

Victim-survivor experience: *'The lawyer's job is to explain the court process in plain language to ease the trauma.'*

To address the above shortfalls and increase victim-survivors' sense of support and agency in the justice system, Full Stop Australia recommends making legal assistance accessible by all victim-survivors of sexual violence. Legal assistance should be:

- Available from before a victim-survivor decides whether to report to police so that victim-survivors are informed of their rights and options when reporting to police, and know what to expect from the justice system (including how long things will take). The overwhelming majority of survivor-advocates who responded to our May 2023 survey¹⁸ said they would find legal assistance helpful in the initial stages of engaging with the criminal justice process following an experience of sexual violence (93%, n = 40/42).

¹⁸ Ibid.

- Free to all victim-survivors of sexual violence who can't afford to engage legal representation. Access to Legal Aid and most Community Legal Centre support involves means testing. We note some victim-survivors would not satisfy these means tests, but would nonetheless struggle to pay expensive private legal fees. In addition, means testing may not capture situations where financial abuse is present—i.e. where a victim-survivor has a certain level of income or assets, but those remain under the control of the perpetrator of violence. It's critical that legal support is available to all who need it.
- Integrated with other supports, so victim-survivors can access all the services they need in one place after experiencing sexual violence.
- Trauma-informed. Lawyers working with victim-survivors of sexual violence should be required to undergo regular training on trauma responses and the dynamics of gender-based violence.

Legal assistance would ensure victim-survivors are supported with the following justice needs when deciding whether to report sexual violence and during the reporting process:

- Understanding the justice system process. This is important to ensure victim-survivors are fully informed about their justice options and feel a sense of agency engaging with the justice system.
- Exercising the right to privacy during the reporting process. After reporting sexual violence, victim-survivors are commonly asked by police to provide access to their personal data through a process known as 'Cellebrite.' This allows the extraction of messages, photos and other information from a victim-survivor's phone, for the purpose of evidence gathering in an investigation. It's important that victim-survivors have access to legal advice in relation to this process—to ensure they are fully informed of their rights when supplying data to police, and the consequences of doing so—and can make an informed decision about whether, and to what extent, to supply their phone for a Cellebrite search. In addition to this process being the subject of legal advice, we also think police processes for seeking Cellebrite material from victims could be improved. We have detailed current problems and how they could be addressed below in the section on *Improving Police Responses to Sexual Violence*.
- Applying for victims support, or civil or administrative redress, following sexual violence. Some victim-survivors may not want to engage with the criminal justice system, or may want to seek redress through other means in addition to going through the criminal justice process. Access to legal advice would enhance victim-survivors' understanding of their options and support them to take relevant action.

We have commented below in the section on *The Trial Process* on other forms of legal assistance we think victim-survivors should be able to access later in the justice system—namely, support to exercise the right to privacy over health and counselling

records, and support during the Court process to intervene in relation to cross examination and applications to admit evidence of past sexual experience.

Recommendation 2: *All victim-survivors of sexual violence should have access to free legal advice to help them understand the justice system process, exercise the right to privacy during the reporting process, and apply for victims compensation or other forms of redress. Legal advice should be:*

- *Available from before a victim-survivor decides whether to report to police. This would ensure victim-survivors are informed of their rights and options when reporting to police, and know what to expect from the justice system.*
- *Free to all victim-survivors of sexual violence who can't afford to engage legal representation.*
- *Integrated with other supports, so victim-survivors can access all the services they need in one place after experiencing sexual violence.*
- *Trauma-informed. Lawyers working with victim-survivors of sexual violence should be required to have specialist training on trauma responses and the dynamics of gender-based violence.*

All victim-survivors should be supported by 'sexual violence system navigators' to help them navigate complex Government and legal systems

We also recommend funding 'sexual violence system navigators,' with a view to increasing practical support to victim-survivors moving through the justice system.

The role of 'system navigators' was set out in the Victorian Law Reform Commission (VLRC)'s 2021 report on *Improving the Justice System Response to Sexual Offences*:¹⁹

'In England and Wales, [sexual violence system navigators] have been available since 2007. They are usually social workers or counsellors who provide practical and emotional support to people who have experienced sexual violence. The [system navigators] tailor support to the individual needs of the person they are supporting; provide accurate and impartial information to them and their families, provide emotional and practical support; provide support before, during and after criminal and civil proceedings; act as a single point of contact; and ensure their safety and the safety of their families. If a person chooses to report, the [system navigator] supports them through and beyond the criminal justice process. The [system navigator's] role is broad and includes advocating for, educating, liaising for and supporting victim survivors. For example, they can liaise with police and deal with housing issues... [System navigators] empower a person to make informed decisions about what to do. They address issues that could cause victim survivors to disengage from support services. They support people in

¹⁹ We note that sexual violence 'system navigators' are referred to as 'independent advisers' in the VLRC's report, as this is the term used in England and Wales where this support is already available to victim-survivors of sexual violence.

dealing with the disruptions caused to their relationships. They also provide support to families of victim survivors.²⁰

We recommend making system navigators available to all victim-survivors of sexual violence across the country. This support should be offered from the first time someone reports sexual violence to an official source (for example, police, a health service, a psychologist, or a frontline service), with contact facilitated through a 'warm referral' process. Referrals should be able to be made after hours—noting that many people report sexual violence outside usual business hours. In addition, we think system navigators should be:

- On hand at the 'integrated sexual violence hubs' recommended above.
- Co-located with police at police stations, to ensure policing is supported by professionals with expertise in trauma and gender-based violence. We have addressed co-location of system navigators below in the section on 'Improving Police Responses to Sexual Violence.'

Among other things, introducing system navigators would provide victim-survivors with better support during police interviews and assistance liaising with police. It would give victim-survivors a dedicated support person who is solely focused on their needs—which is currently lacking, and which many victim-survivors report leads to confusion and disempowerment. It would give victim-survivors a single point of contact, and source of information, advocacy and care coordination. System navigators have the potential to support victim-survivor autonomy, choice and recovery by:

- Providing timely information about justice options and processes—including accessing a forensic examination, reporting options, and access to reimbursement through a victims support scheme.
- Supporting victims to exercise their rights.
- Linking victims with necessary supports, such as medical, legal and counselling, and acting as a liaison point with these services.
- Supporting victim-survivors at the point of initial reporting to police.
- Reducing emotional and administrative burden on survivors, by liaising with actors in the justice system such as police and prosecutors.

While some system navigation and social work support exists for victims of crime, victim-survivors have found this support does not meet their needs, as it is:

- Not available from the outset of the criminal justice process.
- Limited to particular time periods and contexts.

For example, the Witness Assistance Service (**WAS**) available through the NSW Office of the Director of Public Prosecutions is only accessible by witnesses in criminal matters

²⁰ VLRC, above n 10.

that have been committed for trial. There is a significant time lapse between a crime occurring, and the matter being brought to trial—and as such, the WAS does not meet the needs of sexual violence victim-survivors in the immediate aftermath of the crime, or when they first decide to report their experience. Also, the WAS is very focused on preparing for the Court process and ensuring witnesses can give their best evidence—rather than being designed with the support needs of victims in mind, with a view to ensuring they are supported to navigate the aftermath of sexual violence and access all necessary supports.

Victim-survivors in Full Stop Australia’s NSAP have consistently expressed how useful they would find the support of system navigators—telling us they would have found the following helpful:

Victim-survivor experience: ‘A support person who is with you from the start to the finish.... Who advocates on your behalf.’

Victim-survivor experience: ‘Government funded services that provide support to people wishing to report to police, including information about the whole legal process.’

Victim-survivor experience: ‘Case management through the system, working collaboratively with OPP/Police, and advocating for the victim survivor. Free and trauma informed.’

NSAP Advisory Group Member: ‘There would be merit to solutions which can tangibly simplify this process for those professionals lacking time or confidence to respond comprehensively, for instance the suggestion (by Full Stop) of a streamlined referral pathway to specialised case workers with a role to inform victim-survivors of their options and assist them to navigate reporting and support services.’

One survivor-advocate in Full Stop Australia’s NSAP, who was able to access equivalent support through a community legal centre, described this as ‘life changing.’

NSAP Advisory Group Member: *'I was able to access "legal social support" through Caxton Legal as I went through the coronial inquest process. I was given a social worker who was trauma informed. My social worker followed me through whole coronial process and sat with me through every interview. They supported me to link into services, [including] services that could continue to offer care and support after my proceedings had ended. So [even when] my matter was no longer on foot, I had a network of supports in place. My social worker sat in on conferences with other services and would retell my story, so I didn't have to. They arranged security cameras at my house. I would not have gotten through the [coronial inquest] process without this. I had this support for four years. It changed my life.'*

The potential of system navigators to improve victim-survivors' experience of the justice system is well-established. An independent review of the criminal justice system in England and Wales observed that, as 'an example of a reform to a system that is effective, cost-effective and affordable, the establishment of [independent sexual violence advocates] is hard to beat.'²¹ Another review identified the model as 'one of the key reforms that improves support of victims.'²² A review of a similar model in Scotland found such support 'invaluable and life-changing,'²³ noting that victims 'valued the information about the criminal justice process, the emotional support, and the range of support, which extended beyond the criminal justice system.'²⁴

There is also evidence that this model improves criminal justice outcomes by increasing charge and conviction rates (which are disproportionately low for sexual offences) and reducing attrition from the justice system. According to the Victorian Law Reform Commission:

*'A recent review of the case files of over 500 rape cases in England has found a strong link between specialist support and criminal justice outcomes. Cases where a person received support from specialist services were significantly more likely to be deemed a crime, result in charge and almost twice as likely to result in a conviction than cases where a person did not. They were 42 per cent less likely to result in police taking 'no further action' and 49 per cent were less likely to withdraw from the process than people who did not receive specialist support. A survey by the Victims' Commissioner for England and Wales also found a promising link between support and attrition, with 10 per cent of those receiving support choosing to take no further action or withdrawing support, compared to 20 per cent of those who did not have support.'*²⁵

²¹ Vivien Stern. (2010). *The Stern Review: An Independent Review into How Rape Complaints Are Handled by Public Authorities in England and Wales*. Home Office (UK).

²² VLRC, above n 10. See also Elaine Wedlock and Jacki Tapley. (March 2016). *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment*. Victims' Commissioner for England and Wales and University of Portsmouth.

²³ Julian Molina and Sarah Poppleton. (October 2020). *Rape Survivors and the Criminal Justice System*.

²⁴ VLRC, above n 10.

²⁵ Ibid. See also Sarah-Jane Lilley Walker et al. 'Rape, Inequality and the Criminal Justice Response in England: The Importance of Age and Gender' (2021) 21(3) *Criminology & Criminal Justice* 297, 304.

Finally, this model has the potential to assist with the provision of culturally responsive support for Aboriginal and Torres Strait Islander women, through a focus on recruiting First Nations system navigators. Similarly, recruitment of system navigators from the LGBTQ+ community, from CALD communities, and with disability would increase support available to victim-survivors from these priority populations.

Recommendation 3: *Fund access to ‘system navigators’ for all victim-survivors of sexual violence, to increase practical support to victim-survivors navigating the justice system and seeking support from key services following sexual violence. Unlike existing limited schemes (e.g. the NSW Witness Assistance Service), ‘system navigators’ would be available to support victim-survivors prior to, and throughout, engaging with the justice system. System navigators would assist victim-survivors to navigate the justice system by:*

- *Providing timely information about justice options and processes.*
- *Supporting victims to exercise their rights.*
- *Linking victims with necessary supports, such as medical, legal and counselling, and act as a liaison point with these services.*
- *Supporting victim-survivors at the point of initial reporting to police.*
- *Reducing emotional and administrative burden on survivors, by liaising with actors in the justice system such as police and prosecutors.*

Invest in peer support programs for victim-survivors of sexual violence

Several survivor-advocates told us they would have valued being connected with someone with lived experience of sexual violence, to support them as they moved through the justice system.

Victim-survivor experience: *‘Survivors [should be given] access to sexual violence survivor-advocates.’*

Victim-survivor experience: *‘Pay lived experience survivor advocates to walk alongside victim-survivors as they navigate health and judicial systems. Pay them well!’*

Victim-survivor experience: *‘[Survivors should be given] access to peer support workers. Someone who has experienced something similar, who could be a buddy or mentor through whatever process the victim-survivor chooses to be right for them.’*

Some peer support programs already exist. For example, survivor-led organisation The Survivor Hub provides incredible support to victim-survivors of all forms of gender-based violence through regular meetups.

NSAP Advisory Group Member: *'Police should refer victim-survivors to peer support groups like The Survivor Hub [as standard practice].'*

We recommend increased investment in survivor-led peer support groups like The Survivor Hub. There should be a focus on increasing this support in rural, regional and remote areas—where victim-survivors have told us access to peer support is limited.

Recommendation 4: *Fund peer support programs across the country, so victim-survivors can access the support and expertise of others with lived experience of sexual violence. Increasing access to sexual violence peer support in rural, regional and remote areas should be a priority.*

Training for all first responders on trauma, sexual violence, assessing risk and safety planning

Victim-survivors told us they sought support from a range of sources following sexual violence.

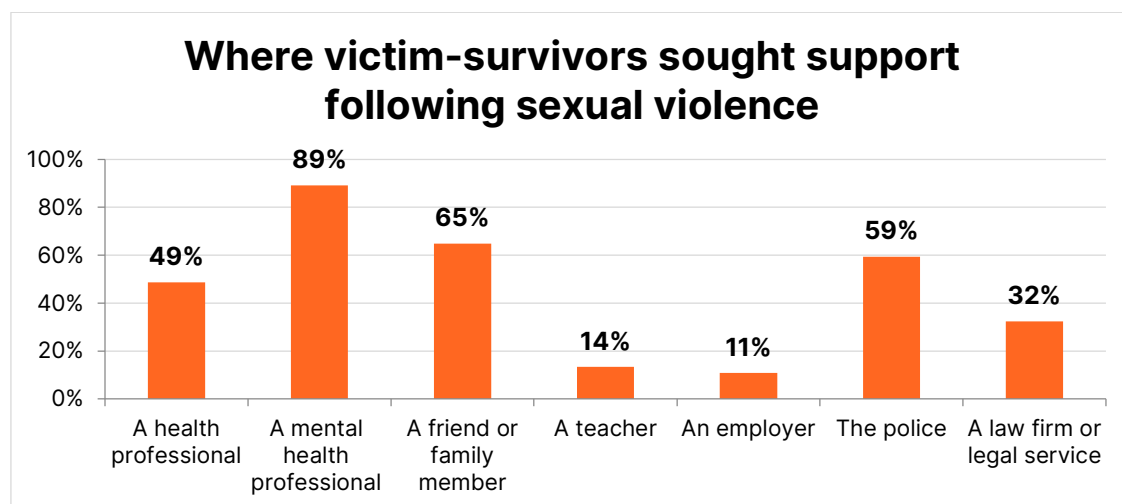


Figure 4: Responses to ALRC Survey question: 'Did you seek support from any of the following? Please select all that apply.' 37 total responses.

Overall, victim-survivors' experiences of seeking support were poor—with the majority of respondents to the ALRC survey telling us they did not receive adequate support following sexual violence.

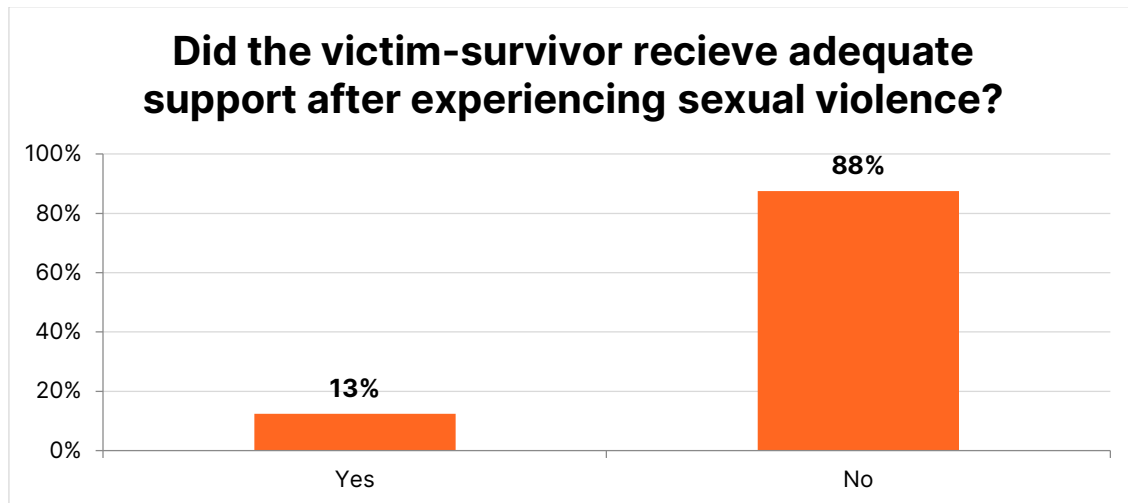


Figure 5: Responses to ALRC Survey question: 'Do you feel you received adequate support after experiencing sexual violence?' 40 total responses.

Some victim-survivors had poor experiences seeking support due to a lack of knowledge among first responders.

NSAP Advisory Group Member: *'[My ex-husband] took me to the doctor "because I didn't enjoy sex with him." I hoped the doctor would be able to read on my face what was happening. But he didn't send my husband out [so we could have] a private conversation. Instead, he sent us to marriage counselling. Later, I told [my] psychologist I was being raped by my husband. The psychologist had a responsibility to report that to police, which could have been a lifeline of help for me. That didn't happen. The psychologist's failure was well documented in my coronial inquest. I was let down.'*

Victim-survivor experience: *'I visited the emergency department at the hospital and explained to receptionist I had been date raped and wanted to check my system for drugs. The receptionist asked me to wait in waiting room. I waited for many hours. Finally, close to midnight, I was able to be checked. The nurse was very angry as she explained that rape cases were meant to be treated as urgent, as drugs have a timeframe on how long they stay in the body. The receptionist was obviously not aware of this protocol. It's a concern if staff are not aware of sexual violence protocols.'*

Victim-survivors also told us lack of understanding among first responders prevented them from appropriately addressing risks associated with gender-based violence.

Victim-survivor experience: *'There is not enough understanding of the barriers to reporting amongst those who are at the coalface. In my experience, people at the coalface of dealing with sexual violence don't understand the nuances of sexual violence. [Many first responders] categorise violence as being severe or less severe, perhaps based on their own biases around the subject. Most often this results in more coercive and emotional types of violence being categorised as less severe and less dangerous. It is just not true that emotional and coercive controlling types of abuse are any less dangerous and damaging than straight physical violence. The lack of understanding of the nuances of violence undermine my trust that services... are equipped to appropriately assess and respond to these types of violence.'*

There should be no wrong place to disclose experiences of sexual violence. It's critical that anyone likely to receive a disclosure of sexual violence is equipped to respond sensitively and provide victim-survivors the support they need. This includes having a good understanding of ongoing risks and safety concerns, and trauma impacts, related to sexual violence victimisation. We recommend this training be mandatory for medical and allied health professionals (including GPs and emergency room staff), psychologists, counsellors and paramedics.

NSAP Advisory Group Member: *'[There needs to be] trauma-informed training for all first responders—hospitals, GPs, legal services and police all need comprehensive training in trauma-informed care. They should be equipped to recognise trauma and respond with empathy.'*

NSAP Advisory Group Member: *'I disclosed my history of sexual assault to countless professionals before I was offered meaningful support and assistance. It talked with psychologists, GPs, psychiatrists and lawyers before finally a social worker told me about victims services. Before that I had spent years financing for my own trauma recovery, and missing out on mental health sessions that I needed because I couldn't afford them. I wish someone had connected me to victims services years earlier. Had I known I could have applied for a recognition payment and subsidised counselling in the aftermath of my sexual assault that would have been life changing.'*

First responders who may receive disclosures of sexual violence should also have the knowledge and resources to refer victim-survivors to appropriate support. Survivor-advocates have told us that lack of referral to appropriate support had serious and long-lasting impacts on their recovery.

NSAP Advisory Group Member: *'I think the key to encouraging victims to feel safe to report is to have a policy of "no door is the wrong door". There is no "one size fits all" when it comes to reporting. We need to provide a myriad of supportive environments to meet survivors where they choose to disclose. This means cross sectoral approaches to guarantee well-trained professionals on the receiving end of disclosures capable of responding sensitively and funneling the reports to appropriate channels which can coordinate responses. What we mustn't continue to have is disclosures being met by a closed door, a dead end. Too often we are missing opportunities to seize on reports because sexual assault is put in the "too hard" basket. So many health professionals heard me disclose but did not meet that disclosure with an offer of the kind of support I needed. There was no follow up.'*

Recommendation 5: *Provide mandatory training related to the dynamics and drivers of sexual violence, risk factors requiring intervention, and how trauma can impact victim-survivors, to all first responders. Training should address how to link victim-survivors appropriately and safely with necessary support. The target groups for this training could include health professionals, paramedics and counselling staff.*

Improving access to information on justice and support options

Victim-survivors of sexual violence often report finding it confusing and difficult to access information about their options and what to expect from the justice system. Survivor-led advocacy group, With You We Can, has identified that two of the most significant barriers to reporting sexual violence are 'a lack of support and a lack of information.'²⁶ A 2023 study conducted on behalf of the NSW Bureau of Crime Statistics and Research (**BOCSAR**), which explored the experiences of 34 victim-survivors of sexual violence in the justice system, found that:

*'Victim-survivors do not know what to expect from the legal process and find the investigation and prosecution process confusing and distressing, providing them with little agency... Complainants can experience distress from feeling confused by, and peripheral to, the legal process.'*²⁷

The findings of this research match the experiences of survivor-advocates in Full Stop Australia's NSAP. Most respondents to the ALRC Survey said they didn't receive adequate support after experiencing sexual violence.

²⁶ With You We Can. (2024). *Our Purpose*. <https://withyouwecan.org/our-purpose/#>.

²⁷ RMIT and KPMG, above n 15.

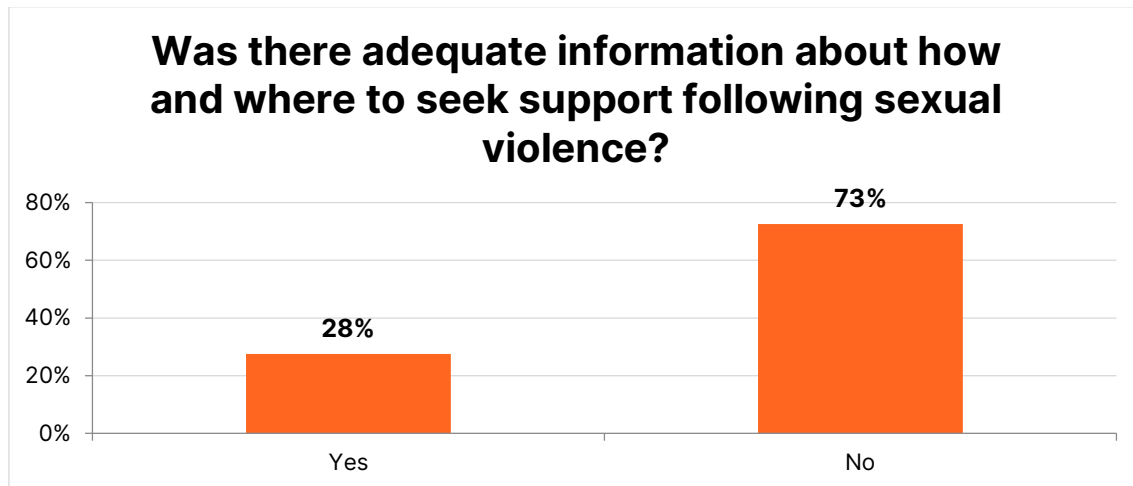


Figure 6: Responses to ALRC Survey question: 'Did you find enough information to help you decide how and where to seek support after you experienced sexual violence?' 40 total responses.

Survivor-advocates told us they found navigating the justice system to be a complex, opaque and disjointed process.

Victim-survivor experience: 'I found the system to be quite fragmented. Constantly having to repeat myself, various people contacting with discrepancies in information. Having to repeat myself constantly. Having to open up to strangers.'

Victim-survivor experience: 'Information was scattered, collation would've helped.'

Victim-survivors also told us the information they could find, or were provided as they progressed through the justice system, didn't meet all their needs. In particular, there was a lack of focus on support available outside the justice system.

Victim-survivor experience: 'I didn't even know about Victims Services and no police or medical professional told me.'

Victim-survivor experience: '[There should be] more focus on options that are not through the justice system.'

Victim-survivor experience: 'I felt like a lot of online support was aimed at legal action. It really discouraged me at first because I didn't feel comfortable with that.'

Improving clarity around what victim-survivors can expect from the justice system, what their options are, and where they can get the support they need, would increase their agency and choice. As well as improving victim-survivors' experiences of the justice

system, this is likely to positively impact low reporting and high attrition rates for sexual violence.

Currently, there is no centralised portal where anyone who has experienced sexual violence can go to learn about their options, support available to them and what they can expect from the justice system—so they can make an informed choice about where to get help and whether to report to police. Information about available support is published by some state and territory governments, but available information varies across jurisdictions. There is also some information available on the websites of specialist sexual assault services (including Full Stop Australia’s website).

There’s limited accessible and easy-to-digest information about the criminal justice process, written from a victim-centric perspective. Information available online is generally for a legal audience—and not accessible to many victim-survivors. There are limited resources informing victim-survivors of the experience they might have engaging with the justice system, and what they can expect at every stage of the process. Some state and territory police force websites contain information about what victim-survivors can expect from reporting to police—but the level of detail available varies from jurisdiction to jurisdiction, and information is generally limited to the police process. Police websites don’t generally go on to explain what victim-survivors can expect once their matter progresses to Court. With You We Can’s website is one of the few places where information on the whole justice process is provided with survivors’ needs in mind. Victim-survivors told us they would have valued this.

***Victim-survivor experience:** ‘[I would have wanted] clearer, more available information about what constitutes sexual violence, where to go for help, and how victims can be supported and helped to find safety.’*

***Victim-survivor experience:** ‘It would have been useful prior interactions with police to have a document that outlined steps that police take after a report, so I was aware of their process and that they were taking it seriously. [I wanted a set of] standardised expectations and police responsibilities, so I knew what I could reasonably expect of [police], and to show them if they were not meeting [minimum standards].’*

To improve access to information about the justice system, we recommend creating a national, government-funded website with accessible information about support options and justice system processes. Because approaches to sexual violence differ across states and territories, the website would need to direct users to state- and territory-specific information. It would also need to direct them to support services operating in the district or region where they’re based. The website should inform victim-survivors:

- Where they can go for support after experiencing sexual violence—including where they can access healthcare, a forensic examination, counselling support and legal advice. The website should include information about accessing services that meet the needs of priority populations—including Aboriginal and Torres Strait Islander people, CALD people, LGBTQ+ people and people with disability.
- What they can expect from every stage of the justice system process—including what the process of reporting to police will be like, approximately how long it will take, what they need to do, what they might need support with, what they can expect from going to Court, what their options are, how long that might take, and more.

***Recommendation 6:** Create a national, government-funded website with accessible information about support options and justice system processes related to sexual violence. Because approaches to sexual violence differ across states and territories, the website would need to direct users to state- and territory-specific information, as well as services operating in the victim-survivor's district or region.*

Making alternative reporting options available across Australia

Victim-survivors of sexual violence value having choice and agency in how they report sexual violence.

Online reporting options can give victim-survivors greater choice in how they report sexual violence. Currently NSW, Queensland, WA and the ACT²⁸ are the only states and territories that offer people who have experienced sexual violence the option of reporting online—with the ACT online reporting option only available to people who experienced sexual violence more than six months ago.

Full Stop Australia supports making online alternative reporting options for sexual violence accessible to victim-survivors across the country. We acknowledge the importance of increasing choice for victim-survivors about how they want to engage with the justice system. Online reporting option tools can meet victim-survivors' justice needs in many important ways—including enabling them to be heard by an 'official' source, giving them agency about how to proceed through the justice system, and enabling them to contribute to preventing further violence by anonymously reporting a perpetrator (even if they don't personally want to make a formal police report).

²⁸ See 'ACT Policing: Reporting Historic Sexual Assault', Australian Federal Police (Web Page) https://forms.afp.gov.au/online_forms/actpolicing_reporting_sexual_assault; 'Alternative Reporting Options', Queensland Police Service (Web Page, 26 October 2020) <https://www.police.qld.gov.au/units/victims-of-crime/adult-sexual-assault/alternative-reporting-options>; 'Sexual Assault Reporting Option', New South Wales Police Force (Web Page) https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/sexual_assault_reporting_option; 'WA Police Force – Sex Crime,' Safe2Say (Web Page) <https://wa-police-force-sex-crime.safe2say.com.au/report/57296573-19ce-4241-b9b0-35e703922272>.

Survivor-advocates in Full Stop Australia's NSAP expressed support for expanding access to online reporting options.

Victim-survivor experience: *'Online or other alternative reporting options would be incredible to have in Victoria. Right now, it's only making a report in person. Online would be best especially for victims who don't trust the police or have had a bad experience in the past. Going to the police is intimidating enough, let alone dealing with that and the aftermath of your assault.'*

NSAP Advisory Group Member: *'[Online reporting options] should be implemented across the country. Survivors deserve the same rights and privileges no matter where they live.'*

We note the largely positive reception of the Sexual Assault Reporting Option (**SARO**) in NSW. A SARO questionnaire is not the same as making a formal report to police and it will not initiate a criminal investigation. The primary purpose of a SARO is to make a record of what occurred, in addition to allowing NSW Police to gather information on sexual offences and offending. We consider the following features of SARO are positive insofar as they maximise victim-survivor autonomy, choice and privacy:

- There is no set way of making a report through SARO. Victims are given the option to remain anonymous, to provide their details but request no engagement from police, or to ask police to contact them.
- All responses to questions are optional.

However, the SARO model has some shortfalls. Some victim-survivors told us they found the lack of follow-up from police after making a SARO report disheartening, as well as being a missed opportunity for moving forward in the justice system and getting connected to support services.

Victim-survivor experience: *'I used the NSW SARO form, which was fantastic. But I would've liked the opportunity to have a more in-depth conversation after filing it to get a better understanding of what my options were.'*

NSAP Advisory Group Member: *'The worst part was I never got any response to my [SARO] report. No acknowledgement. No offer of assistance afterwards. It felt like a missed window of opportunity to connect me with support services. This was yet another example of a system that is a far cry from victim-centric.'*

Full Stop Australia's clinical staff and survivor-advocates in our NSAP also told us knowledge of online reporting options is critical—and that, in NSW, more work needs to be done to build up community understanding and awareness of the SARO.

Full Stop Australia counsellor: *'Most survivors I inform of SARO say they have never heard of it. I think it needs to be advertised better.'*

Full Stop Australia counsellor: *'Generally clients say [reporting online through the SARO] is an easy process. They are often keen to [report online] as they can remain anonymous. A SARO report can also assist [victim-survivors to access] Victim Services support. But most clients have never heard of [the SARO] when we inform them of it. There should perhaps be more education for the public.'*

Victim-survivor experience: *'[Reporting online] was a positive experience which allowed me closure. I just wish it was more known as multiple friends whom I told about it said they wish they had known, and it would've been so helpful.'*

Our recommendation to roll out online reporting options across the country requires a best-practice, victim-centric and trauma-informed approach to online reporting. A best-practice online reporting option tool would have the following features:

- Be co-designed with specialist sexual assault services, to ensure trauma-informed and victim-centric design.
- Allow victim-survivors to choose how they want to engage with the process—for example, if they would like to remain anonymous, if they would like to be contacted by police after making an online report, etc.
- Make it clear what the potential outcomes of reporting through an online reporting option are, and what further steps (if any) victim-survivors must take if they want police to launch an investigation.
- Make it clear who will receive the disclosure and in what timeframe the victim-survivor can expect a response.
- Be appropriately resourced to enable timely responses to those who have consented to being contacted. It's important for victim-survivors to feel recognised by, and confident about, justice system processes—without this, the risk of disengagement from the justice system could arise.
- Enable ongoing, secure, and (if the victim-survivor wants) anonymous communication between the victim-survivor and police in relation to the disclosure.
- Provide clear referral options for relevant support services.
- Be accessible to victim-survivors from a range of lived experiences—for example, platforms should enable both oral and written communication, and should enable contact in languages other than English.
- Specify that all questions are optional—to give victim-survivors agency to tell their story in their own way.

- Be well publicised—so victim-survivors are aware that recording their experience online is an alternative, or a first step, to reporting formally to police. This could occur through communications campaigns in each state and territory.

We recommend a uniform approach to development and implementation of online reporting options across jurisdictions.

Recommendation 7: *Make online reporting options accessible to victim-survivors across Australia, by creating this option in states and territories where it doesn't yet exist and addressing shortfalls in existing models. Online reporting options should:*

- *Allow victim-survivors to choose how they want to engage with the process.*
- *Make it clear what the potential outcomes of reporting through an online reporting option are, and what further steps (if any) victim-survivors must take if they want police to launch an investigation.*
- *Make it clear who will receive the report and in what timeframe the victim-survivor can expect a response.*
- *Be appropriately resourced to enable timely responses to those who have consented to being contacted.*
- *Enable ongoing, secure, and (if the victim-survivor wants) anonymous communication between the victim-survivor and police in relation to the disclosure.*
- *Be co-designed with specialist sexual assault services, to ensure trauma-informed and victim-centric design.*
- *Refer victim-survivors to support services.*
- *Be accessible to victim-survivors from a range of lived experiences, including forms in a range of languages and easy read forms.*
- *Specify that all questions are optional.*
- *Be well publicised—so victim-survivors are aware that recording their experience online is an alternative, or a first step, to reporting formally to police.*

Increasing access to safe, timely and trauma-informed forensic medical examinations

Given the evidentiary value of forensic medical examinations in criminal proceedings, and their role as an 'entry point' to the justice system, improving access to examinations, and the experience of victim-survivors who participate in them, is an important part of improving justice responses to sexual violence.

A forensic medical examination is a specialist medical examination that can only be performed by a trained doctor or specialist nurse examiner. Forensic examinations obtained after sexual violence can be important evidence in criminal proceedings, with

some research indicating the obtaining a forensic medical examination will make it more likely for a victim-survivor to get justice.²⁹

A forensic medical examination can provide evidence that:

- verifies the type of sexual violence that occurred;
- supports the victim-survivor's history of the assault; and
- help identify the perpetrator of sexual violence.³⁰

Forensic medical examinations are most useful within 72 hours of sexual violence occurring. However, depending on the nature of the assault, examinations can be done up to 1 week afterwards.

Currently, the following issues present barriers to victim-survivors accessing safe, trauma-informed and timely forensic medical examinations after experiencing sexual violence:

- **Shortage of forensic examination staff can lead to long wait times.** ABC reporting in 2022³¹ and the Victorian Law Reform Commission's 2021 report on *Improving the Justice System Response to Sexual Offences*,³² found that insufficient access to specialist forensic medical staff can result in long wait times. Long wait times significantly exacerbate trauma for victim-survivors, who might be advised not to shower following sexual violence to avoid destroying evidence. Police Association Victoria secretary Wayne Gatt reports that in Victoria, 'it is not uncommon for members to report an inability to obtain service after hours, they are regularly told to wait until business hours the next day.'³³
- **Lack of access to forensic medical staff is especially acute in rural, regional and remote areas.** Victims-survivors in these areas are required to take long drives or flights after experiencing sexual violence, just to access a forensic examination. These journeys can take many hours, significantly exacerbating the impacts of the sexual violence. The provision of forensic exams in rural, regional or remote areas has been described by regional GP, Dr Alison Edwards, as a 'black hole.'³⁴

²⁹ Antonia Quadara, Bianca Fileborn and Debra Parkinson. *The Role of Forensic Medical Evidence in the Prosecution of Adult Sexual Assault* (ACSSA Issues No 15, Australian Institute of Family Studies, 2013). 15-16. <http://www.aifs.gov.au/acssa/pubs/issue/15/index.html>.

³⁰ Women's and Children's Health Network. (2024). *Forensic Medical Examination After a Sexual Assault*. Government of South Australia. <https://www.wchn.sa.gov.au/our-network/yarrow-place/rape-and-sexual-assault-topics/forensic-medical-examination-after-a-sexual-assault>.

³¹ Willingham, Richard. 'Victims of violent crime forced to wait for forensic examinations in Victoria due to 'dire' shortage of doctors.' *ABC*. 5 September 2022. Available at: <https://www.abc.net.au/news/2022-09-05/victims-forced-to-wait-for-forensic-examinations-in-victoria/101399820>.

³² VLRC, above n 10.

³³ Willingham, above n 31.

³⁴ Jonscher, Samantha. 'Sexual assault survivors continue to suffer long trips to distant hospitals for examinations.' *ABC*. 27 March 2019. Available at: <https://www.abc.net.au/news/2019-03-27/sexual-assault-exams-not-always-available-in-the-regions/10781756>.

- In Victoria, forensic examiners are not embedded in the health system, meaning forensic examinations aren't conducted using a 'patient first' approach.** The system for forensic examinations in Victoria is an outlier to other Australian states and territories, in that forensic examiners in Victoria are not a part of the health system and embedded in hospitals. Instead, the Victorian Institute of Forensic Medicine (**VIFM**) provides forensic medical officers under a service agreement with Victoria Police, whereby VIFM doctors attend to sexual and physical assault victims when requested by police. As a result, forensic examinations are not conducted from a 'patient first' perspective. The problems with this approach have been outlined by forensic doctor John Gall: 'There'll be occasions where [police] will dictate to you what's to be done with that person. The police are looking on this person really as a crime scene. Whereas, from a doctor's perspective, this is a person and your primary responsibility.'³⁵ Employees from NSW Health, who we spoke to when preparing this submission, said locating forensic examinations in the health system may also result in more victim-survivors entering the justice system: 'If you need to report to police to get a forensic examination, people who are unsure about reporting to police, or don't see police as a safe place to disclose, may be deterred from coming forward. A lot of people who come to NSW Health following an incident of sexual violence are there to understand their options or seek medical attention. While they're there, they may decide to get a forensic exam. Once they've had a forensic exam, they may decide to report to police. It's important that the bar for entering the system isn't set too high.' ABS data shows that common reasons for not reporting sexual violence to police include not knowing what happened was a crime (22%) and not thinking the police could do anything about it (22%).³⁶ Victim-survivors in these categories are unlikely to get a forensic examination if access to examinations is through the justice system. According to NSW Health employees, 'We need to promote a response to sexual violence that's not dependent on the criminal justice system.'
- In Victoria and South Australia, there is limited access to forensic examinations where a victim-survivor has not made a police report.** In all states and territories but Victoria, victim-survivors can access a forensic medical examination following sexual violence, even if they haven't reported to police. Meanwhile, in Victoria, examinations without a police report (**'just in case' examinations**) are currently only available on a trial basis at the Monash Medical Centre³⁷—although the VIFM is working to expand the availability of 'just in case' examinations to other sites in metropolitan Melbourne. Meanwhile, we understand that in South Australia, 'just in case' examinations are currently only available in Adelaide—significantly limiting access to forensic testing by people who live in rural, regional and remote parts of South Australia. Limited access to 'just in case' examinations significantly reduces victim-survivor agency and

³⁵ Willingham, above n 31.

³⁶ Australian Bureau of Statistics, above n 5.

³⁷ VLRC, above n 10.

choice about whether and how to undertake a forensic exam. As noted by Sexual Assault Services Victoria, 'there is so much pressure and trauma on the day someone has been harmed ... we need to give victim survivors as many options as possible. 'Just in case' examinations are so crucial in terms of offering victim survivors options at a really overwhelming time.'³⁸

***Victim-survivor experience:** 'After I was raped, I went to the first hospital and was turned away. [At the] second hospital, I waited in the waiting room covered in blood. All conversations happen[ed] in the open for other people waiting to hear. I had nurses ask me if I didn't just have my period, which felt like I was being gaslit and dismissed. I arrived at hospital at 11PM [and] wasn't able to see the doctor until 5PM the next day. I had to stay in my bloody clothes unable to shower all that time. I didn't know if I had been drugged, so I wanted police to run tests on my urine before I made my official statement. But it took 3 months for them to get the answer back to me.'*

***Victim-survivor experience:** 'One of the times I was raped, I went straight to the hospital to be examined as there was substantial bleeding. [I was] turned away from the first [hospital I attended] because they don't [administer rape kits].'*

Full Stop Australia recommends the following measures to address the above issues and increase access to safe, trauma-informed and timely forensic examinations:

- **Map out 'black holes' for access to forensic medical examinations.** There needs to be targeted work done to map out where service gaps exist in each state and territory and increase access to forensic examinations in those areas. There should be a "gold standard" approach taken nationally to making timely and safe forensic medical examinations accessible to all who need them. Particular attention should be paid to increasing access in rural, regional and remote areas, where access is currently especially poor.
- **Address barriers resulting in under-supply of professionals qualified to conduct forensic medical examinations.** Sexual violence is a crisis. The workforce and resourcing set up to respond to it should meet this reality. Currently, long wait times and requirements to travel long distances for a forensic medical examination, especially in rural, regional and remote areas, mean victim-survivors are forced to endure prolonged traumatising in the hopes of gathering forensic evidence. This is unacceptable. Going through processes set up to respond to sexual violence should not prolong harm and trauma, and victim-survivors should never be confronted with a choice between psychological safety and justice.

³⁸ VLRC, above n 10. Citing Submission 17 (Sexual Assault Services Victoria).

Building up the forensic workforce requires consideration of what barriers are stopping medical professionals from becoming accredited to conduct forensic examinations. According to research by Western Sydney University and NSW Health, '[one] critical barrier to recruitment is the need for specialised training, which can preclude interested nurses or doctors from entering the field. This is amplified for prospective workers who live rurally and need to travel to reach training facilities, as well as those with limited funding who struggle to meet the costs of the necessary training and study materials.'³⁹ Barriers identified by NSW Health employees include poor remuneration, and the fact the forensic workforce is largely on call and required to work after hours. The requirement to be on call 'can lead to experiences of isolation and invasion into home and personal life.'⁴⁰ It can also result in lost income: 'Participation as an examiner often meant foregone earnings in another capacity so that there was an economic cost for participating. On-call examiners were not able to work elsewhere at that time, and often had to ensure the following day was free of paid employment in case they did not sleep overnight.'⁴¹ Low flexibility with regard to how work is performed is also an issue—for example, some examiners want to perform forensic exams but are very anxious about the prospect of giving evidence in Court.⁴² Poor perceptions of forensic work, and limited career progression opportunities, also present challenges—with research finding that 'working in sexual assault is not seen as a career. It is generally seen as a secondary role... [There is limited] recognition of sexual assault examiners as specialist doctors. For both doctors and nurses, the focus of on-call, mean[s] a lack of permanent daytime positions.'⁴³ Vicarious traumatisation, compassion fatigue and burnout are other risks associated with performing frontline sexual assault work.

To address these issues, we support the following recommendations made by NSW Health and Western Sydney University:⁴⁴

- Increase daytime staffing of forensic medical examiners to take the pressure off the after-hours and on-call workforce and improve service delivery.
- Support a flexible approach to scope of practice to retain examiners. This includes 'allowing medical and forensic examiners to provide a limited range of services based on availability and expertise—[noting that] some SANEs are very highly motivated by compassion and caring and would continue to work if they were able to have a scope of practice that focused on immediate patient care, including recording of forensic

³⁹ Edmiston N, Freedman E, Evans K, Sperring S, Ussher J, Power R et al. *Motivations, barriers and enablers for the sexual assault medical workforce in NSW, Australia: Research Report*. NSW Ministry of Health. November 2023. Available at: <https://www.health.nsw.gov.au/parvan/sexualassault/Publications/medical-workforce-research.pdf>.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

information and collection of evidence, but not preparing medico-legal reports or going to court.⁴⁵ It also includes flexible rostering, reducing on-call hours and building in periods of leave from on-call duties. Finally, pressure could be taken off individual forensic medical examiners by ensuring obligations connected to justice processes—such as preparing expert certificates and subpoenas—are seen as the responsibility of the service, not individual examiners.

- Review pay and conditions for employment, ensuring adequate remuneration for expert certificate writing, Court attendance and overtime.
- Review approaches to recruitment and training. Among other things, access to paid training opportunities should be increased, a professional body should be established for forensic examiners, and anxiety related to attending Court should be addressed in training and workforce development.
- **Use technology to support timely and trauma-informed access to forensic medical examinations.** We support the use of telephone or videocall technology to increase access to forensic exams in rural, regional and remote areas across Australia. In Western Australia and the Northern Territory, this is already occurring—with regional doctors and nurses able to carry out forensic examinations without full specialist training through telephone support from specialists in capital cities.⁴⁶ Another way remote expertise could be leveraged is through a specialist advice line for medical professionals, which provides 24/7 advice on matters such as whether a forensic exam is required and how to perform an exam. This already exists in NSW for child sexual assault matters—the Child Abuse & Sexual Assault Clinical Advice Line (**CASACAL**) is a 24/7 telephone advice line, which advises professionals performing medical and forensic examinations and providing medical care to victim-survivors of child sexual assault and physical abuse. We note that, even if forensic examinations could be performed with remote support, the professionals conducting them would still need to possess some relevant training, even if they are not fully accredited, including how to conduct examinations in a trauma-informed way.
- **Give victim-survivors the right to specify the gender of their forensic examiner.** Sexual violence is a gendered crime—with victim-survivors more likely to be women, and perpetrators more likely to be men. As a result, many victim-survivors feel more comfortable with a female forensic medical examiner and ‘the gender of [forensic] examiner[s] remains an important barrier for people... [which] can make the experience traumatic rather than therapeutic.’⁴⁷ We support the Victorian Law Reform Commission’s 2021 recommendation that victim-survivors of sexual violence should have the right to specify the gender of a forensic medical examiner.⁴⁸ Given the nature of sexual violence and the

⁴⁵ Ibid.

⁴⁶ Jonscher, above n 34.

⁴⁷ VLRC, above n 10.

⁴⁸ VLRC, above n 10.

invasiveness of the forensic procedure, it's critical to ensure victim-survivors are given as much choice as possible in the forensic process.

- **Engage victim-survivors in follow-up to check wellbeing and provide additional support.** Some sexual assault services in NSW offer follow-up appointments a few weeks after a forensic examination. These appointments are a good opportunity for victim-survivors to receive support with the various health impacts of sexual violence—including the risk of STIs, pregnancy, the possible long-term impacts of injury and mental health impacts. Follow-up with victim-survivors who have received forensic examination should be available across the country, and should be offered as a matter of course.
- **Victoria should move forensic practitioners into the health system.** Victoria should align its approach to forensic examinations with the rest of Australia, by moving the forensic examination process into the health system. This would ensure a patient-first approach is taken to people who wish to undergo forensic testing after experiencing sexual violence.
- **Victoria and South Australia should make forensic examinations without a police report accessible across those states.** This would increase access to forensic testing among people in rural, regional and remote parts of those states, who would currently have to travel to Melbourne or Adelaide to access forensic testing without a police report.
- **Forensic medical examinations should address risks posed by non-fatal strangulation.** We are aware that work is underway in South Australia to ensure practitioners conducting forensic examinations are trained to identify signs of strangulation. Non-fatal strangulation poses significant risk for two reasons. Firstly, it's associated with high risk of physical injury and impacts to long-term health, including brain injury. There is evidence that strangulation can result in 'neurological and psychiatric symptoms such as loss of consciousness, paralysis, loss of sensation, vision changes, memory loss, anxiety and post-traumatic stress.'⁴⁹ Secondly, non-fatal strangulation is a well-established 'predictive risk factor for future severe domestic violence and for homicide.'⁵⁰ Despite these risks, 'strangulation is becoming a more common sexual practice [among young Australian adults].'⁵¹ To address the rise of non-fatal strangulation as a sexual practice among young people, and the risks it poses, we recommend that all jurisdictions undertake similar work to South Australia, to ensure their forensic workforces are adequately trained to identify and respond to non-fatal strangulation risk.

⁴⁹ Douglas, H and Fitzgerald, R. 'Strangulation, domestic violence and the legal response.' *Sydney Law Review*. Vol 36, Issue 2. June 2014.

⁵⁰ Ibid.

⁵¹ Sharman, L, Fitzgerald, R and Douglas, H. 'Strangulation During Sex Among Undergraduate Students in Australia: Towards Understanding, Participation, Harms and Education.' *Sexuality, Research and Social Policy* (2024). <https://doi.org/10.1007/s13178-024-00941-4>.

Recommendation 8: Increase access to safe, trauma-informed and timely forensic examinations by:

- Mapping out current gaps in access to forensic examinations (geographic areas where it is not feasible for victim-survivors to access timely, appropriate forensic examinations).
- Addressing workforce barriers resulting in under-supply of professionals qualified to conduct forensic medical examinations.
- Using phone and videocall technology to support timely and trauma-informed access to forensic medical examinations, especially in rural, regional and remote areas.
- Giving victim-survivors the right to specify the gender of their forensic examiner.
- Engaging victim-survivors in follow-up to check wellbeing and provide additional support after forensic examinations.
- Locating all forensic practitioners in the health system, to ensure a patient-first approach to people who wish to undergo forensic testing.
- Ensuring forensic examinations without a police report are accessible in all states and territories.
- Ensuring that forensic medical examinations in all jurisdictions address risks posed by non-fatal strangulation and concussion.

Better investment in community-led support for priority populations

It's critical to ensure that victim-survivors from priority populations disproportionately at risk of sexual violence have access to culturally safe support that responds to their unique experiences and needs.

Data shows some communities are disproportionately at risk of sexual violence, and face unique challenges reporting violence and engaging with the justice system. For example:

- Aboriginal and Torres Strait Islander women experience sexual violence at rates higher than non-Aboriginal women. Aboriginal and Torres Strait Islander women are three times more likely to experience sexual offending than other women,⁵² and the Wiyi Yani U Thangani Women's Voice report from 2020 found that across Australia, three in five First Nations women have experienced physical or sexual violence.⁵³
- Aboriginal and Torres Strait Islander women also face greater barriers to accessing justice. As a result, 'estimates suggest that around 90% of violence

⁵² Our Watch. (2018). *Changing the Picture Background Paper: Understanding violence against Aboriginal and Torres Strait Islander Women and their children*. OurWatch, Melbourne. Available at: <https://assets.ourwatch.org.au/assets/Key-frameworks/Changing-the-picture-background-paper-AA.pdf>.

⁵³ Campbell, Allyson, Stevens, Amy, Dozer, Ariane, Dick, Darren, Holden, Eleanor, Pedersen, Jane, Hunter, Kimberley, Gray, Kirsten, George, Lluwannee, Devereaux, Nick and Spry, Sophie. (2020). *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*. Australian Human Rights Commission. Available at: https://humanrights.gov.au/sites/default/files/document/publication/ahrc_wiyi_yani_u_thangani_report_2020.pdf.

against First Nations women and most cases of sexual abuse of First Nations children are undisclosed.⁵⁴ Barriers to reporting violence and accessing formal support include lack of cultural competency and discriminatory practices across the support sector, and systemic racism and discrimination.⁵⁵

- LGBTQ+ people ‘can experience unique forms of violence, including threats of ‘outing’, shaming of LGBTQ+ identity or – for those who are HIV-positive or taking hormones to affirm their gender – withholding of hormones or medication.’⁵⁶
- People with disability are at increased risk of intimate partner violence. According to data, ‘36% of women with disability reported experiencing intimate partner violence since age 15, compared to 21% of women without disability. Women with disability also experience violence from a wider range of perpetrators.’⁵⁷
- Migrant and refugee women ‘can be subjected to forms of violence that relate to their uncertain citizenship, where perpetrators threaten them with deportation.’⁵⁸

Specialist services that provide tailored support to priority populations must be fully and sustainably funded, to ensure the justice system is accessible to everyone. This means allocating resources for community-identified positions, and developing referral pathways that are accessible to and co-designed with specific populations.

Recommendation 9: *Fully and sustainably fund sexual violence specialist services in every jurisdiction that provide tailored support to priority populations, to ensure the justice system is accessible to everyone.*

Improving police responses to sexual violence

Our feedback in this section responds to Questions 5 to 7 in the Issues Paper.

Many victim-survivors told us about poor experiences reporting to and dealing with police following sexual violence.

Victim-survivor experience: *‘I was told by the police that I was not a good witness, and they wouldn’t be pressing charges... they make me feel more ashamed, powerless and worthless.’*

⁵⁴ Willis M 2011. Non-disclosure of violence in Australian Indigenous communities. *Trends & issues in crime and criminal justice no. 405*. Canberra: Australian Institute of Criminology. <https://doi.org/10.52922/ti276840>.

⁵⁵ Australian Institute of Health and Welfare. (2024). *Aboriginal and Torres Strait Islander people*. Australian Government. Available at: <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people#:~:text=a%20lack%20of%20cultural%20competency,child%20removal%20if%20disclosing%20family>.

⁵⁶ OurWatch. (2018). *Changing the Story: A shared framework for the primary prevention of violence against women in Australia*. Second Edition. OurWatch, Melbourne. Available at: <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2021/11/18101814/Change-the-story-Our-Watch-AA.pdf>.

⁵⁷ Ibid.

⁵⁸ Ibid.

Victim-survivor experience: *'I had a female officer attend my case. She was less empathetic towards me than the male officers, after [I reported] being raped by a man. I was shocked as she made comments that "this happens every night in Melbourne" as if it's just another day, not a big deal. I really don't think that's appropriate to say to young victims of abuse. I understand her perspective, as she probably does see this regularly, but this is a sensitive issue.'*

Victim-survivor experience: *'The police dismissed me, minimised my concerns and did nothing to protect me or keep me safe.'*

Victim-survivor experience: *'The detective was nice. But after going through the reporting, and then attempting to call the perpetrator myself with [police] to get him to confess, they apparently spoke with him, he denied it, and it was all dropped. I just felt re-victimised.'*

Others told us they decided not to report sexual violence to police, because they didn't see police as a safe and trustworthy source of support, had minimal faith in the ability of the justice system to deliver just outcomes, or feared further harm and re-traumatisation would come from reporting.

Victim-survivor experience: *'Fear of safety, shame and stigma, lack of access to appropriate/supportive police resources.'*

Victim-survivor experience: *'Distrust, fear, police do not believe Aboriginal women or care.'*

NSAP Advisory Group Member: *'I chose not to report to the police because I knew the chance of my perpetrator being charged and convicted was near zero. It felt there was more threat of further harm to me by going through the legal process than there was likelihood of having the community protected from the perpetrator.'*

Victim-survivor experience: *'We shouldn't be encouraging more people to come forward until the system improves. Right now, it can do more damage. People said to me, just because your matter isn't progressing, doesn't mean we don't believe you. This was very confusing, disappointing and, to be honest, hopeless. You are left to just live with it and work it out yourself, and the impacts are lifelong.'*

Victim-survivors have expressed fear and poor perceptions of police and the justice system to Full Stop Australia's clinical staff.

Full Stop Australia counsellor: *'[One key] reason for not disclosing, particularly to police, is that [victim-survivors fear they] will not be believed or that they will be asked questions which imply part-responsibility for the assault.'*

Full Stop Australia counsellor: *'Police still lack the knowledge required to understand sexual assault and gendered violence. Reporting to police can be further traumatising for victims. Many clients do not report as they know the rates of successful prosecution are very low and not worth the trauma.'*

Full Stop Australia counsellor: *'Clients decide not to report as they don't feel they will be believed and, once at court, the perpetrator will get off anyway.'*

Full Stop Australia counsellor: *'Most people don't know what to expect, but they know the road will be long and there is a chance the outcome will be worse for them than the crime itself. It's the uncertainty along the way of the real or imagined steps that stops people from reporting.'*

Victim-survivors' poor experiences with police are reflected in data showing extremely low reporting rates, as well as high attrition from the justice system at the reporting stage. As set out above, ABS data demonstrates that reporting rates of sexual violence among female victim-survivors are around 8%. Meanwhile, BOCSAR research tracking the progress of all sexual assaults reported to the NSW Police Force in 2018 shows that 85% of matters reported to police resulted in no charges being laid by police.⁵⁹

If we hope to increase abysmally low reporting rates, work urgently needs to be done to improve community confidence in, and perceptions of, police and the justice system. Putting systems in place to ensure all victim-survivors receive a trauma-informed, non-judgmental and respectful police response—which promotes victim-survivors being fully informed, and having choice and agency, about the progress of their matters—is important to build confidence in the justice system.

NSAP Advisory Group Member: *'I don't expect cultural change to happen overnight. But survivors won't feel comfortable reporting to police until we know we will be treated with dignity. I knew of too many fellow survivors who had been spurned by police, faced victim-blaming, not had their concerns taken seriously, and so on. I chose not to report to police to avoid subjecting myself to the same prospects.'*

Our recommendations in this section aim to improve the police reporting process by:

⁵⁹ Gilbert, above n 7.

- Integrating policing with other critical supports (Recommendations 10 and 11).
- Mandating minimum standards of care and investigation requirements for all police work, and holding police accountable for their compliance with those standards (Recommendations 12, 13 and 14).
- Ensuring police are equipped to respond safely to, and thoroughly investigate, all reports of sexual violence. This means delivering best practice training that ensures any police officer who may receive a report of sexual violence is capable of responding in a trauma-informed way (Recommendation 15), building the capability of a specialist sexual violence workforce (Recommendation 16), improving police responses to diverse populations (Recommendation 17) and integrating the experiences of people with lived experience of sexual violence into police training (Recommendation 18).
- Tracking the effectiveness of measures to improve police responses to sexual violence, through robust data collection and regular reporting on those measures (Recommendation 19).

The Victorian ‘Multi-Disciplinary Centre’ model should be rolled out across the country

Above, we recommended the creation of ‘integrated sexual violence hubs,’ without police presence, modelled off Victoria’s Orange Door program. In addition to this, we recommend providing access to integrated supports *co-located* with police across the country by rolling out Victoria’s Multi-Disciplinary Centres (**MDC**) model in other states and territories.

In Victoria, MDCs ensure holistic wraparound support is available to victim-survivors from the first time they report sexual violence to police. They are:

‘A “one stop shop” [for people to go to after experiencing sexual violence], providing safe and discreet access to specially trained police investigators, counselling and advocacy support, video audio recorded evidence rooms... clinic rooms where victims can have their general health and wellbeing needs assessed by qualified community health nurses, [and] forensic medical suites... to enable forensic examinations on site.’⁶⁰

Rolling this model out across the country would help ensure a specialist approach is taken to the policing of sexual violence. It would give victim-survivors access to key supports from the first time they report sexual violence to police. Police and other staff at MDCs are specially trained to work with victim-survivors of sexual violence, ensuring a more trauma-informed response.

‘The aim of [MDCs] is to provide a wraparound response for sexual offending victim-survivors, making it easier for them to get the help they need without having to go to lots

⁶⁰ Victoria Police. (2024). *Reporting in person at multidisciplinary centres*. State Government of Victoria. Available at: <https://www.police.vic.gov.au/options-guide-victim-survivors-victoria-police-perpetrated-family-violence-or-sexual-offences/reporting-in-person-at-mdcs>.

of separate places and re-tell their story to a new person each time. All staff working in these [MDCs] are specially trained to work with victim-survivors of sexual offending and provide trauma-informed services.⁶¹

Another advantage of this model is the ability for co-located support services to share information about victim-survivors' experiences, with their consent, to save them from repeating their stories. As set out above in this submission, many victim-survivors would value this. In Western Australia, where equivalent centres exist for child sexual offences, this advantage has been recognised:

'Information about the offence/s [and the victim-survivor] is shared between [centre] staff so that there is consistency in care and [victim-survivors] do not have to repeat their stories.'⁶²

Evaluations of the Victorian MDC model, and similar models elsewhere, have been largely positive, demonstrating the benefits of integrating support services with police.

'Evaluations indicate MDCs are achieving [their] aims. People who had attended a centre were positive about their experience. MDCs were seen to offer more privacy and easy access to a range of services.'⁶³

'A 2017 evaluation of [the Multiagency Investigation and Support Team in WA, which provides an integrated response to child sexual abuse between police, child protection, child and family advocates, and therapeutic supports] found that police investigations and child protection responses were faster under [this] model and that staff and caregivers felt that the service provided a more victim-centred approach for children and families.'⁶⁴

Recommendation 10: *Provide victim-survivors with access to integrated support services co-located with police across the country by rolling out Victoria's Multi-Disciplinary Centres model in other states and territories. We recommend co-locating police with integrated services in addition to establishing 'integrated sexual violence hubs' without police presence (see Recommendation 1). This is to ensure integrated support is available to all victim-survivors, regardless of whether they want to report to police.*

Co-location of system navigators at police stations

In addition to rolling out Victoria's MDC model across the country, we think 'system navigators' should be co-located at police stations—so victim-survivors reporting sexual violence have access to sexual violence-specialist support regardless of whether they report at an MDC or a police station.

⁶¹ Department of Justice (WA). (2023). *Reporting Sexual Offences: Discussion Paper 2*. Government of Western Australia. Available at: <https://www.wa.gov.au/media/40128/download?inline>.

⁶² Ibid.

⁶³ VLRC, above n 10.

⁶⁴ Department of Justice (WA), above n 61.

Survivor-advocates in Full Stop Australia's NSAP told us they would have found police co-location with sexual violence specialist support useful.

Victim-survivor experience: '[There should be] social worker[s] at police stations supporting people when they report and after.'

Full Stop Australia's clinical staff also recognised the value of making sexual violence specialist support available to victim-survivors reporting to police.

Full Stop Australia counsellor: 'Having counsellors available within police stations as part of the initial support to a victim wanting to report could be a good idea. I worked within a [domestic violence] team in London, based at a police station. [Having a counsellor present] offered survivors the opportunity for support as they spoke with police. There was a greater level of confidence offered to survivors.'

Co-locating system navigators with police would enable system navigators to provide real-time support to people attending police stations to report sexual violence. It also helps to ensure police responses to sexual violence are supported by expertise in trauma and gender-based violence. The co-location of sexual violence system navigators with police could be modelled off a pilot program in NSW, whereby Women's Domestic Violence Court Advocacy Service (**WDVCAS**) officers are co-located with police in select NSW police stations, with a view to improving responses to victim-survivors of domestic and family violence. We've already seen the positive impacts of this pilot—with victim-survivors reporting more trauma-informed experiences with police, and police valuing the perspectives of professionals with expertise in trauma and gender-based violence.

***Recommendation 11:** Co-locate 'sexual violence system navigators' (see Recommendation 3) with police at police stations. This will help ensure victim-survivors reporting sexual violence have access to sexual violence-specialist support and help understanding the justice system when reporting to police.*

A mandatory national code of practice for police to standardise a trauma-informed approach to working with victim-survivors of sexual violence

Victim-survivors reported varied experiences of reporting to police—with a few victim-survivors describing a positive and affirming experience, and the majority reporting that they felt retraumatised, judged and unsupported in their interactions with police.

Victim-survivor experience: *'I was shamed and looked down on. Always seen to by male police officers, alone in a room, despite me being abused by a man and deeply terrified of them. No support offered at any of the police processes. Didn't take my case seriously, took 2 years to even bother charging my abuser despite immediate police attendance post incident and rape kit. I had to spend a lot of time and energy advocating for myself and fighting for justice.'*

Victim-survivor experience: *'[My experience with police was] amazing. They listened and treated me more respectfully than family, friends, therapy and services. Astounding really.'*

Victim-survivor experience: *'[My experience with police was] quite good. Understanding. Surprisingly trauma informed.'*

The variation in victim-survivor experiences with police—with more victim-survivors reporting poor experiences than positive ones—points to a systemic problem. As Dr Rachel Burgin and Jacqui Tassone note in their report *Beyond Reasonable Doubt: Understanding Police Attrition of Reported Sexual Offences in the ACT*, 'there should be no wrong door for reporting sexual violence, and the experience should be trauma-informed and victim-centric regardless of [where and how] a victim reports to police.' There is a need to standardise police responses to sexual violence, to ensure every police officer who could receive a report of sexual violence responds in a trauma-informed way.

According to Full Stop Australia's clinical staff, a trauma-informed police response requires validation of the victim-survivor's experiences and decisions, without judgement or blame.

Full Stop Australia counsellor: *'Non-judgmental supportive listening, clear processes, being believed and not questioned or blamed for their actions. Unequivocal placement of blame for sexual assault on the perpetrator.'*

Victim-survivors told us that a trauma-informed response involves treating victim-survivors with respect and providing warm referrals to key support services.

NSAP Advisory Group Member: *'Even if police don't have enough evidence to press charges, they can still validate a survivor's experience and treat them with respect. Police can remain impartial, and still refer a survivor to an appropriate support service and help them link into the service. This can be the difference between someone seeking help or not.'*

NSAP Advisory Group Member: *'Support services should not leave texts or voicemails. Survivors who get these usually don't have the energy to repeat their stories. [Instead] someone in police stations, [either a police officer or someone] embedded there, could do a warm referral. There is nothing wrong with a police officer relaying to a support service—with the informed consent of the victim-survivor—what happened.'*

Full Stop Australia recommends developing a nationally uniform police code of practice to help 'standardise a trauma-informed approach to working with complainants of, and investigating, sexual offences,' in police forces across the country.⁶⁵ The uniform code of practice, which would be mandatory for police forces across the country, should cover:

- Requirements to provide victims with clear information about the reporting process, possible outcomes, and police contact details, from the outset.

Full Stop Australia counsellor: *'[Victim-survivors should be given an] information session to have the process explained before they agree to [making] a statement [to police] or being recorded.'*

Full Stop Australia counsellor: *'[Victim-survivors should be provided with] information on next steps or options police might take following reporting and how [these could] impact [the victim]. Police [should also tell victims how they] will keep [the] victim informed through the process, and why certain decisions might be made, and by who, in plain language.'*

Full Stop Australia's clinical staff have expressed that clarity about police processes for investigating sexual violence and keeping victims informed helps increase confidence in the justice system and reduce retraumatisation.

Full Stop Australia counsellor: *'Police may act without the victim's consent or against [their] wishes. [Victim-survivors may] fear for their safety [if it's] unclear how or when the perpetrator will be informed or dealt with. [They may] fear [their] safety being decreased by police intervention... [Many victim-survivors are worried they will have] no say in "next steps" [and it's] easier to deal with [a] known risk than unknown [consequences of] police intervention.'*

We support Dr Burgin and Jacqui Tassone's recommendations regarding information that should be provided, and processes that should be followed—

⁶⁵ RMIT and KPMG, above n 15.

namely, that victim-survivors should be provided with contact details for the investigating officer, should be informed of the role the officer will have in managing their case, and should be informed of police investigation processes, what’s involved in making a statement, and supports available to them when making a statement.⁶⁶ For the reasons set out above, we think it’s important for ‘system navigators’ to be part of these conversations.

- How to respond in a trauma-informed way to reports of sexual violence and take statements from victim-survivors of sexual violence. Victim-survivors told us this is important because the process of taking evidence—which involves asking victim-survivors to recount their experience of violence in minute detail—can be at odds with trauma-informed practice.

NSAP Advisory Group Member: *‘When you report [sexual violence] and go through a police interview, you need to give a lot of information about what happened. There is a disconnect between what [the police] need for evidence, and being trauma informed.’*

Victim-survivor experience: *‘[Police should be able to] understand the intense vulnerability and courage that reporting [requires]. [They should understand] how to demonstrate empathy to victims. [There should be] some key messages all police are trained in [around] believing victims, treating [sexual violence] seriously, [reinforcing that sexual violence is not the victim’s] fault, [and that police] care.’*

Some victim-survivors told us the police approach to taking their statement was bureaucratic and inflexible, not affording them choice and safety about how they told their story. They emphasised the importance of having agency, and feeling like their needs and rights are being considered by police, when giving a statement.

Victim-survivor experience: *‘There needs to be a person-centred approach, rather than a protocol-driven approach... Victim-survivors need to be empowered throughout the process.’*

Victim-survivor experience: *‘[Allow victim-survivors] to choose their interviewing officer. Provide them choice and autonomy and respect [their] boundaries. [Take] it slow, [take] them seriously.’*

⁶⁶ Burgin, R, Tassone, J. (2024). *Beyond Reasonable Doubt? Understanding Police Attrition of Reported Sexual Offences in the ACT*. Swinburne University of Technology. https://researchbank.swinburne.edu.au/file/3faae18e-b608-4f7b-9f14-ed70aa90ab79/1/2024-burgin-beyond_reasonable_doubt.pdf.

- Requirements to provide regular updates to victim-survivors on the progress of their matters, including ensuring updates are provided in a trauma-informed way. It might be appropriate for ‘system navigators’ to be part of these conversations, or to liaise with police on the victim-survivor’s behalf, depending on the victim-survivor’s preference. This requirement is important to give victim-survivors more visibility of, and a greater sense of agency in, justice system processes. In the ACT context, victim-survivors have expressed ‘the feeling of waiting for police to contact them, and when they did, it was at times that were inconvenient or inappropriate.’⁶⁷ Victim-survivors in the ACT also expressed finding it ‘difficult [to contact] police when they had a question or sought information.’⁶⁸

Victim-survivor experience: ‘[Police] said they would ring back the following day and it took them a week. When I was angry about that breach of trust they patronised me and basically said I should calm down.’

We support Dr Burgin and Jacqui Tassone’s suggestion that victim-survivors of sexual offences should have ‘a “touch point” with justice agencies every four weeks,’ or sooner where there’s been ‘a significant change in the status of their investigation.’⁶⁹ Police should also be required to ensure victim-survivors are supported when receiving distressing news, noting that some victim-survivors had negative experiences receiving updates from police.

Victim-survivor experience: ‘It drew the incident out and made it much worse by having to wait in the same clothes and travel a fair distance for a sexual assault kit. Then they randomly called me one day and said they didn’t have enough evidence and would be dropping the case and AVO. I was about to walk into work when they called me and it destroyed me.’

- A trauma-informed process for providing victim-survivors with reasons for discontinuing an investigation or deciding not to proceed with charges.
- Timeframes for key interactions and clarity regarding who is responsible for communicating with the victim-survivor at various points.
- Trauma-informed processes for linking victim-survivors with support services. It should be clear ‘when, how and to whom referrals are to be made,’⁷⁰ and all referrals to support services should be warm referrals, unless the victim-survivor says otherwise.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ RMIT and KPMG, above n 15.

Recommendation 12: *Develop a mandatory, nationally uniform code of practice to help standardise a trauma-informed approach to working with complainants of, and investigating, sexual offences in police forces across the country. The code of practice, which would be adopted by police forces across the country, should cover:*

- *Requirements to provide victims with clear information about the reporting process, possible outcomes, and police contact details, from the outset.*
- *How to respond in a trauma-informed way to reports of sexual violence and take statements from victim-survivors of sexual violence.*
- *Requirements to provide regular updates to victim-survivors on the progress of their matters, including ensuring updates are provided in a trauma-informed way.*
- *A trauma-informed process for providing victim-survivors with reasons for discontinuing an investigation or deciding not to proceed with charges.*
- *Timeframes for key interactions and clarity regarding who is responsible for communicating with the victim-survivor.*
- *Trauma-informed processes for linking victim-survivors with support services.*

Policing should prioritise victim-survivors' right to privacy and support victim-survivors to make informed choices about their personal data

Some clients of Full Stop Australia have reported negative experiences of police requesting to download data from their phones using Cellebrite technology. Clients have told us that:

- Police didn't explain the consequences of the data download—for example, that data may form part of a police brief of evidence and be provided to the accused.
- Police didn't make it clear they had a choice about whether to provide their phone to police for data to be downloaded.
- Police didn't make it clear how long the phone would be in police custody.
- Police didn't make it clear, or give clients a choice about, how much data would be downloaded. For example, we are aware of a case where police downloaded the full contents of a victim-survivor's phone, even though most of the material on the phone wasn't relevant to the facts in issue in the trial—because, in that case, the victim-survivor had only met the perpetrator three days before sexual assault occurred. A more appropriate course would have been to only download material within a relevant date range.
- Victim-survivors felt pressured to provide their phones to police for the purpose of Cellebriting. Some victim-survivors told us they were worried that not providing their phone to police might result in their case being dropped.

Victim-survivor experience: *'Whilst I was in getting a rape kit done, the police arrived and immediately tried to go through my phone, saying to my mum "if she has nothing to hide."*

Policing practice on collection of victim-survivors' personal data needs to be reviewed nationally, with a view to ensuring victim-survivors' right to privacy is considered and protected in all police work.

Recommendation 13: *Conduct a review of policing practice across the country, with a view to ensuring victim-survivors' right to privacy is protected in all police work, and establishing a best-practice approach to seeking access to victim-survivors' personal information.*

Improve accountability and transparency of police handling of sexual violence matters and subject policing of sexual violence to enforceable minimum standards

Better accountability and transparency in policing is also critical to improve the response to victim-survivors of sexual violence.

Karen Isles, a survivor-advocate, lawyer and founder of the Make Police Investigate campaign, has identified the following gaps:

- There is no legally enforceable duty of care owed by police to victim-survivors of sexual violence. While police owe defendants a duty of care, the same is not extended to victim-survivors. According to Isles, 'we urgently need a duty of care to make sure that Police don't re-traumatise victim-survivors. This goes beyond anti victim-blaming training. We want police to take care of victim-survivors; to support referrals to mental health, independent lawyers and other supports.'⁷¹
- There are no legally mandated minimum standards of police investigation of sexual violence matters. According to Isles, 'currently police have discretion what, if at all, to investigate and how. This means that bias (such as racism, homophobia, victim-blaming) negatively impacts police (in)action.'⁷²
- There are insufficient 'independent and transparent police accountability mechanisms.'⁷³ This mirrors the research findings of Dr Burgin and Jacqui Tassone, that within ACT police 'there is currently no independent oversight of the investigation of sexual offences.'⁷⁴ Without a broad-based, comprehensive approach to oversight and accountability of police investigation of sexual violence, poor police practice may only be exposed if an individual victim-survivor makes a complaint. Even if this happens, in many cases, the complaint will be investigated by police themselves—raising questions about independence and transparency.

⁷¹ Isles, Karen. (2024). *Make Police Investigate*. <https://www.makepoliceinvestigate.org/>.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Burgin and Tassone, above n 66.

To improve accountability and transparency in policing, we support the following reforms recommended by the [Make Police Investigate](#) campaign:

- Create a legally enforceable duty of care owed by police to victim-survivors of sexual violence, requiring police to meet minimum standards when interacting with victim-survivors, and giving victim-survivors the ability to assert their rights in the justice system.
- Create legally mandated minimum standards of police investigation of sexual violence matters.
- Establish 'an ongoing, independent sexual assault case review... to oversee police decision-making in sexual offence cases and address high rates of attrition.'⁷⁵ Case reviews should be conducted by a body or agency independent from police—for example, by the Law Enforcement Conduct Commission in NSW. Case reviews should be conducted on 'every case that has not proceeded to charge, and... should take place every three months.'⁷⁶ Public reports should be required to be released on the outcome of these reviews, with police required to demonstrate how they have acted on review findings.

Recommendation 14: *We support the calls by the [Make Police Investigate](#) campaign for a legally enforceable duty of care owed by police to victim-survivors, legally mandated minimum standards for police investigations, and regular independent oversight of police decision-making in sexual offence cases. Independent case reviews should be conducted by a body or agency independent from police, on every case that has not proceeded to charge, every three months—with public reports released on the outcome of these reviews and police required to act on case review findings.*

Improving training on trauma, sexual violence and challenging rape myths

Improvements to police training would also help ensure that any officer who may receive a report of sexual violence is equipped to respond in a respectful, trauma-informed and validating way.

We acknowledge that some training on responding to sexual violence is already taking place in police forces across the country, and that advances in police practice and training regarding sexual violence and trauma have been made in recent years. For example, in NSW:

'In 2022, the [NSW Police Force] amended a compulsory course for any officer wishing to become a detective to ensure that it was trauma-informed and taught a victim-centric response. A dedicated Sexual Violence Portfolio Holder has been assigned to each police area command or district to oversee its sexual violence matters. In 2023, the force

⁷⁵ Ibid.

⁷⁶ Ibid.

introduced a process that ensures any sexual matter reported to police that does not proceed to charge was assessed by an experienced committee.⁷⁷

Despite improvements, victim-survivor experiences show more needs to be done to ensure police responses to sexual violence are trauma-informed and victim-centric. Victim-survivors told us they experienced bias, victim-blaming attitudes, lack of trauma-informed practice, and limited acknowledgement and validation of their experiences, when interacting with police.

Victim-survivor experience: *'I spoke at a NSW Police conference once [as part of a panel of people with lived experience of sexual violence]. I was the only male on the panel. Afterwards, a police officer came up to me and said, because you're a man, your story is almost more believable. We get women saying this stuff all the time.'*

Victim-survivor experience: *'When reporting I was made to feel as if I was lying and in the wrong. The detective originally told me that my situation wasn't sexual assault as the perpetrator was my boyfriend...'*

Victim-survivor experience: *'Police [should] allow women to go to a safer place to report than over the counter, as sometimes that is where they triage the... incident and [only if it's] deemed worthy will [police] take a statement in a private room. I had to stand at the counter, with no privacy, explaining [my experience of sexual violence]. [It] was undignified and not confidential.'*

Victim-survivor experience: *'Police would not bother to take details and record them on file let alone investigate unless the rape was accompanied with a serious assault with serious physical injuries suffered. Then they would concentrate on the physical injuries and leave the rape alone.'*

Victim-survivors' poor experiences are borne out in research demonstrating the adequacy of police training regarding sexual violence. For example, a recent internal review of training provided to the ACT Sexual Assault and Child Abuse Team found the course 'did not prepare officers adequately for the challenges of the role.'⁷⁸ The review found 'existing training failed to educate on the misconceptions about sexual violence... missed opportunities to interrogate the impact of coercive control and grooming on consent, and failed to recognise the patterns of behaviour that constitute family

⁷⁷ Sibthorpe, Clare. "My word against his:" Colossal system failure in sexual assault cases.' *Sydney Morning Herald*. 30 May 2024. Available at: <https://www.smh.com.au/national/nsw/my-word-against-his-colossal-system-failure-in-sexual-assault-cases-20240529-p5jhn9.html>.

⁷⁸ Tidmarsh, P, Sharman, S and Hamilton, G. (2023). 'The Effect of Specialist Training on Sexual Assault Investigators' Questioning and Use of Relationship Evidence.' *Journal of Police and Criminal Psychology*. 38(2).

violence. Instead, cases were viewed as discrete, isolated incidents. This may be, in part, due to the prevailing belief in the community that sexual assault is a “miscommunication.”⁷⁹ Meanwhile, a 2023 BOCSAR report found that NSW Police practice on sexual violence is plagued by ‘fundamental challenges [including] a lack of trauma-informed approaches from officers and detectives, as well as variability in the collection of evidence.’⁸⁰ Finally, the Australian Institute of Criminology reported in 2024 that ‘recent research suggests that... priority training needs for police [include] working with victims who have been traumatised or who have suffered other negative mental health effects, both to support improvements in their wellbeing and to more effectively work with them in the context of criminal investigations.’⁸¹

In addition to gaps in existing training, there is a lack of national consistency in police approaches to training on sexual violence, as well as limited existing mechanisms for testing the effectiveness of police training initiatives.⁸² According to the Australian Institute of Criminology, there is a ‘lack of research on whether training leads to actual improvements in practice, including increases in arrests or the proportion of cases proceeding to prosecution or conviction’ and ‘few efforts to extract an overarching narrative of what works and how’ to improve police responses to sexual violence.⁸³

To address these shortcomings, we recommend developing a best-practice standardised approach to training for all police officers across the country who may receive reports of sexual violence or interact with victim-survivors. This should not preclude additional training to ensure policing responds to local and regional needs. However, an approach to training that sets minimum standards for police competency in responding to sexual violence is important for consistency and to address enduring issues.

Training should be mandatory not only for sexual offence specialist police, but also, for all general duties police officers—although we envisage that specialist police would receive more extensive training. It’s important that general duties officers receive training on sexual violence, as they are often the ones who receive victim-survivors’ first disclosures of sexual violence. These interactions are critical, given research showing ‘that the way a victim-survivor is treated when they first report a sexual offence has a big impact on whether they will continue through the criminal justice process. Research also shows that for people who have experienced trauma, kind and respectful interactions, including with people in positions of authority, can help them to heal from that trauma.’⁸⁴

⁷⁹ Burgin and Tassone, above n 66.

⁸⁰ RMIT and KPMG, above n 15.

⁸¹ Dowling, Christopher. (2024). ‘Police training in responding to family, domestic and sexual violence.’ *Trends and Issues in Crime and Criminal Justice*. Australian Institute of Criminology, Canberra. <https://doi.org/10.52922/ti77390>.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Department of Justice (WA), above n 61.

We support the recommendation of Dr Burgin and Jacqui Tassone that such a course 'should be qualifying'⁸⁵—that is, police officers should not be able to commence duties until they've undertaken it. We also recommend that training for police should not be a one-off event. Instead, there should be mandatory continuing professional development for all officers who may interact with victim-survivors—with more intensive ongoing training for sexual violence specialist police—to ensure skills are maintained and developed, and policing is responsive to changes in community attitudes. Making training mandatory is important, as demonstrated by a review of NSW Police conducted by the NSW Law Enforcement and Crime Commission in the context of domestic and family violence. The Law Enforcement and Crime Commission noted that, even though 'a wide range of training material and internal procedures in relation to domestic and family violence [are available] on [the NSW Police] website, none of this training is mandatory,' and as a result, police officers 'lacked the expertise and skills to carry out basic investigative requirements in relation to domestic and family violence incidents.'⁸⁶

The police training program should be co-designed with people with lived experience of sexual violence and frontline sexual violence services with expertise supporting victim-survivors of sexual violence and providing trauma-informed care.

Training should cover:

- The impacts of trauma—for example, how trauma can affect memory and victim-survivors' responses. According to research, victim-survivors of one-off traumatic events (including sexual violence) typically recall only three to five clear details,⁸⁷ and memories may be impaired with amnesiac gaps or contain differences between accounts.⁸⁸ An understanding of these impacts is critical to ensure that policing is tailored to victim-survivors' needs. This would not only reduce retraumatisation, but also support victim-survivors to give better statements.
- How to work with victim-survivors in a trauma-informed way. An understanding of how to support people experiencing trauma is foundational to a respectful and supportive police response.
- Victims' rights under applicable Charters of Victims Rights.
- The drivers and consequences of sexual violence.
- The impacts of the criminal justice process on victim-survivors.
- Evidence and substantive sexual violence law.

⁸⁵ Burgin and Tassone, above n 66.

⁸⁶ Law Enforcement Conduct Commission. (June 2023). *Review of NSW Police Force responses to domestic and family violence incidents*. State of New South Wales. Available at: <https://www.lecc.nsw.gov.au/news-and-publications/publications/review-of-nsw-police-force-responses-to-family-and-domestic-violence-incident.pdf/@download/file>.

⁸⁷ Holmes, E. A., Grey, N. and Young, K. A. D. (2005). 'Intrusive images and "hotspots" of trauma memories in posttraumatic stress disorder: An exploratory investigation of emotions and cognitive themes.' *Journal of Behavior Therapy and Experimental Psychiatry*, 36(1).

⁸⁸ Ibid. See also Conway, MA, Meares, K and Standart, S. (2004). 'Images and goals.' *Memory*, 12; McNally, R.J. (2003). *Remembering Trauma*. Cambridge, MA: Harvard University Press.

- Vicarious trauma management. This is critical to ensure police responding to sexual violence matters can do their work safely and sustainably.
- Challenging rape myths that continue to result in victim-survivors having poor experiences in the justice system. For example, training should:
 - Address victim-blaming that continues to impact victim-survivors who were under the influence of drugs or alcohol when they experienced sexual violence.
 - Provide education on intimate partner sexual violence. This is the most prevalent form of sexual offending—with research suggesting that ‘around 77% of sexual offending is perpetrated by someone the victim-survivor knows [and] most commonly an intimate partner or family member.’⁸⁹ Sexual violence perpetrated by intimate partners comes with additional challenges for victim-survivors—for example, victim-survivors may be ‘uncertain about whether the perpetrator meant to harm them and believe the situation can be sorted out between themselves and the perpetrator, fearful that their relationship with the perpetrator will be used against them or that they will not be believed or taken seriously, [feel] confusion, guilt or disbelief that the assault occurred, [or feel] concerned for the perpetrator.’⁹⁰ In addition, experiences of survivor-advocates in Full Stop Australia’s NSAP suggest more needs to be done to address bias and lack of understanding of intimate partner sexual violence by police.

Victim-survivor experience: ‘I felt, from the outset, that police would not seek prosecution of my perpetrator because he was my then-husband and I had remained married to him after the rapes. I don’t think police had a nuanced understanding of rape in the context of other forms of family violence.’

Finally, police training on intimate partner sexual violence needs to equip police with skills and strategies to address ongoing risk to victim-survivors—noting that intimate partner sexual violence is a high indicator of lethality risk.⁹¹

⁸⁹ Department of Justice (WA), above n 61.

⁹⁰ Ibid.

⁹¹ Toivonen, C, & Backhouse, C. (2018). *National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 07/2018). Sydney, NSW: ANROWS.

Recommendation 15: *Develop a best-practice standardised approach to training for all police officers across the country, in all jurisdictions, who may receive a report of sexual violence or interact with victim-survivors. This includes both general duties and specialist police. Training should be mandatory and updated regularly. It should include both induction modules and continuing professional development. The training program should be co-designed with people with lived experience of sexual violence and specialist sexual violence services. Training should cover:*

- *The impacts of trauma—for example, how trauma can affect memory and victim-survivors' responses.*
- *How to work with, interview and take statements from victim-survivors in a trauma-informed way.*
- *Victims' rights under jurisdiction applicable Charters of Victims Rights.*
- *The drivers and consequences of sexual violence.*
- *The impacts of the criminal justice process on victim-survivors.*
- *Evidence and substantive sexual violence law.*
- *Vicarious trauma management.*
- *Challenging rape myths that continue to result in victim-survivors having poor experiences in the justice system.*

Build up the specialist sexual violence workforce within police and ensure all sexual violence matters are investigated by specialist police

In addition to the initiatives set out above, which aim to ensure *all* police officers are equipped to receive initial disclosures of sexual violence, we also recommend recognising that policing sexual violence requires a specialist approach and allocating commensurate resources to policing sexual violence.

Research shows that 'attrition is highest when sexual offence reports are investigated by general duties officers.'⁹² In light of this, we support the recommendation of Dr Burgin and Jacqui Tassone, that 'given the specialisation of sexual violence work, including engagement with victims who have experienced sexual trauma, all sexual offences... should be investigated by [specialist units].'⁹³

While, for the reasons above, we think general duties officers should be equipped to receive initial disclosures of sexual violence and triage victim-survivors into the justice system—responsibility for intensively case managing and investigating sexual violence matters should sit with specialist officers. This specialist approach is commensurate with the scale of the sexual violence crisis and the unique challenges it poses. To ensure this is possible, work needs to be done to build up the workforce of sexual violence specialist units, especially in rural, regional and remote areas.

⁹²Burgin and Tassone, above n 66.

⁹³ Ibid.

Several victim-survivors told us they would value being able to make a statement to a sexual violence specialist officer.

Victim-survivor experience: *'[There should be] a specialist [unit] for sexual offences that victims can be referred to from their first engagement with police. Remove reporting to random untrained police officers, and instead direct [victim-survivors] to [the] appropriate person.'*

Victim-survivor experience: *'There needs to a Sexual Assault specialty team [within police] available 24 hours a day, [rather than] a person who answers the phone [telling] a victim "I don't know if they are on duty now," [asking] for [the victim's] name and contact number and say[ing] they will pass the message on.'*

One victim-survivor also told us that insufficient resourcing of specialist police officers impacted her experience of reporting sexual violence to police.

Victim-survivor experience: *'There is ONE sexual violence officer in our region, and she is often unavailable due to demand. She is overworked and has limited time. [This] made [my experience of reporting] feel rushed and not at the pace I needed it to be. I didn't go back.'*

Recommendation 16: *Recognise that policing sexual violence requires a specialist approach and allocate commensurate resources to it. This involves increasing the workforce of sexual violence specialist units, and requiring that all sexual offences be investigated by specialist units.*

Ensure police responses to sexual violence meet the needs of diverse communities

Victim-survivors from priority populations—including people from the LGBTQ+ community, CALD communities, First Nations communities, and people with disability—can experience additional barriers reporting to police. Issues include lack of understanding of diverse experiences, bias and discrimination, lack of cultural safety, lack of accessibility, and the fact that police may not be viewed as a source of support by people from these groups.

Victim-survivor experience: *'The police held very outdated stereotypical views of gay people and blamed me for what happened for not taking more caution.'*

Victim-survivor experience: *'[The police] wouldn't even let me report my rapist, who targeted me because I'm disabled. He is a disability support worker, and they still didn't care.'*

Victim-survivor experience: 'Police are not good at identifying victim-survivors. Misidentification is a huge problem. I have several friends [who are on visas] who were reported to border control after going to police to report sexual violence. There should be a protocol where police agree not to report people who have reported sexual violence to border control.'

For example, a 2022 report on the Queensland Police Service identified several issues with the approach to violence experienced by priority populations. The report found that 'there are often shortfalls in [Queensland Police Service] responses to domestic and family violence when one or both of the parties identify as LGBTIQ+, have a culturally or linguistically diverse background, are young or elderly, have a cognitive, intellectual, or physical disability, are experiencing mental health issues or have other complex needs.'⁹⁴ The report also found that racism 'is a significant problem within the Queensland Police Service,' and the Service 'has not sufficiently prioritised the development of cultural capability within the organisation [as a result of which police work] lack[s] cultural capability which leads to responses that do not meet community expectations.'⁹⁵ Misidentification of Aboriginal women remains a systemic issue in police forces across the country.

To make reporting to police more accessible for everyone, work needs to be done to ensure that police responses to sexual violence cater to diverse experiences and needs. This includes:

- Addressing systemic racism within police forces across the country, which continues to impact Aboriginal and Torres Strait Islander people and communities. It is critical to actively address racism and the enduring impacts of colonisation, so reporting to police is safe for Aboriginal and Torres Strait Islander people. The problem of misidentification of Aboriginal women needs to be addressed to ensure the justice system is accessible to everyone.
- Developing a culturally informed and responsive approach to working with Aboriginal and Torres Strait Islander people, particularly in remote and regional areas.
- Increasing police understanding of the needs of diverse populations (including LGBTIQ+ people, Aboriginal and Torres Strait Islander people, CALD communities and people with disability), by mandating specific police training on experiences of sexual violence among victim-survivors from those populations.
- Embedding Aboriginal and Torres Strait Islander, CALD, LGBTIQ+ and disability liaison officers with appropriate specialist training within sex crimes police units across the country. We support an intersectional approach to addressing

⁹⁴ Commission of Inquiry into Queensland Police Service. (2022). *A Call for Change: Commission of Inquiry into Queensland Police Service responses to domestic and family violence*. (Report). Available at: <https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf>.

⁹⁵ Ibid.

gender-based violence, which recognises the unique experiences of diverse populations—and think police resourcing should meet this need.

***Victim-survivor experience:** 'Police should have disability awareness training and disability liaison officers. Police have [liaison officers] for multicultural, queer and Aboriginal people—but not for people with disability, even though people with disability are overrepresented as both perpetrators and victims [of sexual violence].'*

Recommendation 17: *Ensure that police responses to sexual violence cater to diverse experiences and needs by:*

- *Addressing systemic racism within police forces across the country, which continues to impact Aboriginal and Torres Strait Islander people and communities. In particular, address the enduring problem of misidentification of Aboriginal women.*
- *Developing a culturally informed and responsive approach to working with Aboriginal and Torres Strait Islander people, particularly in remote and regional areas.*
- *Mandating specific police training on experiences of sexual violence among victim-survivors from Aboriginal and Torres Strait Islander, CALD and LGBTQ+ communities, and victim-survivors with disability.*
- *Embedding Aboriginal and Torres Strait Islander, CALD, LGBTQ+ and disability liaison officers with appropriate specialist training within sex crimes police units across the country.*

Police training should include hearing from people with lived expertise

It's critical that police responses to sexual violence are informed by the lived experience of victim-survivors. Hearing from victim-survivors would give police insight into the impacts of violence, what it's like to go through the justice system, and what victim-survivors found helpful (and not) when interacting with police.

Some police forces incorporate victim-survivor perspectives into police training on sexual violence, but the approach to this is not uniform across the country.

Victim-survivors have told us they would support police hearing from people with lived expertise of sexual violence as part of their training.

***Victim-survivor experience:** 'A lived experience survivor who is able to stand up and give a presentation to [new police recruits] would be wonderful.'*

NSAP Advisory Group Member: *'Part of training for police officers should involve hearing from people with lived expertise [of sexual violence]. I've recently started offering this in Queensland for Queensland Police—for all new recruits and existing officers. Hearing [about sexual violence] from someone who has experienced it makes police want to come up and talk to us... It's very confronting for the new recruits. I don't think they have any idea of what they'll be facing.'*

Research has recognised the ability of victim-survivors' perspectives to 'contribute to cultural change within police agencies, and combat outdated attitudes and practices [as well as] assist in clarifying understanding of referral services, court processes, and investigative standards and procedures.'⁹⁶

Recommendation 18: *Sexual violence training for police forces across the country must involve hearing from people with lived experience of sexual violence, who have reported to police and gone through the justice system. This is critical for building understanding among police of what the justice system is like for victim-survivors and how best to support them.*

Monitoring and regular reporting on initiatives to improve police responses to sexual violence

Finally, work needs to be done to assess the effectiveness of initiatives implemented to improve police responses to sexual violence.

There should be regular data collection and public reporting on the impact of the above initiatives on police attitudes, their handling of sexual violence matters, reasons why matters reported to police did not proceed to charge, reasons why sexual violence reported to police did not result in a conviction, victim-survivor experiences in the justice system, and charge and conviction rates. Initiatives to improve policing should then be modified in response to this evidence base.

Recommendation 19: *There should be robust data collection and regular reporting on the impact of initiatives aimed at improving police responses to sexual violence. Reporting should cover police attitudes, their handling of sexual violence matters, reasons why matters reported to police did not proceed to charge, reasons why sexual violence reported to police did not result in a conviction, victim-survivor experiences in the justice system, and charge and conviction rates. Initiatives to improve policing should then be modified in response to this evidence base.*

⁹⁶ Dowling, above n 81.

The trial process

Our feedback in this section responds to Questions 11 to 35 in the Issues Paper.

Victim-survivors told us they experienced significant retraumatisation during the Court process.

Victim-survivor experience: *'I felt unprepared, there didn't feel like there was anyone there to provide me advice... Whilst I [was] not on trial technically, I [was] on trial for my reputation, and no one is there to help you with how to convey answers when you don't get to explain yourself.'*

Victim-survivor experience: *'The court process was awful. The perpetrator of my rape was in the room while I gave evidence. Every member of the court was male (all lawyers and judge). The barrister for the man who raped me alleged that my conduct, the way I dressed & my past sexual history all indicated that I was not raped.'*

Some victim-survivors who never reported sexual violence to police told us their knowledge of what the Court process was like for victim-survivors was a 'powerful deterrent' to coming forward.

NSAP Advisory Group Member: *'The thought of being subjected to psychologically damaging cross-examination by a callous and brazen defence barrister who is permitted to peddle outmoded sexist prejudices was a powerful deterrent to me reporting my sexual assaults. Until there are measures in place to protect victims from such practices, many of us will not be willing participants in the justice process as it stands.'*

Victim-survivor experience: *'[I might have been more likely to report if I'd had] greater reassurance that sharing [my] story [would] do more than re-traumatise [me].'*

Full Stop Australia's counsellors have also spoken to the effect of the Court system on their clients.

Full Stop Australia counsellor: *'The Court system retraumatizes clients terribly.'*

Full Stop Australia counsellor: *'Every client I have worked with has been retraumatized by the Court process.'*

The fact that the Court system is a source of pain and retraumatisation for all victim-survivors who go through it, and a deterrent to reporting for those who don't, is hugely problematic. Significant change is needed to make the Court process more accessible and trauma-informed.

Use of 'special measures' to support victim-survivors in criminal proceedings

Our feedback in this section responds to Questions 11 to 13 in the Issues Paper.

As noted in the Issues Paper, a range of 'special measures' have been introduced to reduce retraumatisation for victim-survivors giving evidence in Court. These include requirements that a complainant's evidence be given in 'closed Court,' the use of one-way screens to shield the complainant from the accused in Court, the use of CCTV to enable complaints to give evidence outside Court, the use of facilities outside Court precincts where complainants may give evidence, provisions enabling complainants to be accompanied by a support person during their evidence, and changes to the design of Courts.

We are supportive of the above measures insofar as they give victim-survivors more choice about how to give evidence and can help reduce retraumatisation. However, we note their limited ability to protect victim-survivors from the traumatic nature of giving evidence. Research in NSW shows while these measures are 'generally working as intended,' they have 'not significantly changed the substance of how sexual offence trials are conducted, including how the Crown frames its case, and in particular, how complainants are cross-examined by the defence.'⁹⁷ This is because the 'special measures' described above amount to 'only modest incursions into the essence of what makes sexual offence trials so traumatic for many complainants, including the adversarial nature of proceedings, the breadth and sensitivity of topics they might be asked to address, the absence of substantive barriers to the evocation of rape myths and stereotypes, and the length of time for which complainants might be examined.'⁹⁸

While we generally support 'special measures', we do not think they're enough on their own to address unfair and retraumatising aspects of the criminal trial. To this end, we have suggested other reforms elsewhere in this submission.

For completeness, we think the use of 'special measures' would be improved by:

- Ensuring all of the above measures are available in all jurisdictions. This would give victim-survivors access to equal protection regardless of where their matter is heard.

⁹⁷ Quilter, J & McNamara, L. (2023). *Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis* (Crime and Justice Bulletin No. 259). Sydney: NSW Bureau of Crime Statistics and Research. <http://www.bocsar.nsw.gov.au/Publications/CJB/CJB259-Report-Transcript-Analysis-of-NSW-Sexual-Offences-Trial.pdf>.

⁹⁸ Ibid.

- Providing victim-survivors with mandatory, not discretionary, access to these measures. The position on this varies across jurisdictions. For example, NSW law provides that complainants in sexual assault matters are ‘entitled’ to access the above measures⁹⁹ Meanwhile, South Australian law provides that a Court *may* order the use of ‘special measures.’¹⁰⁰ Making these measures discretionary may impact the degree to which they are offered and used. We think ‘special measures’ should be ‘opt-out’ choice for victim-survivors of sexual violence—that is, they should be entitled to them, and be given a choice about whether they would like to use them, in all trials.

Recommendation 20: *Access to ‘special measures’ to reduce retraumatisation for victim-survivors giving evidence in Court should be made consistent across jurisdictions, so victim-survivors have access to equal protection regardless of where their matter is heard. Victim-survivors should be entitled to access these measures in all jurisdictions—rather than access being discretionary, as it currently is in some jurisdictions.*

Expanding the use of pre-recorded evidence

Our feedback in this section responds to Questions 14 to 15 in the Issues Paper.

Currently, the ability to pre-record evidence varies across jurisdictions and depending on the attributes of the victim. For example, using a pre-recorded police interview as evidence in chief is available to children and adults with communication difficulties in some jurisdictions, but not to victim-survivors of sexual violence more generally.

Full Stop Australia considers all victim-survivors of sexual violence should be entitled to give pre-recorded evidence if they want to—that is, this option should be open to all victim-survivors as a matter of course, with victim-survivors able to ‘opt out’ if they wish. This includes measures such as:

- Use of an audiovisual recording of their police interview as all or part of their evidence-in-chief.
- Giving the balance of their evidence (any additional evidence in chief, cross-examination and re-examination) at a pre-trial hearing in a Courtroom or separate premises.
- If the victim-survivor chooses to give evidence at trial (rather than pre-recording their evidence), recording this so it can be used, in the case of a successful appeal, at any subsequent re-trial.

NSAP Advisory Group Member: *‘Everyone should have the choice to give pre-recorded evidence.’*

⁹⁹ *Criminal Procedure Act 1986* (NSW) s 294B.

¹⁰⁰ *Evidence Act 1929* (SA) s 13.

There are many advantages to the use of pre-recorded evidence. It leads to ‘a reduction in the amount of time that a witness needs to spend giving evidence in Court (and having to interact with the perpetrator) and [means] their account is given at a point in time when events are fresher in their memory.’¹⁰¹ This is likely to lead to better quality evidence. This advantage was recognised by the Royal Commission into Institutional Responses to Child Sexual Abuse, who said allowing witnesses and complainants to pre-record evidence enhances their capacity to give their best evidence, which is critical to the successful prosecution of sexual offending.¹⁰² Allowing pre-recorded evidence also helps address the retraumatising impacts of delay in Court proceedings, as ‘the time scale for the complainer’s direct involvement would be greatly compressed and the traumatic effect considerably alleviated.’¹⁰³

It is important that, if pre-recorded evidence is used in sexual offence matters, it is informed by the following principles:

- The choice about whether to pre-record evidence, and if so, whether to use pre-recorded evidence in criminal proceedings, should always rest with victim-survivors. Victim-survivors should be able to change their minds and give evidence in person, even if they have previously recorded their evidence.
- If a victim-survivor’s police interview is recorded, the victim-survivor should be given a choice about when the recording takes place. For example, a victim-survivor who reports sexual violence to police in the immediate aftermath of offending would likely be significantly impacted by trauma and unable to give their best evidence.
- If a victim-survivor’s police interview is recorded, this process should be supported by a witness intermediary. Witness intermediaries are ‘accredited professionals from one of five primary disciplines—speech pathology, social work, psychology, teaching or occupational therapy.’¹⁰⁴ Their role is to support victim-survivors to give their best evidence and provide expert advice regarding victim-survivors’ communication needs. This expertise in communication, and

¹⁰¹ Attorney-General’s Department (SA). (2023). *Review of sexual consent laws in South Australia: Discussion paper*. Government of South Australia. Available at: <https://yoursay.sa.gov.au/90581/widgets/423777/documents/275336>.

¹⁰² Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report, Parts VII to X and appendices, page 5.

¹⁰³ George, AJ, Lowik, V, Suzuki, M & Corbett-Jarvis, N. (2023). *Specialist Approaches to Managing Sexual Assault Proceedings: An Integrative Review*. Joint research between the Australasian Institute of Judicial Administration, Commonwealth Attorney-General’s Department, CQUniversity College of Law and Queensland Centre for Domestic and Family Violence Research. Available at: https://aija.org.au/wp-content/uploads/2023/10/Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings-An-Integrative-Review_05.pdf. Citing Leeona Dorrian. *Improving the management of sexual offence cases: final report from the Lord Justice Clerk’s Review Group* (Scottish Courts and Tribunals Service Report, March 2021) (‘Dorrian Review’). Available at: <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>.

¹⁰⁴ Victims Services NSW. (15 April 2024). *Child Sexual Offence Evidence Program*. NSW Government. <https://victimsservices.justice.nsw.gov.au/how-can-we-help-you/programs-and-initiatives/child-sexual-offence-evidence-program.html#:~:text=The%20witness%20intermediary%20role%20is,advocates%2C%20or%20a%20support%20pers on.>

how trauma may impact victim-survivors' ability to give evidence, offers a critical perspective within the legal system.

- Police should be properly equipped to take evidence that will be used in Court proceedings. This includes specialist training on the laws of evidence and how to take evidence from sexual violence victims in a trauma-informed way.
- Victim-survivors should have a right to, and be provided with, legal advice and any other support (including counselling and the support of a 'system navigator') before their evidence is recorded.
- The process and effect of recording evidence should be explained to victim-survivors beforehand by the person taking their evidence. This includes explaining the possible downsides of pre-recording evidence to victim-survivors. For example, there is some evidence that giving pre-recorded evidence may lead to lower conviction rates in sexual violence trials. A 2024 University College London study found 20% fewer convictions in UK sexual violence cases where evidence was pre-recorded.¹⁰⁵ As a result, Professor Cheryl Thomas KC, at UCL Faculty of Laws, suggested that 'it would be prudent for police and the [prosecution] to routinely advise witnesses of lower conviction rates [due to] such a strong and consistent correlation between the use of [pre-recorded] evidence and lower jury conviction rate.'¹⁰⁶ In spite of this evidence, we think giving victim-survivors the option of pre-recording evidence is important, as it allows victims to avoid the significantly retraumatising prospect of going to Court. However, victim-survivors should be fully informed about the possible implications.

Recommendation 21: All victim-survivors of sexual violence should be entitled to give pre-recorded evidence if they want to, including:

- *Using an audiovisual recording of their police interview as all or part of their evidence-in-chief.*
- *Giving the balance of their evidence at a pre-trial hearing.*
- *Ensuring all evidence given in Court is recorded for use in future proceedings.*

Victim-survivors should be given full and informed choice about whether to pre-record evidence—including being able to choose when the pre-recording takes place, receiving legal and other support prior to recording evidence, and having possible downsides of recording evidence explained to them. If a victim-survivor's police interview is recorded, this process should be supported by a witness intermediary.

¹⁰⁵ Ellison, Claire. 'Rape complainants warned pre-recording evidence could backfire.' *BBC*. 11 January 2024. <https://www.bbc.com/news/uk-67940103>.

¹⁰⁶ Ibid.

The use of ‘specialist questioners’, ground rules hearings and witness intermediaries to support victim-survivors to give their best evidence

Our feedback in this section responds to Questions 16 to 17 in the Issues Paper.

Victim-survivors told us they found the process of giving evidence in Court highly traumatic. Not only did they have to relive, in great detail, their experience of violence—they were discredited, scrutinised, and made to feel like they were the ones on trial.

Victim-survivor experience: *‘[The Court process should be] less about the victim’s “credibility” and character and more about the abuser. The onus right now sits so heavily on the victim to “prove” the rape or abuse happened. It’s so backwards. Offender character, including history of prior abuse, cannot be introduced as evidence as it would “unfairly bias” the trial. But the same character of the victim can be picked to shreds. It’s just so unfairly weighted against the abuser.’*

Cross-examination, in particular, was a significant source of trauma for victim-survivors whose matters were heard in Court—and a barrier to reporting for others.

Victim-survivor experience: *‘[Cross-examination was] devastating and victim blaming. Didn’t get to rebut what was said about me or express myself. Didn’t get to challenge his story as it wasn’t presented to me. Humiliating and traumatising.’*

While case law recognises defendants don’t have a standalone right to cross-examination,¹⁰⁷ the cross-examination process has traditionally been understood as a ‘distinguishing feature’¹⁰⁸ of the adversarial legal system. It has been described as a ‘powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story.’¹⁰⁹ Yet increasingly, the value of cross-examination as a means of discovering the truth had been doubted. Experts have drawn attention to its use as ‘a process of manipulating the witness through suggestive questioning, avoiding unfavourable disclosures, and obtaining jury sympathy.’¹¹⁰ They have observed that ‘[c]ross-examination techniques are specifically designed to damage the effectiveness of the testimony and mute the voice of the complainant.’¹¹¹ Its role in intentionally discrediting complainants has also been noted—with research showing it is commonly used ‘to make an honest witness appear at best confused and at worst a liar’¹¹²

¹⁰⁷ See *GPI Leisure v Herdsman Investments (No. 3)* (1990) 20 NSWLR 15 at 22.

¹⁰⁸ Marc Rosenberg, ‘The Contribution of Chief Justice Lamer to the Development of the Law of Hearsay’ (2000) 5 *Canadian Criminal Law Review* 115.

¹⁰⁹ *Wakeley v The Queen* (1990) 93 ALR 79, 86 (Mason CJ, Brennan, Deane, Toohey and McHugh JJ), quoting *Mechanical and General Inventions Co Ltd v Austin* [1935] AC 346, 359 (Viscount Sankey LC).

¹¹⁰ Christine Eastwood and Wendy Patton, ‘The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System’ (Research Report, Queensland University of Technology, 2002).

¹¹¹ *Ibid.*

¹¹² Diane J Birch, ‘The *Criminal Justice Act 1988* — Documentary Evidence’ (Pt 2) [1989] *Criminal Law Review* 15.

NSAP Advisory Group Member: *'Tactical cross examination is very common. [Lawyers] set up questions in a way that's lose-lose. The way they question you makes you look like a liar—when their actual role is to find out the truth. Questions are set up so people get distressed and confused. This seeds doubt and undermines credibility.'*

Victim-survivors' poor experiences of cross-examination are reflected in research. A 2021 study by Professors Julia Quilter and Luke McNamara found that, even in jurisdictions that have introduced affirmative consent laws, cross-examination still often runs contrary to legislation—questioning why victim-survivors 'didn't just say no,' and questioning victim-survivors' credibility over their imperfect recall of (often trivial) events.¹¹³ Cross-examination can also impact victim-survivors' capacity to recount events at trial, with 'complainants in sexual offence trials... more prone to making mistakes or providing inaccurate responses by cross-examination questions that are closed, leading, repeated and/or complex.'¹¹⁴

Research analysing transcripts from 75 sexual violence trials in NSW found entrenched issues with the way cross-examination was conducted:

*'That the complainant will be tested is an unavoidable and legitimate feature of the trial process. What we have found, however, is that in the trials in this study, complainants were regularly tested in multiple ways that extend beyond the parameters of the specific event that the Crown asserts constituted sexual assault... (or another sexual offence)—and that these are frequently underpinned by one of more real rape attributes. [The way cross-examination was sometimes conducted] is likely to contribute to the complainant's confusion and upset, and sense of being under siege. These are not the sorts of harms that can be alleviated by (nonetheless important) strategies like optimising facilities for remote location/CCTV evidence, or amending the elements of sexual offences, or expanding the number of myth-correcting jury directions. In the trials analysed in this study there was very little about the substantive manner in which cross-examination is conducted (including the heavy emphasis on accusations of lying) that could be regarded as coming near being trauma informed.'*¹¹⁵

The above evidence suggests there is a need to:

- Reflect on the role of victim-survivors' evidence, and cross-examination in particular, in the criminal justice process. The intended purpose is to discern the truth, yet evidence suggests the way cross-examination is occurring goes against this objective—by impacting the quality of evidence and discrediting honest witnesses.

¹¹³ McNamara, L & Quilter, J. (2023). *Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry on Current and proposed sexual consent laws in Australia* (Submission 17).

¹¹⁴ Department of Justice (WA). (2023). *Journey through the criminal justice system: Discussion Paper 3*. Government of Western Australia. Available at: <https://www.wa.gov.au/media/40129/download?inline>.

¹¹⁵ Quilter & McNamara (2023), above n 97.

- Address aspects of giving evidence, and cross-examination in particular, that have become a significant source of trauma—or a powerful deterrent to reporting sexual violence—for victim-survivors.
- Recognise that the right to a fair trial extends beyond the accused and applies to victims, witnesses and the broader community too. While the right to a fair trial is often talked about ‘as a defendant-centric right,’¹¹⁶ case law recognises a broader right—with Australian courts acknowledging this right ‘extends beyond the rights of the accused to include the interests of the community and the protection of witnesses.’¹¹⁷

NSAP Advisory Group Member: *‘The legal profession has put itself on a pedestal, as if it’s uniquely placed to find out the truth. In reality, lawyers are no better equipped than laypeople.’*

To address retraumatising aspects of giving evidence, Full Stop Australia supports:

- Testing the viability of using ‘specialist questioners’ to take evidence from victim-survivors of sexual violence in criminal proceedings.
- In the meantime, introducing a ‘ground rules hearing’ process, supported by the expertise of witness intermediaries, into all sexual violence proceedings.

‘Specialist questioners’ are used in Norway to take and test the evidence of children and people with disability. The process works as follows:

‘[Specialist questioners] are trained in best practice procedures for eliciting complete and accurate evidence. The interview is linked by video to the judge, prosecution and defence lawyers in another room. After the interviewer takes a comprehensive account of the events, the judge, prosecution and defence counsel, who watch via CCTV link, have the opportunity to ask the interviewer to put further questions on their behalf to the witness. They do not devise the precise questions to be asked or put questions directly to the witness. This process is repeated until all the parties are satisfied that sufficient evidence has been taken and adequately scrutinised. The video of the interview can then be accepted in court as the totality of the evidence, with no need for the child to attend or be cross-examined. A complainant is usually referred for treatment and support following the interview... In part due to the interview being overseen by judge, prosecution and defence, this mode of questioning does not appear to have given rise to any internal conflict in the interviewer’s role in eliciting sufficient evidence for both the defence and prosecution. As Hanna, Davies, Henderson, Crothers and Rotherham note, in this way, “Norway retains the essential two-party nature of the adversarial proceeding.” Moreover, because the aim is to elicit as much accurate and reliable

¹¹⁶ Bowden, P, Henning, T & Plater, D. ‘Balancing fairness to victims, society and defendants in the cross-examination of Vulnerable Witnesses: An impossible triangulation?’ *Melbourne University Law Review* (2014) 37(3). Available at: <https://www5.austlii.edu.au/au/journals/MelbULawRw/2014/1.html#fnB114>.

¹¹⁷ Ibid. Citing *Barton v The Queen* (1980) 147 CLR 75, 101 (Gibbs ACJ and Mason J), quoted in *Dietrich v The Queen* (1992) 177 CLR 292, 335 (Deane J); *Jago v District Court of New South Wales* (1989) 168 CLR 23, 33 (Mason CJ), 49–50, 54 (Brennan J); *R v Lodhi* (2006) 199 FLR 250, 263–4 [54]–[57] (Whealy J); *Ragg v Magistrates Court of Victoria* (2008) 18 VR 300, 319 [77] (Bell J); *R v Wilkie* (2005) 193 FLR 291, 305 [54] (Howie J).

*evidence as possible from the witness and to do so in a way that avoids the problems generated by traditional cross-examination, there is no need for interviewers to assume differing stances or roles (pro-prosecution or pro-defence) during questioning. This may assist in avoiding any potentially negative implications for witnesses, were such a change in role to occur.*¹¹⁸

Full Stop Australia supports exploring the viability of making this model available to all victim-survivors of sexual violence in Australia. Policy justifications for this include improving the quality of evidence in criminal proceedings, mitigating a significantly retraumatising aspect of the criminal system, and improving the fairness of the trial process for all involved.

As this process would allow all evidence against the accused to be fully tested, we don't see it being inconsistent with the accused's right to a fair trial. We also don't see the use of 'specialist questioners' as being inconsistent with defence counsel's duties to the accused in a criminal trial. This includes the duty to ensure the accused's case is presented 'fully and properly' and 'fearlessly and with vigour and determination'¹¹⁹—and, in accordance with the rule in *Browne v Dunn*, to 'put all relevant propositions and imputations, which will be relied on later, to the complainant.'¹²⁰ These duties could be advanced through defence counsel weighing in on the questioning of 'specialist questioners', to ensure all topics and evidence relevant to the accused's case are fully tested. But with evidence collection the responsibility of specialists, there would be more safeguards around how victim-survivors are questioned. This would not only increase safety for victim-survivors—it would improve the quality of evidence and thereby lead to a fairer and more effective justice system.

We note this approach to giving evidence could be especially important in cases involving complainants who are children or people with disability. There is evidence that these groups can be especially impacted by confusing questioning:

'It is well-established that the cross-examination of children and persons with an intellectual disability can cause them to give unreliable evidence. This may be because, for example, children have particular difficulties remembering what happened a long time after the event; may not realise they have misunderstood a question; may not seek clarification of confusing, complex or ambiguous questions; and may be prone to anxiety. Similar problems can be experienced by witnesses who have an intellectual disability.

... Unnecessarily complex cross-examination questions may also impede vulnerable witnesses' comprehension. Closed questions, which elicit a simple 'yes' or 'no' answer from witnesses, have been shown to be the most frequently used but to elicit the least reliable evidence. One study found that children aged from five to eight years attempted to answer 75 per cent of nonsensical closed questions (eg, 'Is a box louder than a knee?') but only a small proportion of nonsensical open questions (eg, 'What do bricks eat?').

¹¹⁸ Bowden et al, above n 116.

¹¹⁹ *Lewis v Judge Ogden* (1984) 153 CLR 682, 689 (Mason, Murphy, Wilson, Brennan and Dawson JJ).

¹²⁰ (1894) 6 R 67, 70–1 (Lord Halsbury).

Closed questions can be rephrased as non-leading or open questions, which are less confusing and obtain more accurate responses. Similarly, leading questions, which are questions that 'directly or indirectly sugges[t] a particular answer to a question', also obtain inaccurate responses.¹²¹

For the reasons above, Full Stop Australia supports testing the viability of using 'specialist questioners' to elicit evidence from victim-survivors in sexual violence cases. Some of the matters that would need to be considered are:

- Workforce planning—ensuring there are enough questioners, who are appropriately trained, to meet demand in sexual violence cases.
- How this model of eliciting evidence could be incorporated effectively into Australia's adversarial legal system.

While the viability of this model is being tested, Full Stop Australia supports the use of ground rules hearings, informed by the expertise of witness intermediaries. All victim-survivors should have access to this support, regardless of whether they are a child or adult, or can be classified as a 'vulnerable' witness.

Ground rules hearings enable the prosecution, defence and judicial officer to decide on the following before a victim-survivor is questioned:

- The style and parameters of questioning so that questioning is not improper or irrelevant.
- The scope of questioning including questioning on sensitive topics and evidence to reduce re-traumatisation.
- The preferences and needs of complainants—including the need for breaks and how a victim-survivor can ask for breaks.

It is important that ground rules hearings are supported by witness intermediaries. Witness intermediaries can support the ground rules hearing process by:

- Undertaking an assessment of victim-survivors' communication needs—for example, by assessing their understanding of a particular type of questioning or ability to sequence events.
- Preparing a Court report on those needs, which includes recommendations for, and suggested adjustments to, questioning.
- Attending the ground rules hearing, where they can answer questions about their report on the victim-survivor's communication needs, and provide guidance to prosecution or defence counsel on the appropriateness of proposed questioning.

¹²¹ Ibid. Citing Amanda H Waterman, Mark Blades and Christopher Spencer, 'Do Children Try to Answer Nonsensical Questions?' (2000) 18 *British Journal of Developmental Psychology* 211; David Caruso, 'I Don't Want to Play Follow the Leader — Part 2', (Paper presented at the AIJA Criminal Justice in Australia and New Zealand — Issues and Challenges for Judicial Administration Conference, Sydney, 9 September 2011); Adrian Keane, 'Towards a Principled Approach to the Cross-Examination of Vulnerable Witnesses' [2012] *Criminal Law Review* 407.

- Being present when victim-survivors give evidence, so they can intervene if their recommendations aren't being followed or there is a breakdown in communication.

It is important that any witness intermediary scheme:

- Makes the support of a witness intermediary available to all victim-survivors of sexual violence. Currently, witness intermediaries are available in several jurisdictions to child complainants, child witnesses, and vulnerable adult complainants giving evidence in sexual violence matters—but not to adult victim-survivors of sexual violence. Making them available to all sexual violence victims recognises that there is a clear link between the trauma of experiencing sexual violence, and victim-survivors' ability to communicate. As set out above, trauma has long-lasting impacts, which can negatively affect the ability to recall events in a linear fashion.
- Allocates sustainable public funding to witness intermediaries. For example, we understand that under South Australia's witness intermediary scheme, eligible witnesses must pay for witness intermediary services. Prior to this, we understand that accessing witness intermediary services was free, but that funding for the program ran out. This position impacts victim-survivors' access to justice.

***Recommendation 22:** Urgent steps must be taken to address irrelevant, invasive and otherwise improper cross-examination, which retraumatizes victim-survivors and undermines the quality of evidence. Full Stop Australia recommends testing the viability of using 'specialist questioners' to elicit evidence from victim-survivors—as an alternative to victim-survivors being questioned by the prosecution and defence. In the meantime, we support the use of ground rules hearings, informed by the expertise of witness intermediaries, to address entrenched, fundamentally unjust and retraumatizing aspects of giving evidence.*

Calling expert evidence on the impact of trauma on memory and victim-survivor behaviour

Our feedback in this section responds to Question 18 in the Issues Paper.

As set out above, there is a well-established evidence base detailing the effects of trauma on memory, and the various responses victim-survivors may have to trauma. A common misconception in sexual offence cases is that complainants will always give full and linear accounts of relevant events, remember all details of an offence and be consistent in their descriptions of it.¹²² However, research shows that it is common for a complainant to recount their experience of a sexual offence differently at different times, because of the way they retain and recall memories, the context of the disclosure,

¹²² Victorian Department of Justice and Regulation. (2017). 'Jury Directions: A Jury-Centric Approach (Part 2).' *Criminal Law Review* 20.

or feelings of stress or embarrassment.¹²³ Victim-survivors may also have clear and specific recall of some events—and very limited or hazy recall of other (often more peripheral) events. Disordered and fragmented memories are common responses to trauma. There is also a large evidence base showing the commonness of a ‘controlled response’ as a coping mechanism to trauma, with many victims recounting evidence of sexual violence appearing ‘numbed’ and like their emotions are under control.¹²⁴

NSAP Advisory Group Member: *‘My trauma response is to appear unemotive. You don’t know what a person’s actual experience is. Their reactions tell you nothing.’*

Full Stop Australia supports the practice of the NSW Office of the Director of Public Prosecutions of calling expert evidence about memory and responsive behaviour research in sexual violence trials. This helps to ensure criminal trials will be informed by and responsive to evidence about how people recall traumatic events, and how victim-survivors may respond to trauma. This is important to counteract misconceptions juries have about sexual violence and trauma (see further below). We are supportive of Prosecutors in other jurisdictions adopting this approach.

Recommendation 23: *Prosecutors across the country should follow the approach of the NSW Office of the Director of Public Prosecutions by calling expert evidence about memory and responsive behaviour research in sexual violence trials. This will help ensure criminal trials are informed by a well-established evidence base on the effect of trauma on memory, and the variety of responses victim-survivors may have to trauma.*

Changes to the operation of the jury to ensure a fair trial

Our feedback in this section responds to Questions 19 to 21 in the Issues Paper.

The use of juries in criminal trials is a feature of the democratic system, with ‘lay person participation in the legal system... considered central to a healthy democracy’¹²⁵ and recognition that ‘trial by jury helps the criminal justice system reflect the values and standards of the general public.’¹²⁶ Upholding the defendant’s right to a fair trial does not require trial by jury. This right encompasses ‘the right to be heard before a competent tribunal,’ and ‘the right to have a matter determined by a decision maker who

¹²³ NSW Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020).

¹²⁴ Petrak, J., & Hedge, B. (Eds.). (2003). *The trauma of sexual assault: Treatment, prevention and practice*. West Sussex: John Wiley & Sons. See also Klippenstine, MA & Schuller, R. (2012). ‘Perceptions of sexual assault: Expectancies regarding the emotional response of a rape victim over time.’ *Psychology, Crime & Law*, 18(1).

¹²⁵ Horan, Jacqui. ‘All about juries: why do we actually need them and can they get it “wrong”?’ *The Conversation*. 7 March 2019. <https://theconversation.com/all-about-juries-why-do-we-actually-need-them-and-can-they-get-it-wrong-112703>.

¹²⁶ Mendelle, Paul. ‘Why juries work best.’ *The Guardian*. 22 February 2010. <https://www.theguardian.com/commentisfree/2010/feb/21/juries-work-best-research>

is free from bias and is seen to be unbiased.¹²⁷ These rights can be upheld with a jury or without. Still, some consider jury trials contribute to these rights by ‘provid[ing] a safeguard against the exercise, or the apparent exercise, of arbitrary power by the State,’ thereby ‘protect[ing] both actual justice for an accused and the perception of justice being administered.’¹²⁸

The importance of juries in theory can be at odds with how they make decisions in practice. Members of the jury can hold bias and misconceptions, which impact their ability to decide the facts of a case. This risk is particularly high in sexual offence trials, due to the widespread and entrenched nature of misconceptions about sexual offending, and enduring negative attitudes towards victims. For example:

- A lack of understanding of the range of trauma responses. For example, the commonness of ‘freeze’ and ‘fawn’ responses, which do not involve active resistance by a victim-survivor, the fact that trauma can affect recall, and the fact that some victim-survivors may not appear distressed while giving evidence about a traumatic event. A 2009 study found that jurors often drew negative inferences from a complainant’s failure to appear obviously distressed while testifying, to report the offence immediately or to fight back physically during the assault – even though these are common responses among genuine victims of sexual violence.¹²⁹
- A lack of understanding of complex power imbalances underlying a person’s ability (or lack thereof) to consent and withdraw consent.¹³⁰ Research shows that misconceptions about consent can influence juror decision-making in sexual offence trials ‘to the detriment of a proper application of the law of consent.’¹³¹
- ‘Real rape’ myths, which do not accord with sexual violence perpetrated in intimate partner relationships or by a person known to the survivor. Research shows that individual complainants whose experience departs from the archetype of ‘real rape’ (where the perpetrator is a stranger, physical violence is used, and the victim fights back) are less likely to be accepted by jurors as genuine.¹³²
- The persistence of victim blaming.
- Lack of sympathy for victims who don’t match ‘perfect victim’ archetypes.

As the New Zealand Law Commission noted in its 2015 report, *The Justice Response to Victims of Sexual Violence*, the prevalence of these misconceptions in sexual violence

¹²⁷ Otherwise known as the ‘hearing rule’ and the ‘bias rule.’ See Victorian Law Reform Commission. (16 May 2023). *Inclusive Juries—Access for People Who Are Deaf, Hard of Hearing, Blind or Have Low Vision: Report*. VLRC. <https://www.lawreform.vic.gov.au/publication/inclusive-juries-report/9-inclusive-juries-and-the-right-to-a-fair-trial/>.

¹²⁸ Law Council of Australia. (May 2020). ‘Principles on Jury Trials in the Context of COVID-19.’ <https://lawcouncil.au/publicassets/741662d2-74ac-ee11-9434-005056be13b5/Principles%20on%20Jury%20Trials%20in%20the%20Context%20of%20COVID%20-19.pdf>

¹²⁹ L. Ellison and V. Munro, ‘Turning Mirrors into Windows? Assessing the Impact of (Mock) Juror Education in Rape Trials’ (2009) 49(3) *The British Journal of Criminology* 363.

¹³⁰ Enhance Research, *Community Attitudes to Sexual Consent* (Women’s Safety and Justice Taskforce (Qld), 2022).

¹³¹ NSW Law Reform Commission, above n 123.

¹³² Gerger, H, Kley, K, Bohner, G & Siebler, F. ‘The Acceptance of Modern Myths About Sexual Aggression Scale: Development and Validation in German and English’ (2007) 33(5) *Aggressive Behavior* 422.

trials often inhibits the jury's ability to perform its function.¹³³ Research has found that jurors commonly rely on ignorant or biased assumptions when determining guilt in sexual violence matters. For example, a 2007 study conducted by the Australian Institute of Criminology revealed that:

*'Pre-existing juror attitudes about sexual assault not only influence their judgements about the credibility of the complainant and guilt of the accused, but also influence judgements more than the facts of the case presented and the manner in which the testimony is given.'*¹³⁴

These issues are especially concerning in light of the inherent difficulty of holding juries accountable for decisions based on bias and misconceptions—the secrecy of jury deliberations means there is a lack of clarity or accountability around [the] effects [of myths and preconceptions about sexual violence] in criminal trials.¹³⁵ There is also 'no legislative restriction that prevents rape myths ... from being taken into account by fact finders'¹³⁶ such that juries 'remain free to conclude that a complainant's style of dress, consumption of alcohol, flirtatious behaviour or lack of resistance constituted "reasonable grounds" for a belief in consent.'¹³⁷

Victim-survivors have expressed concerns about juries holding outdated views about consent and sexual violence, which may impact their decision-making.

NSAP Advisory Group Member: *'Juries should not be [used] in sexual violence matters. As much as jurors are meant to be impartial peers... regardless of what evidence is presented, they are swayed by their own presumptions. Juries don't have the capacity to make informed decisions on sexual violence matters. We need to move to a system where informed and trained judges make evidence-based decisions on these matters. There are also more ways to hold a judge to account for their reasoning.'*

Addressing juror bias and the risk that misconceptions about sexual violence and trauma pose is critical to ensure the right to a fair trial is upheld. As set out above, this right does not just apply to the accused, but also to victims and broader society.

To this end, several reforms to the jury system have been proposed, including:

¹³³ New Zealand Law Commission, 'The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes', NZLC R136 (December 2015).

¹³⁴ Taylor, N & Joudo, J. 'The impact of pre-recorded video and closed-circuit television testimony by adult sexual assault complainants on jury decision-making: An experimental study', *Research and Public Policy Series* No 68 (Canberra: Australian Institute of Criminology, 2005).

¹³⁵ Office of the Under-Secretary to the Minister for Justice (Domestic and Sexual Violence Issues) (NZ), *Improving the Justice Response to Victims of Sexual Violence* (Cabinet Paper, 2 July 2019) [87] <<https://www.justice.govt.nz/assets/Documents/Publications/7236-Proactive-release-SV-response-final.pdf>>.

¹³⁶ Annie Cossins, 'Submission to NSW Law Reform Commission Review of Consent in Relation to Sexual Offences' (Draft Submission, 2018).

¹³⁷ Rape & Domestic Violence Services Australia, Submission No 88 to NSW Law Reform Commission, *Consent in Relation to Sexual Offences* (29 June 2018) 12 [6.6] <https://www.lawreform.justice.nsw.gov.au/Documents/Current-projects/Consent/Preliminarysubmissions/PCO88.pdf>.

- ‘Juryless’ trials. This may involve decision-making by a judge alone (a model Scotland has committed to piloting), a panel of judges, or a judge and small expert lay panel (a model used in South Africa, where sexual offence trials are decided by a judge and two lay people).
- The use of ‘professional’ jurors, with specialist expertise in sexual offending and trauma.
- Jury directions aimed at counteracting prevalent misconceptions about sexual violence and trauma.
- Juror education prior to trial, addressing common misconceptions about sexual violence and trauma.

Full Stop Australia supports mandatory jury directions to counteract common rape myths and misconceptions about trauma responses. Jury directions in all jurisdictions should:

- Be based on the directions in the *Jury Directions Act 2015* (Vic)—which, as the Issues Paper notes, has the most comprehensive list of jury directions. The directions required to be given under Victorian law address a range of rape myths and respond to evidence about common trauma responses. Among other things, Victorian jury directions address delayed complaints, differences in complainants’ accounts, the possibility of a ‘freeze’ response, the fact that sexual violence may occur in a range of diverse relationships, that it is common for a victim-survivor to continue a relationship with a perpetrator following sexual violence, and that people who have experienced sexual violence may not be physically injured. We recommend that all jurisdictions amend relevant legislation to require jury directions no less comprehensive than those under Victorian law to be given.
- Be required to be given at the outset of every sexual violence trial. It is critical that jury directions are given early in all cases, to address misconceptions about sexual violence that might otherwise take root during a trial. For consistency, giving such directions at the outset of proceedings should be mandatory—rather than being left up to the discretion of individual judges.
- In addition, be required to be repeated during the sexual offence trial if there is a good reason to do so, or if a party to proceedings requests the direction be repeated and there is no good reason not to do so—as is the case under NSW law. This would enable misconceptions about consent and sexual violence to be addressed in real time, and reflects evidence that ‘repetition of jury directions helps jury comprehension.’¹³⁸

Our proposed approach to the timing of jury directions combines the approach taken in NSW and Victorian law—where they are required to be given as a corrective, and where

¹³⁸ Criminal Law Review, Department of Justice and Regulation (Vic), *Jury Directions: A Jury-Centric Approach* (Report, 2015) 9.

they are required to be given at the earliest opportunity the Judge deems appropriate, respectively. We have recommended this mixed approach in response to ample evidence that jury directions are most effective when given early in proceedings and used proactively to address assumptions introduced by improper questioning:

- In 2004, the Victorian Law Reform Commission found that the timing of jury directions significantly impacts the jury’s deliberation process, with directions delivered early being much more effective in combating misconceptions and myths about sexual assault.¹³⁹
- Research by Professors Quilter and McNamara found that ‘for maximum effect, it is preferable if judges give ‘corrective’ directions (e.g. that delay in complaint does not necessarily mean fabrication) at the time this suggestion is raised—most commonly during the complainant’s cross-examination.’¹⁴⁰ Quilter and McNamara also found that ‘more needs to be done to ensure that relevant directions are given in every trial where they are warranted [and that in many cases] a direction on delay or differences in account was warranted, but was not given.’¹⁴¹

We also support juror education prior to trial to address and counteract common misconceptions about sexual offending and trauma. Research shows that juror education prior to evidence being given in a trial assists the jury to revise underlying assumptions based on rape myths.¹⁴² Studies have also shown that jurors who received education to undo misconceptions around consent and common rape myths prior to the commencement of a trial are more resistant to statements founded on myths and misconceptions being made by other jurors during deliberation.¹⁴³

We also support more work being done to test the impacts of ‘juryless’ trials and ‘professional jurors.’

Views about the potential of ‘juryless’ trials to improve justice outcomes for victim-survivors, and the fairness of criminal proceedings for all, are mixed. In 2021, the VLRC found ‘it is not clear that replacing the jury... would deal with [misconceptions in sexual violence trials]. There are serious risks that would require further study, such as the impacts of this change on a fair trial.’¹⁴⁴ In its submission to the VLRC review, the Victorian Victims of Crime Commissioner expressed the view that there ‘is no evidence that judge-alone trials result in better experiences for complainants or fewer acquittals, and there is not enough evidence about their use.’¹⁴⁵ The ‘need for a greater evidence

¹³⁹ VLRC, *Sex Offences: Interim Report*, Report No 78 (2004) Ch 7.

¹⁴⁰ Quilter, J, McNamara, L & Porter, M. (2022). ‘New Jury Directions for Sexual Offence Trials in NSW: The Importance of Timing.’ *Criminal Law Journal*. 46(3).

¹⁴¹ Quilter & McNamara (2023), above n 113.

¹⁴² Harrison Lee et al, ‘The Effects of Victim Testimony Order and Judicial Education on Juror Decision-Making in Trials for Rape’ (2022) *Psychology, Crime and Law* 1.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ VLRC, above n 10, citing Submission 45 (Victims of Crime Commissioner).

base' about this change has been identified in 'several [overseas] jurisdictions.'¹⁴⁶ For example, 'the Gillen Review in Northern Ireland indicated "profound concerns about the suitability of jury trials," but considered the evidence base would need to be much stronger before [juryless trials] would be feasible.'¹⁴⁷

Meanwhile, the approach to juries in South African sexual violence trials has been recognised as a 'successful example of an alternative approach to the traditional adversarial trial.'¹⁴⁸ In South Africa:

*'A panel system is implemented, where cases are heard by a judge and two lay assessors with experience in justice administration or a special skill relevant to the case. The lay panel members assess the facts; the judge determines and applies the law, and confers with the assessors in reaching a verdict.'*¹⁴⁹

In light of the limited evidence base on juryless trials, we support further research being done to test the impact this measure would have on justice outcomes for victim-survivors, and the fairness of sexual offence trials for all. Research should test the impact of judge-alone trials, versus trials that use a limited lay panel (like South Africa). It should also test victim-survivor experiences of the criminal process and the impact this measure has on conviction rates.

Similarly, we support more work being done to explore whether 'professional jurors' would be an effective means of addressing common misconceptions and complexity in sexual offence trials. Considerations include:

- Victim-survivor views and experiences in 'professional juror' trials.
- The impact of this measure on conviction rates.
- Specific training 'professional jurors' are required to undergo.
- Workforce planning—ensuring there are enough 'professional jurors,' who are appropriately trained, to meet high demand in sexual violence cases.
- Mitigating the risk of actual or perceived bias among 'professional jurors,' which could diminish confidence in the justice system or lead to perverse incentives to appeal decisions.

¹⁴⁶ George et al, above n 103.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

Recommendation 24: Full Stop Australia supports mandatory jury directions to counteract common rape myths and misconceptions about trauma responses. Jury directions in all jurisdictions should be based on the directions in the Jury Directions Act 2015 (Vic), which offers the most comprehensive approach to jury directions. Jury directions should be required to be given at the outset of every sexual violence trial, and in addition, be repeated during the trial as often as needed to correct misconceptions about consent and sexual violence in real time.

Recommendation 25: Full Stop Australia supports juror education prior to trial to address and counteract common misconceptions about sexual offending and trauma.

Recommendation 26: Further research should be done on the impact of 'juryless' trials and 'professional' jurors on justice outcomes for victim-survivors and the fairness of sexual offence trials for all. Among other things, research should test victim-survivor views and experiences in 'professional juror' and 'juryless' trials, and the impact of these measures on conviction rates.

Restricting improper, retraumatising or irrelevant cross-examination and the admissibility of irrelevant evidence

Our feedback in this section responds to the issues raised by Questions 22 to 24 in the Issues Paper.

The Issues Paper notes a range of existing restrictions to how cross-examination is conducted, including prohibition of:

- Unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive questioning.
- Questioning in a tone that's belittling, insulting or otherwise inappropriate.
- Questioning with no basis other than in stereotype.
- Questioning on and evidence of the complainant's 'sexual reputation.'
- Direct cross-examination of a complainant by an unrepresented accused.
- Statements relating to the reliability of a particular class of complainants—for example, statements suggesting that sex workers are less credible than other complainants.

There is some variation in these restrictions across jurisdictions, creating gaps for victim-survivors. For example:

- 'Sexual reputation' evidence is completely inadmissible in all jurisdictions other than the Northern Territory. Meanwhile, in the Northern Territory, evidence of a complainant's 'general reputation as to chastity' can be admitted with the leave

of the Court, if the Court is satisfied the evidence has substantial relevance to the facts in issue.¹⁵⁰ The Northern Territory should align with legislation in other states and territories—and community expectations—by amending its law to specify sexual reputation evidence is not admissible in any circumstances.

- It is not mandatory for judicial officers to intervene in relation to improper questions in all jurisdictions. WA legislation provides that the Court *may* disallow questioning that is ‘misleading, unduly annoying, harassing, intimidating, offensive, oppressive or repetitive.’¹⁵¹ Whereas provisions disallowing improper questions in New South Wales, ACT, Tasmania, Victoria and South Australia are in broader terms, and require mandatory judicial intervention.¹⁵² In all jurisdictions, judicial intervention to address improper questions should be mandatory and should cover all question types listed in s 41 of the *Evidence Act 1995* (NSW).
- Restrictions on statements relating to the reliability of particular classes of complainants that apply in Victoria should be applicable in all jurisdictions.

Restrictions on cross-examination and the admissibility of evidence should be consistent across jurisdictions. This provides victim-survivors with equal protection regardless of where the offending occurred.

In response to Question 24 in the Issues Paper, we support restricting cross-examination that reinforces myths about sexual violence (for example, that a victim-survivor would be expected to complain at the earliest possible opportunity). There are existing provisions in various jurisdictions that restrict such questions to some degree—for example, provisions stating only ‘relevant’ evidence is admissible, and that evidence ‘with no basis other than in stereotype’ is not admissible.¹⁵³ Despite these restrictions, research shows lines of questioning invoking rape myths remain prevalent in cross-examination.¹⁵⁴ This suggests that, on its own, legislative change restricting improper and irrelevant lines of questioning is not enough. To this end, we’ve made other recommendations to improve the process of questioning victim-survivors elsewhere in this submission.

In addition, we support the following legislative change to further restrict admissibility of irrelevant, invasive and retraumatising cross-examination:

- All jurisdictions should introduce a provision specifically requiring the Court to disallow questions with no basis other than to reinforce myths, stereotypes and misconceptions about sexual violence. The Issues Paper contemplates restricting such questioning ‘on the ground that it is irrelevant.’ The challenge of

¹⁵⁰ *Sexual Offences (Evidence and Procedure) Act* (NT) s 4.

¹⁵¹ *Evidence Act 1906* (WA) s 26.

¹⁵² See, for example, *Evidence Act 2008* (Vic) s 41.

¹⁵³ See, for example, *Evidence Act 1995* (NSW) ss 41 and 56.

¹⁵⁴ Quilter & McNamara (2023), above n 97.

doing this is that ‘relevance’ has been construed very broadly in case law.¹⁵⁵ While existing provisions may already be used to disallow evidence that reinforces ‘rape myths,’ there is value in making this explicit in legislation—to require judges to specifically consider the admissibility of evidence on this basis.

- All jurisdictions should appropriately limit the admissibility of ‘sexual experience’ evidence. ‘Sexual experience’ evidence—referred to in some jurisdictions as ‘sexual activity’ or ‘sexual history’ evidence—is evidence relating to the past sexual activities or experiences of a complainant in sexual violence proceedings. Such terminology has been found in case law to cover ‘both consensual and non-consensual sexual activities (i.e. including sexual abuse) and evidence of the absence of sexual experience (e.g. virginity, or of particular types of sex).’¹⁵⁶ Restrictions on the admissibility of this evidence vary between jurisdictions. While some evidence of this kind can be necessary or helpful to prosecute some sexual offences, it is also commonly used to discredit and retraumatise victim-survivors. It can also be used to reinforce rape myths and blame victims—for example, suggesting that previously consenting to sexual activity with the accused means the victim-survivor consented on the occasion in question.

The approach to admissibility of ‘sexual experience’ evidence in some jurisdictions raises concerns. For example, South Australian law provides that evidence of recent sexual activities with the accused is generally admissible, regardless of its probative value, the interests of justice, or the impact it would have on a victim-survivor.¹⁵⁷ Meanwhile, the restriction on admissibility of ‘sexual experience’ evidence in ACT law ostensibly only applies to sexual activity with persons other than the accused.¹⁵⁸ This suggests evidence of sexual activity with the accused is generally admissible, even if it has no relevance to the proceedings at hand.

The most restrictive approach to the admissibility of ‘sexual experience’ evidence is the one in NSW law—which provides this evidence will only be admissible if it falls into one of six evidentiary ‘gateways,’ and its probative value outweighs potential distress, humiliation, or embarrassment to the complainant.¹⁵⁹ Noting the issues with ‘sexual experience’ evidence, we support legislation taking a clear and comprehensive approach to limiting its admissibility, rather than relying on judicial discretion. We support jurisdictions adopting an approach to ‘sexual experience’ evidence no less restrictive than that in NSW law.

¹⁵⁵ The threshold test is whether there is a logical connection between the evidence and a fact in issue: *Papakosmas v The Queen* (1999) 196 CLR 297 at [81]. A majority of the High Court in *BBH v The Queen* (2012) 245 CLR 499 has found evidence can be relevant and therefore admissible so long as it has probative value. This is so even if it may ultimately be categorised by the tribunal of fact as carrying no weight: Heydon J at [97]–[104]; Crennan and Kiefel JJ at [152], [158]–[160]; Bell J at [194]–[197]. Relevance requires a minimal logical connection: *IMM* [2016] HCA 14 [40].

¹⁵⁶ Professor Jeremy Gans. (8 March 2024). *Submission: Inquiry into the Crimes Amendment (Strengthening Criminal Justice Responses to Sexual Violence) Bill*. Submission to the Senate Legal and Constitutional Affairs Legislation Committee. Available at: <https://www.aph.gov.au/DocumentStore.ashx?id=e6613598-6ca5-4f52-bbbc-4daaa4190923&subId=753228>.

¹⁵⁷ *Evidence Act 1929* (SA) s 34L.

¹⁵⁸ *Evidence (Miscellaneous Provisions) Act* (ACT) s 76(2) (limited to ‘specific sexual activities’).

¹⁵⁹ See *Criminal Procedure Act 1986* (NSW) s 294CB.

We also note that in ACT, QLD and the NT, the Court is not required to consider the impact of admitting ‘sexual experience’ evidence on a victim-survivor.¹⁶⁰ We recommend that consideration of victim-survivors be strengthened across all jurisdictions. All states and territories should explicitly provide in legislation that ‘sexual experience’ evidence is only admissible in the interests of justice, having regard to ‘whether probative value outweighs distress, humiliation and embarrassment to the complainant; the risk evidence may arouse in the jury discriminatory belief or bias, prejudice, sympathy or hostility; [and] the need to respect the complainant’s personal dignity and privacy.’¹⁶¹

Finally, we recommend greater clarity on the distinction between ‘sexual reputation’ and ‘sexual experience’ evidence. While all jurisdictions other than the NT have completely barred ‘sexual reputation’ evidence from being admitted, and all jurisdictions limit ‘sexual experience’ evidence to some extent, there isn’t enough legislative or practical guidance on how to distinguish one form of evidence from the other. Evidence of a victim-survivor’s past sexual activities could be relevant to both their ‘sexual experience’ and their ‘sexual reputation.’ Greater clarity is needed on how restrictions on these forms of evidence interact, to ensure they are working as intended.

Recommendation 27: *Restrictions on cross-examination and the admissibility of evidence should be consistent across jurisdictions. This provides victim-survivors with equal protection regardless of where the offending occurred. To this end, we recommend addressing the following deficiencies:*

- *The Northern Territory should align with other states and territories—and community expectations—by amending its law to specify ‘sexual reputation’ evidence is never admissible.*
- *All jurisdictions should make it mandatory for judicial officers to intervene in relation to improper questions.*
- *All jurisdictions should take an equally comprehensive approach to the types of questions recognised as ‘improper.’*
- *Restrictions on statements relating to the reliability of particular classes of complainants that apply in Victoria should be applicable in all jurisdictions.*

Recommendation 28: *All jurisdictions should introduce a provision specifically requiring the Court to disallow questions with no basis other than to reinforce myths, stereotypes and misconceptions about sexual violence.*

¹⁶⁰ *Evidence (Miscellaneous Provisions) Act* (ACT) ss 76, 78; *Criminal Law (Sexual Offences) Act 1978* (Qld) s 4(3); *Sexual Offences (Evidence and Procedure) Act* (NT) s 4.

¹⁶¹ These considerations condition the admissibility of ‘sexual experience’ evidence under Victorian law. See *Criminal Procedure Act 2009* (Vic) s 342, 349.

Recommendation 29: *All jurisdictions should appropriately limit the admissibility of ‘sexual experience’ evidence and align with the following:*

- *All jurisdictions should adopt an approach to ‘sexual experience’ evidence no less restrictive than NSW law.*
- *All jurisdictions should strengthen their approach to considering victim-survivors’ interests when considering the admissibility of ‘sexual experience’ evidence. This includes whether the probative value of the evidence outweighs distress, humiliation and embarrassment to the victim-survivor; the risk evidence may arouse discriminatory belief or bias, prejudice, sympathy or hostility; and the need to respect the victim-survivor’s personal dignity and privacy.*
- *More clarity is needed on the distinction between ‘sexual reputation’ and ‘sexual experience’ evidence. Evidence of a victim-survivor’s past sexual activities could be relevant to both their ‘sexual experience’ and their ‘sexual reputation.’ It should be clear how restrictions on these forms of evidence interact, to ensure they are working as intended.*

Victim-survivors should have standing to intervene in relation to cross-examination, and applications to admit evidence, that affect them

Where defence counsel proposes to ask questions or admit evidence about matters that impact victim-survivors’ rights, victim-survivors in all jurisdictions should be given standing to intervene. Relevant matters include:

- Questions and evidence related to victim-survivors’ prior sexual activities.
- Questions which are unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive, or are put to the witness in a belittling, insulting or otherwise inappropriate tone.
- Questions and evidence that reinforce rape myths and have no basis other than in stereotypes about sexual violence.
- Questions and evidence that are otherwise irrelevant.

We acknowledge there are legislative provisions restricting or prohibiting the above questions and evidence.¹⁶² However, research shows that cross-examination continues to run counter to these restrictions:

- A 2023 analysis of transcripts from 75 sexual violence trials, conducted by Professors Quilter and McNamara, found that ‘rape myths and stereotypes about how a genuine victim of sexual violence should behave featured prominently in [sexual offence] trials.’¹⁶³ Complainants were ‘regularly cross-examined about

¹⁶² For example, Part 3.1 of the *Evidence Act 1995* (NSW) provides that only relevant evidence is admissible in proceedings. Section 41 of that Act provides that misleading or confusing questions, as well as questions that intimidate or belittle a witness, or have no basis other than in stereotype, are inadmissible.

¹⁶³ Woods, Cat. ‘Study confirms ‘rape myths’ still persist in sexual offence trials.’ *Law Society Journal*. 16 August 2023. Quoting Professor Julia Quilter. <https://lsj.com.au/articles/study-confirms-rape-myths-still-persist-in-sexual-offence-trials/>. See also Quilter & McNamara (2023), above n 97.

having made a delayed or incomplete complaint (84 per cent of trials in the study), having failed to physically resist (53 per cent of trials), having failed to verbally communicate non-consent (53 per cent of trials), and having incomplete or inconsistent recall of events (76 per cent of trials).¹⁶⁴ The study also found that 'in 73 per cent of trials the complainant was accused of lying about or inventing the sexual offence allegation with ulterior motives'¹⁶⁵ and that 'complainants were regularly subjected to questioning that extended considerably beyond the specifics of the events that were the basis of the sexual offence charges in question.'¹⁶⁶

- Legal practitioners have identified 'a gap between what the legislation says can be asked of a victim, and what is actually asked of a victim in courtrooms.'¹⁶⁷ Lawyer and Senior Lecturer Roman Fida has spoken of the flouting of legislative restrictions on certain types of questioning: 'Sometimes a defence lawyer, attorney will keep going down that line of questioning because even though they know they are wrong, even though they know there is a good chance they will be halted, they believe it is important to get that point across to a jury or the like. So it is a calculated risk, I have seen that a lot.'¹⁶⁸

Giving victim-survivors standing would enable them—through dedicated legal representatives—to challenge improper and irrelevant lines of questioning that are banned by legislation but continue to prevail anyway. Such questions reinforce dangerous and outdated rape myths and victim-blaming narratives, continue to retraumatise victims, and deny them justice.

Giving victim-survivors standing would also enable them to be heard in relation to applications to admit evidence that affects them. For example, applications to admit 'sexual experience' evidence in NSW law require the trial judge to decide 'whether the evidence falls within the parameters of s 294CB(4),' including whether its probative value outweighs distress, humiliation or embarrassment to the complainant.¹⁶⁹ It is appropriate that a victim-survivor be heard on the impact certain evidence would have on them.

Currently, victims of sexual violence don't have their own legal representatives in criminal proceedings—whereas the accused has defence counsel, and the prosecution's interests may not align with a victim-survivor's. In addition to causing feelings of disempowerment among victim-survivors who appear as witnesses in Court, this also means there isn't a reliable mechanism for addressing inappropriate questioning.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Quilter & McNamara (2023), above n 97.

¹⁶⁷ Kinsella, Elise. 'Questioning of sexual assault victims during trials 'worse' than in the 1950s, criminologist finds.' *ABC*. 25 March 2021. <https://www.abc.net.au/news/2021-03-25/experts-question-how-justice-system-deals-with-sexual-offences/13248172>.

¹⁶⁸ Ibid.

¹⁶⁹ *Taylor v R* (2009) 78 NSWLR 198 at [44]-[45].

Victim-survivor experience: *'Within the legal system especially I felt like a piece of evidence, and I was treated as such. I had no one to advocate for me, or directly support me.'*

Victim-survivor experience: *'[I found the Court process] horrifically retraumatizing. Felt like a piece of evidence, had no one explicitly on my side. Prosecutor was not "my prosecutor" and was representing the crown's interest not mine. I am so proud of myself for giving live evidence in the courtroom. However, the entire trial centred around picking apart every bit of my character that didn't fit the "perfect victim" trope rather than the evidence itself... I had immediate police attendance after a violent physical and sexual assault, immediately went to hospital and had a rape kit and injuries photographed, and he still got away with it.'*

To support legislative reform, Full Stop Australia recommends making this form of legal support freely available to victim-survivors through publicly funded legal services. We think there are strong public interest grounds for doing this. This would promote victims having greater agency and awareness of matters that affect them in sexual violence proceedings. Being less 'passive', and having more visibility of Court processes that affect them, could help reduce the sense of disempowerment and retraumatization so many victims feel in Court.

Recommendation 30: *All victim-survivors of sexual violence should have standing to intervene in relation to cross-examination, and applications to admit evidence, that affect them. To support legislative reform, Full Stop Australia recommends making this form of legal support freely available to victim-survivors through publicly funded legal services. This would promote victims having greater agency and awareness of matters that affect them in sexual violence proceedings.*

Limiting disclosure of counselling, therapeutic and other records, and supporting victim-survivors to challenge applications for such material

Our feedback in this section responds to Questions 27 to 28 in the Issues Paper.

It is critical that victim-survivors' communications with counseling, health and other therapeutic practitioners, and other professionals, are adequately protected. This ensures victim-survivors can report and disclose their experiences of sexual violence confidentially and receive necessary care. We note that, historically, victim-survivors' counselling records were frequently adduced in Court to highlight discrepancies in their accounts, with the goal of undermining their credibility.¹⁷⁰ In response to this practice,

¹⁷⁰ Ibid.

and recognising victim-survivors' right to privacy, legislative provisions protecting certain communications have been introduced.¹⁷¹

As set out in the Issues Paper, legislative provisions restricting or prohibiting disclosure of victim-survivors' private communications with professionals differ across jurisdictions.

Full Stop Australia supports aligning the approach to these communications across jurisdictions. This would increase clarity and consistency in how this material is dealt with across the country. We recommend an approach that prioritises the privacy and agency of victim-survivors, recognises the confidentiality of all health information and professional records, and ensures victim-survivors feel safe to seek critical care. In particular:

- A victim-survivor's consent should be explicitly required to disclose their confidential communications. Victim-survivor consent is currently required in some jurisdictions, but not others. Full Stop Australia is aware of cases where subpoenas for victim-survivors' counselling records have been served on health practitioners, and material has been produced without the victim-survivor's knowledge (much less consent). This has the potential to be extremely retraumatising and contribute to the sense of being sidelined from the legal process. The Victorian Law Reform Commission has recognised that involving victim-survivors in decision-making regarding disclosure of their medical records is not only integral for psychological safety, but also empowering.¹⁷² A requirement for consent could be modelled off the following provisions in Tasmanian law:¹⁷³

(3) A counselling communication must not be disclosed in any criminal proceedings unless the victim has consented to the disclosure.

(4) A person must not be required, in or in connection with any criminal proceedings, to produce a document that records a counselling communication unless the victim has consented to the production of the document.

(5) Evidence of a counselling communication must not be adduced or admitted in any criminal proceedings unless the victim has consented to the adducing or admission of the evidence.

- Privilege should not only apply to counselling and therapeutic records. It should be broader in scope, capturing all communications and records related to a victim-survivor's health and therapeutic care, as well as communications and records held by social workers, drug and alcohol rehabilitation services, and specialist domestic, family or sexual violence services. Jurisdictions currently vary in how broadly they define 'protected communications.' For example, the

¹⁷¹ Danuta Mendelson, 'Judicial Responses to the Protected Confidential Communications Legislation in Australia' (2002) 10 (1) *Journal of Law and Medicine* 49; VLRC, *The Role of Victims of Crime in the Criminal Trial Process* (2016, Report).

¹⁷² *Ibid* 142.

¹⁷³ *Evidence Act 2001* (TAS) s 127B.

protection in South Australia is limited to communications made for, or in the course of, psychiatric or psychological therapy.¹⁷⁴ Full Stop Australia supports the broader definition of 'protected health information' under Victorian law—which focuses on whether the information was provided to someone acting in a professional capacity, thereby capturing a broader range of services.¹⁷⁵

... health information is protected health information for the purposes of a proceeding if

–

The proceeding is a criminal proceeding; and

The proceeding relates (wholly or partly) to a charge for a sexual offence; and

The health information is about a person against whom –

That sexual offence is alleged to have been committed; or

Any other sexual offence has been committed or is alleged to have been committed;

and

The person who recorded or collected the information (or, if the information is an opinion, formed that opinion) did so in a professional capacity.

It does not matter whether the information was recorded or collected (or, if the information is an opinion, was formed) before or after the conduct constituting the sexual offence occurred or is alleged to have occurred.

We also support Victoria's more complete approach to defining 'health information', which includes personal information—whether true or not—that discloses:

- Any information or opinion about the physical, mental or psychological health of an individual.
 - An individual's disability.
 - Any expressed wishes for future provision of health services by an individual.
 - Any health service provided.¹⁷⁶
- When deciding whether to admit medical records, Courts should be required to consider the healthcare, recovery and safety needs of victim-survivors of sexual violence. We recommend that all jurisdictions adopt a requirement to consider the following factors, which apply under NSW law:

(a) the need to encourage victims of sexual offences to seek counselling,

(b) that the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship,

(c) the public interest in ensuring that victims of sexual offences receive effective counselling,

(d) that the disclosure of the protected confidence is likely to damage or undermine the relationship between the counsellor and the counselled person,

¹⁷⁴ Evidence Act 1929 (SA) s 67D.

¹⁷⁵ Evidence (Miscellaneous Provisions) Act 1958 (VIC) s 32BA.

¹⁷⁶ Health Records Act 2001 (Vic).

(e) whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias,
(f) that the adducing of the evidence is likely to infringe a reasonable expectation of privacy.¹⁷⁷

- Victim-survivors should have standing to intervene in relation to applications to admit their confidential records. Such provisions exist in some jurisdictions,¹⁷⁸ but not others. We recommend giving victim-survivors the opportunity to intervene in relation to such requests, which affect their right to privacy. This would give them an important sense of agency over their confidential information.
- Privilege should be applicable to civil proceedings, where the relevant evidence was found to be privileged in a criminal matter. Currently, this is not the case in all jurisdictions. Legislation could be modelled of an existing provision in NSW law:¹⁷⁹

(2) If evidence was found to be privileged in a criminal proceeding under ...[relevant section]... the evidence may not be adduced in a civil proceeding to which this section applies.

We hope protecting complainants' privacy by expanding the approach to protected communications in all jurisdictions will encourage more victim-survivors to seek counselling and support services, and in turn ensure that their long-term recovery is prioritised. We also hope this approach will lead to more victim-survivors feeling safe to report crimes, without fear of their private information being made public through the Court process.

To increase victim-survivors' autonomy and control over their confidential communications with professionals, and support them to assert their right to privacy, we think legislative change should be combined with publicly funded legal support for people impacted by applications for relevant records. This support would buttress legislative protections. For example, Legal Aid NSW runs a Sexual Assault Communications Privilege Service—which provides legal advice and representation to victim-survivors of sexual assault who want to prevent the disclosure of protected communications, or enable their release in an informed way. Enabling victim-survivors to make informed choices about the release of their medical records would increase their sense of agency and control over legal proceedings, reducing disempowerment and consequential retraumatisation.

We recommend making equivalent legal support available in all jurisdictions. Such support should be available to all victim-survivors who need it—including people who may not meet the means test requirements for Legal Aid, but would nonetheless be unable to pay expensive private legal fees.

¹⁷⁷ *Criminal Procedure Act 1986* (NSW) s 299D(2).

¹⁷⁸ See, for example, *Criminal Procedure Act 1986* (NSW), s 299A, and *Evidence (Miscellaneous Provisions) Act 1991* (ACT), s 79IA.

¹⁷⁹ *Evidence Act 1995* (NSW) s 126H.

Recommendation 31: *Adopt a uniform approach to the disclosure of victim-survivors' counselling, therapeutic and other records across jurisdictions. The approach should prioritise the privacy and agency of victim-survivors, recognise the confidentiality of all health information and professional records, and ensure victim-survivors feel safe to access services. In all jurisdictions:*

- *A victim-survivor's consent should be explicitly required to disclose their confidential communications.*
- *Privilege should not only apply to counselling and therapeutic records. It should capture all communications and records related to a victim-survivor's health and therapeutic care, as well as communications and records held by social workers, drug and alcohol rehabilitation services, and specialist domestic, family or sexual violence services.*
- *When deciding whether to admit medical records, Courts should be required to consider the healthcare, recovery and safety needs of victim-survivors of sexual violence.*
- *Victim-survivors should have standing to intervene in relation to applications to admit their confidential records.*
- *Privilege should also apply to civil proceedings, where the relevant evidence was found to be privileged in a criminal matter.*
- *There should be publicly funded legal support for people impacted by applications for relevant records.*

Admissibility of tendency and coincidence evidence

Our feedback in this section responds to Question 31 in the Issues Paper.

Tendency and coincidence evidence includes:

'Evidence of other complainants who have allegedly been sexually assaulted by the same defendant. For example, evidence may be adduced to show that, because the defendant engaged in sexual activity with one child in his or her family, the defendant has a tendency to commit such acts. This evidence may have probative value in relation to allegations of sexual assault against other children in the family.

... Tendency and coincidence evidence may also include, for example, evidence of prior convictions for sexual offences or other prior illegal sexual conduct—often referred to as 'uncharged acts'—such as 'grooming' behaviours.¹⁸⁰

Admitting such evidence in sexual offence proceedings can be important to establish a defendant had the propensity to offend in a particular way or against particular victims.

¹⁸⁰ Australian Law Reform Commission and NSW Law Reform Commission. (October 2010). 'Tendency and Coincidence Evidence.' *Family Violence —A National Legal Response*. ALRC Report 114 and NSWLRC Report 128.

We think there is justification for increasing the admissibility of this evidence in all jurisdictions. The position on admissibility of tendency and coincidence evidence in all jurisdictions could be based on NSW, TAS, ACT and NT legislation,¹⁸¹ with slight amendments to incorporate the recommendations of Professor David Hamer set out below.

In NSW, TAS, ACT and NT—all of which have adopted Uniform Evidence Acts—legislation on the admissibility of tendency and coincidence evidence specifies that:

- Tendency and coincidence evidence is admissible where it has ‘significant probative value,’ which outweighs the danger of unfair prejudice to the defendant.¹⁸²
- Tendency evidence about the defendant's sexual interest in children, or about the defendant acting on such interest, is presumed to have significant probative value.¹⁸³

As noted by Professor David Hamer, this legislative presumption ‘has a restricted sphere of operation. It is limited to [child sexual offence] proceedings; and tendency evidence—not coincidence evidence—of a defendant's sexual interest in children.’¹⁸⁴ Hamer argues that ‘there are no sound policy reasons for these restrictions, and that resulting tensions may impact the way the presumption is applied in practice.’¹⁸⁵

To address these limitations, we support expanding the admissibility of tendency and coincidence evidence by:

- Applying the presumption of ‘significant probative value’ to all sexual offence matters (i.e. matters involving both adult and child complainants)—not only child sexual offence matters. This change could be achieved with wording to the effect of ‘evidence about the defendant's propensity to commit sexual violence is presumed to have significant probative value.’
- Expanding the presumption of ‘significant probative value’ so it applies to both tendency and coincidence evidence. Professor Hamer notes that ‘the distinction between tendency and coincidence evidence is artificial and unnecessary.’¹⁸⁶

Adopting a broader approach to tendency and coincidence evidence in all sexual offence matters might help address some of the challenges with prosecuting these matters. Sexual violence often occurs without witnesses, contributing to low charge and conviction rates. As noted by Professor Hamer, ‘[child sexual abuse involves] serious

¹⁸¹ *Evidence Act 1995* (NSW); *Evidence Act 2011* (ACT); *Evidence (National Uniform Legislation) Act 2011* (NT); *Evidence Act 2001* (TAS).

¹⁸² See, for example, *Evidence Act 1995* (NSW) ss 97, 98, 101.

¹⁸³ See, for example, *Evidence Act 1995* (NSW) s 97A.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ David Hamer, ‘Myths, Misconceptions and Mixed Messages: An Early Look at the New Tendency and Coincidence Evidence Provisions’ 45 *Crim LJ* 232.

offences that occur on a very large scale, and they are difficult to prosecute... [T]he same applies to adult sexual assault, and there are many other crimes where this evidence could also play a greater role and assist in enforcement.'¹⁸⁷

Recommendation 32: *All jurisdictions should adopt a broader approach to the admissibility of tendency and coincidence evidence in both adult and child sexual offence matters. The approach should be based on uniform legislation in NSW, ACT, NT and TAS, with the following changes to increase admissibility of tendency and coincidence evidence:*

- *Applying the presumption of 'significant probative value' to all sexual offence matters (i.e. matters involving both adult and child complainants)—not only child sexual offence matters.*
- *Expanding the presumption of 'significant probative value' so it applies to both tendency and coincidence evidence.*

Specialist sexual violence Courts

Our feedback in this section responds to Question 33 in the Issues Paper.

Full Stop Australia strongly supports the introduction of sexual violence specialist Courts. A specialist approach is justified in light of the prevalence and unique dynamics of sexual violence, and enduring impacts of trauma. It would help address entrenched misconceptions regarding sexual offending and trauma responses across the community, and minimise retraumatisation for victim-survivors engaging with the legal system.

Survivor-advocates in Full Stop Australia's NSAP who responded to the ALRC Survey overwhelmingly supported the establishment of specialist Courts.

¹⁸⁷ Silva, Francisco. 'Tendency for Trouble.' *Law Society Journal*. 14 April 2022. Quoting Professor David Hamer. <https://lsj.com.au/articles/a-tendency-for-trouble/>.

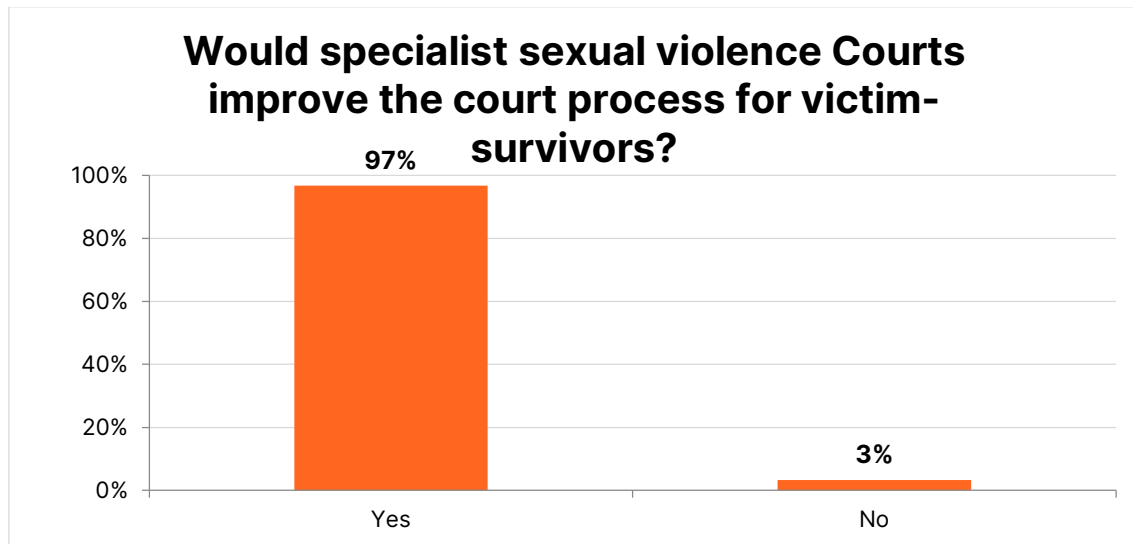


Figure 7: Responses to ALRC Survey question: 'Do you think specialist sexual violence courts would make the court process better for victim-survivors?' 31 total responses.

Full Stop Australia supports a specialist Court model that:

- Makes training on sexual violence, the impacts of trauma and provision of trauma-informed approaches mandatory for all judicial officers, lawyers and Court staff. The training program should be co-designed with people with lived experience of sexual violence and frontline sexual violence services, and should cover all of the items set out in Recommendation 12 on police training. Victim-survivors unanimously supported making specialist training mandatory for lawyers and judges conducting sexual offence cases. Training should recognise and address diverse needs and experiences—such as cultural safety needs and how to support people with disability to give their best evidence.

Victim-survivor experience: 'Courts need disability awareness training as well.'

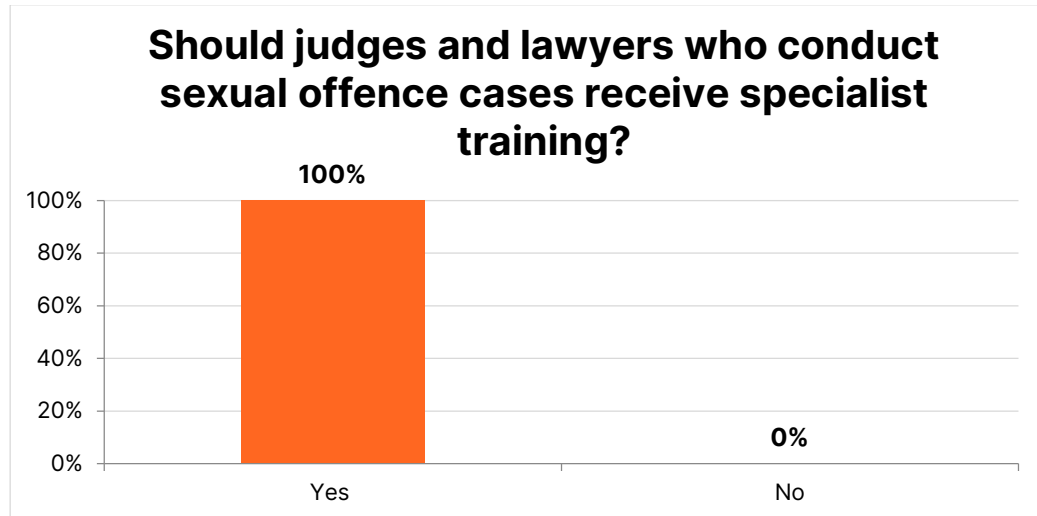


Figure 8: Responses to ALRC Survey question: 'Do you support specialised training for judges and lawyers who conduct sexual offence cases?' 32 total responses.

- Specifically requires everyone working in the Courts to use trauma-informed practice. This has been done overseas. For example, a Bill introduced to Scottish Parliament in April 2023,¹⁸⁸ which establishes a specialist sexual offences Court, 'embeds trauma-informed practice across the justice system, via new duties on criminal justice agencies regarding adoption of trauma-informed practice.'¹⁸⁹ This includes 'empowering courts to set rules and procedures on trauma-informed practice for civil and criminal cases, and requiring the judiciary to take trauma-informed practice into account when civil and criminal business is being scheduled.'¹⁹⁰
- Specialist Courts could operate within the existing Court system. Vicki Lowik and Amanda-Jane George have noted that, 'it may not be necessary to create a separate standalone court to get better outcomes. Research has shown trauma-informed training is necessary for court personnel to understand and help prevent victim/survivor retraumatisation. This can be achieved within the existing court system. Regular courts can have a "specialist approach" — a different way of running proceedings for sexual assault cases that better meet the needs of victim/survivors. This can be on specific days of the week around normal court operations.'¹⁹¹

There is evidence that specialist Courts overseas are delivering better outcomes for victim-survivors. For example, 'one early evaluation in South Africa shows 94.9 per cent of victim-survivors were satisfied with prosecutors, and 87.5 per cent were satisfied with their preparation for trial.'¹⁹² Importantly, victim-survivors in this evaluation

¹⁸⁸ *Victims, Witnesses, and Justice Reform (Scotland) Bill* (introduced on 25 April 2023).

¹⁸⁹ George et al, above n 103.

¹⁹⁰ Ibid.

¹⁹¹ Lowik, Vicki & George, Amanda-Jane. 'Does Australia need dedicated sexual assault courts?' *SBS*. 30 October 2023. <https://www.sbs.com.au/news/article/does-australia-need-dedicated-sexual-assault-courts/row9g8cki>.

¹⁹² Ibid.

'reported that their participation in the trial was positive and that they felt safe while waiting to testify.'¹⁹³

Specialists Courts also have the potential to address delay in sexual offence proceedings, which victim-survivors have identified as a significant source of retraumatisation.

NSAP Advisory Group Member: *'I know of a victim survivor for whom long and repeated delays to their trial hearing was so destabilising to their psychological state that it directly led to a near-fatal suicide attempt. This demonstrates how failure to provide timely and efficient court processes perpetuates secondary harm to victims.'*

Victim-survivor experience: *'[It took me] 7.5 years [to go] through the court system. My abuser used the court systems and process to continue his peroration, causing delay after delay and issue after issue every time a new trial date had been set. Again, I am proud of myself for doing it, but I understand now why so many women don't bother. I was so hopeful, despite knowing the 99% odds against me. I wouldn't take it back, but it would've broken most people (and did near break me). Victims shouldn't have to decide between retraumatisation and justice.'*

Delays can be addressed within a specialist Court model through prompt case scheduling, effective case processing measures, and the use of case coordinators to actively manage cases.¹⁹⁴

Recommendation 33: *Establish sexual violence specialist Courts for the hearing of all sexual offence matters. Full Stop Australia supports a specialist Court model that:*

- *Makes training on sexual violence, the impacts of trauma and provision of trauma-informed approaches mandatory for all judicial officers, lawyers and Court staff. The training program should be co-designed with people with lived experience of sexual violence and frontline sexual violence services.*
- *Specifically requires everyone working in the Courts to use trauma-informed practice.*
- *Specialist Courts could operate within the existing Court system.*

Sentencing

Our feedback in this section responds to Questions 39 to 42 in the Issues Paper.

¹⁹³ George et al, above n 103.

¹⁹⁴ Ibid.

Limiting the admissibility of 'good character' evidence in sentencing for sexual offences

Full Stop Australia supports the advocacy of Harrison James and Jarad Grice, cofounders of the [Your Reference Aint Relevant campaign](#), which recommends legislative amendment to make evidence of an offender's character totally inadmissible in sentencing for child sexual offences.

The offender's character is currently a sentencing factor, for child sexual abuse and sexual violence as well as other crimes, under sentencing legislation in all jurisdictions. The extent to which the offender's character can be considered in sentencing for child sexual offences has been limited in all jurisdictions by provisions equivalent to section 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW)—which provides that the offender's character may not be used as a mitigating factor in sentencing where it 'assisted' them to offend.

Full Stop Australia firmly believes that the seriousness, prevalence, and unique dynamics of child sexual abuse mean 'good character' should never serve as a mitigating factor in sentencing for such offences. Child sexual abuse is a pervasive issue in our society. As set out above, the latest Australian Child Maltreatment Study found that 1 in 3 girls, and 1 in 5 boys, had experienced child sexual abuse.¹⁹⁵ The impact of such abuse is profound, encompassing not only the offense itself, but also the grooming process employed by offenders, the silence and shame endured by victim-survivors, and the complex dynamics that often exist between offenders and their victims.

Harrison James (Your Reference Aint Relevant Cofounder): *'[Child sexual offenders] don't only groom the victim: they're grooming [victims'] families, their friends, their schools, their churches, their communities. It's part of their standard method. We can't separate good character from the evil they perpetrate on children, [who are] the most vulnerable victims of all.'*

Child sex offences are a unique form of criminal activity, in that:

- Perpetrators commonly rely on an outwardly good reputation to perpetrate heinous crimes behind closed doors.
- A person's public reputation has very little to do with their propensity to offend in private.

This dynamic makes it entirely inappropriate for past character to be considered in sentencing in all cases of child sexual abuse. In every case of child sexual abuse, the offender's public reputation either had no bearing on their propensity to offend, or in a worse case, was used to facilitate offending.

¹⁹⁵ Mathews et al, above n 2.

The application of provisions like section 21A(5A) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) is currently leading to a double standard for sentencing perpetrators of child sexual abuse, depending on the setting of the abuse. Depending on the circumstances of abuse—namely, whether a judge accepts the offender’s character ‘assisted’ them to offend—sentences can differ greatly. For example, in *R v Scholz* [2023] NSWDC 222, the Court accepted that the offender was able to gain access to his victims due to his role as an RFS ‘local hero’ and by holding himself out to one victim’s mother as having a Working With Children Check. Meanwhile, in *R v BQL* [2022] NSWDC 295, an offender who gained access to his victim by renting a room in her mother’s house and commencing a relationship with her mother, was held not to have used ‘good character’ to facilitate offending. Yet, in both cases, the offender’s character was undoubtedly used to gain access to, or a position of trust and authority over, the victims. Distinguishing them serves no meaningful purpose and causes injustice to victim-survivors.

To address this inconsistency, we recommend amending legislation in all jurisdictions to clarify that the character of an offender can *never* be considered a mitigating factor in sentencing for child sexual offences. This would establish a more consistent approach to sentencing, which recognises the insidious role all child sex offenders’ reputations play in allowing them to gain access to their victims.

Harrison James (Your Reference Aint Relevant Cofounder): *‘Law sets the precedent for how society operates, and if we have law that allows convicted child sex offenders to utilise good character references, that really sets the tone for the conversations that happen in our workplaces, in our schools, with our families.’*

We also support preventing character evidence from being used as a mitigating factor in sentencing for adult sexual offending. The recent sentencing of Thomas Earle, a convicted rapist, shows how character references can be used to enable sexual offenders to avoid custodial sentences—with the judge sentencing Earle to 300 hours’ community service (and no jail time), and commenting on his ‘good character’ based on several character references.¹⁹⁶ This is clearly out of step with community expectations for the sentencing of a convicted rapist.

Sexual offenders’ perceived ‘good’ character often assists them to offend—with many perpetrators of sexual offences relying on an outwardly good reputation to gain access to, or the trust of, their victims. This might be because they are able to hold themselves out as a person of ‘good’ character in the workplace, at school or university, on a dating app, at a bar, club or other social setting, or through relationships with mutual friends.

¹⁹⁶ See Roberts, Georgia. ‘Canberra rapist Thomas Earle avoids jail time, sentenced to 300 hours of community service.’ *ABC*. 29 April 2023. Available at: <https://www.abc.net.au/news/2023-04-29/rapist-thomas-earlesentenced-to-three-years-ico/102278630>.

In some cases, abuse of trust or power is a feature of adult sexual offending. Some offenders abuse a position of trust or authority in relation to their victims—for example, in relation to a person with disability in a care setting. In these relationships and situations, the offender’s character will often contribute to them gaining access to their victim. For example, someone applying for a role as a carer for a person with disability or a person requiring aged care might need to satisfy that person’s family that they’re a person of good character.

Preventing character evidence from being used in the sentencing of adult sexual offences would give survivors more faith that the justice system recognises the harm caused by sexual violence. It would also remove a retraumatising element of the Court process for survivors of these crimes, many of whom report they find it incredibly painful and retraumatising to hear reviews of their offender’s ‘good character’ during sentencing.

Recommendation 34: Amend legislation in all jurisdictions to clarify that the character of an offender should not be considered a mitigating factor in sentencing for child or adult sexual offences.

Greater research and investment into behaviour change programs for convicted sexual offenders is needed

We support the Queensland Sexual Assault Network (QSAN)’s comments in its submission to this Inquiry:

‘Many victim-survivors may be supportive of the offender being mandated to attend rehabilitation programs to address their offending behaviour. However, there are currently no such courses in the community and limited opportunities whilst in custody. The development and delivery of effective, evidence-based offender treatment programs needs to be further explored to both hold offenders accountable and assist in improving community safety.’

There is currently limited evidence on what works (and doesn’t) to drive lasting behaviour change among sexual offenders. We support investment in targeted research to increase our understanding of what initiatives are most likely to effectively change the behaviour and attitudes of sexual offenders.

We also support investment in evidence-based and victim-centric behaviour change courses for sexual offenders. As noted by the submission from QSAN, there should be the option to undertake programs that are ‘on country, culturally appropriate and include cultural healing approaches.’

Ensuring that sexual offenders are supported to change their behaviour is an important part of preventing further harm.

Recommendation 35: *Invest in the development of evidence-based behaviour change programs for sexual offenders, both inside correctional facilities and in the community. This should include culturally appropriate behaviour change programs, and programs delivered on Country.*

Civil proceedings and other justice processes

Our feedback in this section responds to Questions 45 to 56 in the Issues Paper.

Restorative justice

Our feedback in this section responds to Questions 45 to 47 in the Issues Paper.

In light of the retraumatising nature of the criminal system, we recognise the need for alternative justice options for sexual violence. It is well-established that ‘many complainants regret their experience of reporting [sexual violence to police] because of the “new trauma” they experienced from the trial process.’¹⁹⁷ As a result, victim-survivors have expressed a desire for ‘an alternative approach to justice.’¹⁹⁸

While the desire for alternative justice pathways emerged clearly in our discussions with victim-survivors in Full Stop Australia’s NSAP, views on restorative justice were mixed. Some victim-survivors raised serious concerns about the potential of this process to facilitate the continuation of abuse dynamics, thereby prolonging harm to victim-survivors.

NSAP Advisory Group Member: *‘[Restorative justice may] be appropriate for non-violent crime. For example, where a teen has broken into a shop. But it’s never appropriate in sexual violence matters. Because sexual violence is not related to words—it has to do with the way the perpetrator views the victim. Some [victim-survivors] might think [restorative justice] will help them. But it might facilitate more harm. It could even encourage them back into the abusive relationship.’*

NSAP Advisory Group Member: *‘Perpetrators don’t only groom their victims. They groom official processes. I really don’t think restorative justice can be done safely at all for child sexual abuse, sexual violence or domestic violence.’*

¹⁹⁷ RMIT and KPMG, above n 15.

¹⁹⁸ Ibid.

NSAP Advisory Group Member: *'I feel that restorative justice feeds into the power dynamic [between victim-survivors and perpetrators]. Presenting restorative justice to someone [as an option] could get their hopes up. They might think this is something they want and hope it will help their recovery.'*

These risks were also expressed by the Full Stop Australia clinical team.

Full Stop Australia counsellor: *'My concern about restorative justice in response to sexual violence is that sexual violence often involves manipulative and coercive behaviours to meet the need of the perpetrator. I hold concern that these behaviours could also be used in a restorative justice space to manipulate the process rather than offering genuine remorse and concern for the victim. I feel that this has the potential to cause additional harm or distress to the victim.'*

However, other victim-survivors thought restorative justice had potential as an alternative pathway to recognition of harm, where offered in appropriate cases.

Victim-survivor perspective: *'I understand why many people believe there is no role for restorative justice for sexual violence offenders. I find that to be the case for my first two perpetrators. However, with my third perpetrator I wish a restorative justice option would have been available. I felt that he did not understand the implications or consequences of his actions. I felt that his actions were reckless but not intentionally malicious. I was hopeful that if he was educated about what took place, why it constituted sexual violence and why it was harmful then he would have been remorseful. I did not believe that carceral punishment was necessary or would have been effective in rehabilitating him from his behaviour. My view about this was only heightened given the perpetrator was an Aboriginal man, whom I would have no faith in the justice system to treat fairly or humanely, as evidenced by the findings of the Royal Commission into Aboriginal Deaths in Custody. I would have been optimistic that a rehabilitative behaviour change approach for this perpetrator may have been effective, especially if undertaken in a culturally appropriate way with respected Elders from his community to hold him accountable. Without options for alternative justice approaches which centre the values and needs of victim-survivors, many like myself in situations such as these will choose not to engage, resulting in missed opportunities for intervention and greater likelihood for reoffending.'*

Victim-survivor experience: *'Regarding [young people] who sexually offend against other [young people], certain forms of restorative justice could be good.'*

Restorative justice for adult sexual offending is already available in some Australian jurisdictions. Restorative justice for adult sexual offending is used in 'the Australian

Capital Territory, where it is governed by a legislated framework; Queensland, where it is based on a dispute resolution model plus the courts' general powers to adjourn cases; [and] New South Wales, but only in a limited way (after a criminal conviction and while the person responsible is serving their sentence).¹⁹⁹ Restorative justice is more broadly available in youth sexual offending matters.²⁰⁰

In light of the risks of restorative justice, we think further work needs to be done to assess its potential for delivering justice to, and possible impacts on, victim-survivors, before it is further expanded. A victim-centric approach should be taken to assessing the suitability of restorative justice in sexual offence matters, including:

- Extensive consultation with victim-survivors.
- In-depth assessment of victim-survivors' experiences with restorative justice in sexual offence matters, in jurisdictions where this option exists. This includes tracking victim-survivors' views on this option over a period of time—not just in the immediate aftermath of participating in such a scheme.

If restorative justice were to be expanded more broadly in the future, the following are key considerations:

- Participating in the restorative justice process must remain voluntary for victim-survivors, and centre victim-survivors' needs. This includes victim-survivors being free to withdraw at any time. Victim-survivors' recovery, agency, choice and safety should be the primary considerations in whether this option is appropriate for them.
- Restorative justice should never be used as an alternative to criminal proceedings, which risks '[implying] sexual violence is unimportant, and a private rather than public concern.'²⁰¹ It is paramount that other justice options, including proceeding through the criminal process, remain fully available to victim-survivors who participate in restorative justice. This needs to be monitored on an ongoing basis to ensure victim-survivors of sexual violence aren't being funneled into non-criminal processes.
- The recommendation of the VLRC that, if used, 'the scheme should apply to all offences'²⁰²—not just sexual offences.'²⁰³ The VLRC noted that 'introducing restorative justice for sexual offences alone could give the wrong impression that sexual offending is less serious than other crimes.'²⁰⁴
- Restorative justice should only ever be available where the offender has taken accountability for their actions.

¹⁹⁹ VLRC, above n 10.

²⁰⁰ Ibid.

²⁰¹ Ibid.

²⁰² Other than child sexual offences, which, as addressed below, we do not consider appropriate for restorative justice.

²⁰³ VLRC, above n 10.

²⁰⁴ Ibid.

- Where a victim elects to participate in restorative justice without reporting sexual violence to police, this should not present a barrier to commencing criminal proceedings later. Victims' justice needs may change over time. We support the recommendation of the VLRC that 'the legislative framework [on restorative justice] should include a section providing that a referral to restorative justice does not affect any other action in relation to the offence.'²⁰⁵ We note that the Australian Capital Territory's legislation governing restorative justice provides that 'referral [to restorative justice] is to have no effect on any other action or proposed action in relation to the offence or the offender.'²⁰⁶
- Restorative justice should only ever be considered following an assessment of risk related to the victim's ongoing physical and psychological safety. There would need to be clear parameters around what this risk assessment should cover, and the risk assessment framework should be co-designed with the sexual violence sector and victim-survivors. Risk assessments should be designed to recognise diverse experiences, including the impacts of the victim-survivor's age and ability/disability (particularly the presence of neurodivergence).
- Any restorative justice model would need to be trauma-informed, with the risk of retraumatizing survivors by putting them back in contact with their perpetrator carefully managed. Restorative justice processes should be co-designed with victim-survivors and the sexual violence sector, and it is essential that all actors responsible for delivering restorative justice processes have trauma-informed training.
- Self-determined approaches linked to cultural, language and community needs must be led by First Nations communities.
- Abuse dynamics need to form part of any assessment of the suitability of restorative justice.
- Restorative justice would *never* be suitable for child sexual abuse, given the entrenched power imbalance that applies in all child sexual offending.
- Victim-survivors would need to receive adequate support and advice about participating in the process. This means receiving free legal advice regarding the implications of the process, access to clinical support to address mental wellbeing impacts, and the support of a 'system navigator' to engage with the process.

²⁰⁵ Ibid.

²⁰⁶ *Crimes (Restorative Justice) Act 2004* (ACT) s 7(1). References to 'offender' or 'offence' include references to 'alleged offender' and 'alleged offence': s 12 (definition of 'offence' and 'offender').

Recommendation 36: *More work is needed to assess the potential impacts of restorative justice on victim-survivors. A victim-centric approach should be taken to assessing the suitability of restorative justice in sexual offence matters, including:*

- *Extensive consultation with victim-survivors.*
- *In-depth assessment of victim-survivors' experiences with restorative justice in sexual offence matters, in jurisdictions where this option exists. This includes tracking victim-survivors' views on this option over a period of time—not just in the immediate aftermath of participating in such a scheme.*

Expanding support available under Victims Compensation Schemes

Our feedback in this section responds to Questions 52 to 53 in the Issues Paper.

There is significant variance in both eligibility for, and amounts payable under, Victims Compensation Schemes across jurisdictions. This results in 'entrenched inequalities between victims depending on the State or Territory in which the crime has taken place and the application for compensation lodged.'²⁰⁷ To ensure equal access to justice and support across jurisdictions, we recommend considering opportunities for greater alignment between Victims Compensation Schemes across the country.

We particularly support exploring the possibility for greater alignment in amounts payable to victims under such schemes. Currently, amounts vary greatly between jurisdictions. For example, the maximum amount payable to a primary victim in Victoria is \$60,000 plus \$10,000 in special financial assistance,²⁰⁸ whereas in Tasmania, the maximum amount payable to primary victims is only \$30,000.²⁰⁹ Reviewing compensation payable under Victims Compensation schemes should be done in consultation with victim-survivors.

Some victim-survivors who were able to access Victims Compensation told us the amount they received was inadequate to recognise harm done to them.

NSAP Advisory Group Member: *'For being systematically raped almost every night, I got \$10,000.'*

Victim-survivor experience: *'Victims [compensation] should be greater and ongoing support should be offered. Not limited. My life has been irreversibly changed, and effectively ruined, yet I have a cap on how quickly I need to recover.'*

²⁰⁷ Law Council of Australia. (July 2014). *Submission to the Royal Commission's issues paper 7: victims of crime compensation schemes*. Available at: lawcouncil.au/resources/submissions/victims-of-crime-compensation-schemes--issues-paper-7.

²⁰⁸ *Victims of Crime Assistance Act 1996* (Vic) ss 8 and 8A.

²⁰⁹ *Victims of Crime Assistance Regulations 2010* (Tas) reg 4.

Full Stop Australia supports a review of amounts payable to victim-survivors under Victims Compensation Schemes in all jurisdictions, to ensure they align with community expectations, adequately recognise harm and meet victim-survivors' ongoing recovery needs. We note that a review of the NSW scheme is ongoing, and have advocated for increases to amounts payable under that scheme.

We also support victim-survivors being provided with government-funded legal advice to understand and exercise their rights under Victims Compensation Schemes.

Finally, we recommend addressing any unjust barriers preventing victim-survivors accessing Victims Compensation. For example, in most States and Territories the civil standard of proof ("on the balance of probabilities") applies to applications for support under statutory Victims Compensation Schemes. Meanwhile, in South Australia, the criminal standard of proof ("beyond reasonable doubt") applies to applications for Victims Compensation. This precludes victim-survivors in South Australia from receiving compensation if the offender has not been convicted. It is a significant barrier to victims exercising their right to compensation under South Australia's victims of crime compensation scheme. We recommend that South Australia align its approach with other jurisdictions, by applying the civil standard of proof to Victims Compensation applications. We also recommend a holistic review of unjust barriers preventing victim-survivors from accessing Victims Compensation in schemes across the country.

Recommendation 37: *Undertake a holistic review of Victims Compensation Schemes in all jurisdictions, which:*

- Considers opportunities for greater alignment between schemes in different jurisdictions, to ensure equal access to justice and support among victim-survivors across the country.*
- Reviews amounts payable under various schemes, in consultation with victim-survivors. Compensation amounts should align with community expectations, adequately recognise harm and meet victim-survivors' ongoing recovery needs.*
- Identifies and addresses unjust barriers preventing victim-survivors from accessing Victims Compensation. Among other things, South Australia should align its approach with other jurisdictions by applying the civil standard of proof to Victims Compensation applications.*

Strengthening Victims Charters

Our feedback in this section responds to Questions 54 to 56 in the Issues Paper.

As noted in the Issues Paper, every Australian jurisdiction has adopted 'a "charter," "declaration," or set of "guidelines" in relation to victims of crime' (collectively, **Victims Charters**). The Victims Charters 'set out the rights of entitlements of victims of crime to participate in certain processes and have input into certain decisions which affect them.'

There is variability across jurisdictions as to the enforceability of, and rights conferred in, Victims Charters.

To strengthen protection and support available to victim-survivors of sexual violence in the justice system, we recommend amending Victims Charters in all jurisdictions to give victim-survivors a mechanism to enforce or pursue their rights. This would empower victim-survivors to assert their rights to support, redress and information—as set out in Victims Charters—as they move through the justice system.

Currently, several Victims Charters contain provisions expressly stating the rights therein are not enforceable. For example, South Australia's declaration of principles for the treatment of victims of crime is 'not enforceable in criminal or civil proceedings, [does] not give rise to any right to damages for breach, and [does] not affect the conduct of criminal proceedings.'²¹⁰ Rights in Victorian²¹¹ and Queensland²¹² Victims Charters are similarly unenforceable.

The VLRC has noted the challenges of making victims' rights enforceable in the criminal justice system:

*'Victims' rights relate to an individual's private interest in the criminal proceedings, which can directly challenge the public interest underpinnings of the adversarial criminal justice process. Related to this, the two-party contest between the state prosecutor, representing the harmed society, and the accused, does not easily create space for a third party. [And] attempts to enforce rights through legal proceedings may disrupt and delay criminal proceedings.'*²¹³

Whilst acknowledging these challenges, we don't think providing victims with a mechanism to assert their rights in the justice system needs to come at the cost of delaying or disrupting proceedings. For example, a victim-survivor asserting their right to access a key service (such as counselling support)²¹⁴ in the aftermath of sexual violence should not impact legal proceedings. Enforceability is about giving victim-survivors an avenue to pursue their rights when they haven't been met. This could work similarly to individuals asserting their rights under human rights legislation—in the ACT, QLD and Victoria, such legislation allows people to pursue various foundational rights when interacting with government agencies. Without some enforcement mechanism, a Victims Charter risks being 'more an aspirational document than one which affords strong protection for the rights of victims of crime.'²¹⁵

²¹⁰ *Victims of Crime Act 2001* (SA) s 5(3).

²¹¹ *Victims Charter Act 2006* (Vic) s 22(1)(a).

²¹² *Victims of Crime Assistance Act 2009* (Qld) s 7.

²¹³ VLRC. (August 2015). 'Victims' rights in the criminal trial process.' *The Role of Victims of Crime in the Criminal Trial Process: Consultation Paper*. Available at: <https://www.lawreform.vic.gov.au/publication/the-role-of-victims-of-crime-in-the-criminal-trial-process-consultation-paper/12-victims-rights-in-the-criminal-trial-process/>.

²¹⁴ This is a right under the NSW Victims Charter. See *Victims Rights and Support Act 2013* (NSW) s 6 [6.3].

²¹⁵ Janet Loughman. (10 September 2009). *Consultation on Strengthening the NSW Charter of Victims Rights*. Letter from Women's Legal Services NSW to Director, NSW Victims Services. http://www.wlsnsw.org.au/downloads/law-reform/2009WLSNSW_VictimsServices_CharterOfVictimsRights.pdf.

Victims Charters across jurisdictions should also be strengthened by ensuring the following rights are provided to all victim-survivors of sexual violence:

- Victims should be updated on the progress of their matters as a matter of course. This is currently a stated right in the Victorian Victims Charter,²¹⁶ but not in the NSW Charter. In NSW, a victim-survivor will only be updated on the progress of an investigation upon request.²¹⁷ This right should also extend beyond the investigation stage, requiring victims to be given regular updates throughout the justice system process—by either police or the prosecution, depending on the status of the matter.
- Victims should be informed of an offender’s impending release from custody as a matter of course. In NSW this will only occur if the victim has requested to be kept informed.²¹⁸
- Victims should have a right to have their views considered on matters that impact their safety, such as bail and parole decisions. These rights could be strengthened in the NSW Victims Charter. In that Charter, there are requirements to put a victim’s need for protection before a bail authority and provide the victim with information about the outcome of a bail application—but no obligation to take victims views into account on these matters.²¹⁹ Similarly, the NSW Charter allows a victim to make submissions regarding the grant of parole only if they request to do so²²⁰—we think this option should be offered as a matter of course, and be up to the victim to decline.
- Victims should have a right to request an independent review of decisions by police or the prosecution to discontinue or not file charges.
- Victims should have the right to record their evidence prior to trial, or to use special measures in Court if they give evidence at trial.
- Victims should have the right to specify the gender of their forensic examiner.
- Victims should have the right to be allocated a ‘system navigator’ to support their journey through the justice system and accessing services following sexual violence.
- Victims should have the right to legal representation and advice in relation to matters that affect them in the criminal justice system.

Recommendation 38: *To strengthen protection and support available to victim-survivors of sexual violence in the justice system, we recommend amending Victims Charters in all jurisdictions to give victim-survivors a mechanism to enforce or pursue their rights.*

²¹⁶ *Victims Charter Act 2006* (Vic) s 8.

²¹⁷ *Victims Rights and Support Act 2013* (NSW) s 6 [6.4].

²¹⁸ *Victims Rights and Support Act 2013* (NSW) s 6 [6.15].

²¹⁹ *Victims Rights and Support Act 2013* (NSW) s 6 [6.12] and [6.13] and [6.16].

²²⁰ *Victims Rights and Support Act 2013* (NSW) s 6 [6.16].

Recommendation 39: *Victims Charters in all jurisdictions should provide victim-survivors of sexual violence with the following rights:*

- *Victims should be updated on the progress of their matters as a matter of course. Currently, some victims are only updated on the progress of their investigation upon request.*
- *Victims should be informed of an offender's impending release from custody as a matter of course. Currently, some victims are only informed upon request.*
- *Victims should have a right to have their views considered on matters that impact their safety, such as bail and parole decisions.*
- *Victims should have a right to request an independent review of decisions by police or the prosecution to discontinue or not file charges.*
- *Victims should have the right to special measures in Court, including the right to pre-record their evidence.*
- *Victims should have the right to specify the gender of their forensic examiner.*
- *Victims should have the right to be allocated a 'system navigator' to support their journey through the justice system and accessing services following sexual violence.*
- *Victims should have the right to legal representation and advice in relation to matters that affect them in the criminal justice system.*

Other matters

While the focus of the Issues Paper is justice system, rather than legislative, approaches to sexual violence, we note for completeness that Full Stop Australia supports an affirmative standard of consent being adopted in legislation in all Australian states and territories. Most states and territories have already moved to adopt this legislative standard,²²¹ while others are considering reform.²²²

Adopting an affirmative consent model involves 'placing a responsibility on the parties involved in sexual activity to continually ensure that consent is given throughout the activity [and placing] particular responsibility on the initiator of the sexual activity, who must say or do something to determine whether the other person consents.'²²³

Introducing a positive obligation to obtain consent appropriately shifts the fault element of sexual offences towards the accused—requiring them to show the steps they took

²²¹ NSW, Victoria, Tasmania, Queensland and the ACT have all adopted an affirmative standard of consent in their criminal law.

²²² The WA Law Reform Commission and the South Australian government conducted reviews that considered adopting an affirmative standard of consent in 2023 and 2024 respectively.

²²³ Attorney-General's Department (SA), above n 101.

to ensure a complainant was consenting.²²⁴ This is a reasonable expectation and an extremely low bar to meet. It represents a basic foundation of respectful interactions, in a sexual context or otherwise. There are hundreds of exchanges we engage in daily, for which we seek consent. This is part of existing in public spaces and being a member of society. Affirmative consent is a reasonable expectation for something as significant and consequential as engaging in sexual activity. The consequences of sexual activity without consent are grave.

The benefits of an affirmative legislative model of consent include:

- Entrenching standards of respect, safety, and mutual and ongoing communication as cornerstones of all sexual interactions.
- Improving clarity regarding the operation of the criminal law, and the obligations of parties to sexual encounters. This promises to increase safety for those participating in sexual activity and increase access to justice for victim-survivors of sexual violence.
- The potential to address harmful rape myths that continue abound in both legal proceedings and society at large—for example, myths that women say ‘no’ when they really mean ‘yes’, that women who are raped are ‘asking for it’, and that rape can be the result of men not being able to control their need for sex so their responsibility is removed.²²⁵ In addition to improving victim-survivors’ experiences of the justice system, this has the potential to improve community understandings of consent—for example, ‘problematic heterosexual scripts that privilege men’s entitlement to sex and position women as the ‘gatekeepers’ who must resist men’s advances, including attitudes that disregard consent because an aroused man ‘may not realise’ the woman does not want to have sex.’²²⁶
- Addressing the victim-blaming, and intense scrutiny, that victim-survivors so commonly face in criminal proceedings—by appropriately shifting focus to the actions of the accused.²²⁷
- Increasing protection to victim-survivors who experience the common ‘freeze’ response to sexual violence. This involves a person becoming unable to communicate lack of consent during a sexual offence, due to fear. This response, alongside surrendering, is the most reported response by victims of sexual assault.²²⁸ By requiring consent to be affirmative and based on mutual communication, lack of physical or verbal resistance cannot, by itself, amount to consent.

²²⁴ Mason, G and Monaghan, J. ‘Autonomy and Responsibility in Sexual Assault Law in NSW: The *Lazarus* Cases’ (2019) 31 *Current Issues in Criminal Justice* 24.

²²⁵ *Ibid.* See also NSW Law Reform Commission, above n 123, citing New South Wales, *Parliamentary Debates*, Legislative Council, Legislative Council, 7 November 2007, 3584-5 (John Hatzistergos).

²²⁶ Coumarelos, C, Weeks, N, Bernstein, S, Roberts, N, Honey, N, Minter, K, & Carlisle, E. (2023). *Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey, Findings for Australia*. (Research report 02/2023). ANROWS. Available at: <https://anrowsdev.wpenginepowered.com/wp-content/uploads/2023/03/ANROWS-NCAS-2021-Findings-for-Australia-FINAL.pdf>.

²²⁷ Although, above studies by Professors Julia Quilter and Luke McNamara show that more work is required to address this cultural problem.

²²⁸ Revised Explanatory Statement, *Crimes (Consent) Amendment Bill 2022* (ACT).

There are several reasons why it's important for this standard to be adopted in *all* Australian states and territories:

- Greater alignment between sexual offence legislation in jurisdictions across Australia would improve clarity regarding the operation of the criminal law and ensure victim-survivors have the same access to justice regardless of where offending occurs.
- It's important that laws across Australia align with consent education delivered in schools and other domains, and government policy on consent. The Federal government's *Consent Policy Framework*, released in early 2024, promotes an affirmative standard of consent. The *Framework* aims to 'promote a clear and consistent community definition of sexual consent across programs that focus on young people,' and articulates an affirmative, positively expressed, ongoing and mutual model of consent.²²⁹ Alignment between state and territory law, and Federal government policy, would increase clarity regarding the meaning of consent in the community, the operation of the criminal law and expectations of parties to sexual encounters. Increasing consistency in how members of the community understand consent is likely to lead to safer sexual interactions.

Recommendation 40: *An affirmative standard of consent should be adopted in legislation in all Australian states and territories. This would entrench standards of respect, safety, and mutual and ongoing communication as cornerstones of all sexual interactions, and improve clarity regarding the operation of the criminal law and obligations of all parties to sexual encounters.*

²²⁹ Department of Social Services. 'The Commonwealth Consent Policy Framework: Promoting healthy sexual relationships and consent among young people.' (20 January 2024).

Review of Sexual Consent Laws in South Australia.

Submission by Full Stop Australia
February 2024



Full Stop Australia acknowledges the Traditional Custodians of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them, their cultures and their Elders past and present.

About Full Stop Australia

Full Stop Australia thanks the South Australian Government for inviting us to comment on the Government's discussion paper, *Review of Sexual Consent Laws in South Australia* (**Discussion Paper**).

Full Stop Australia is a nationally focused not-for-profit organisation, which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma;
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector; and
- Advocate to governments and in the media for laws and systems that better respond to, and ultimately prevent, gender-based violence.

Our advocacy draws upon the expertise of our trauma-specialist counsellors, who support people impacted by sexual, domestic and family violence across the country. It also draws on the lived expertise of our clients and over 600 survivor-advocates in our National Survivor Advocate Program—a program that facilitates survivor-advocates sharing their experiences to drive positive change. We are committed to centering the voices of victim-survivors in our work, and advocating for laws and systems that genuinely meet their needs.

About this submission

This submission doesn't respond to every question in the Discussion Paper. Our lack of response to certain questions is due purely to time constraints, and shouldn't be taken to indicate either support for, or opposition to, any particular policy approach.

The recommendations in this submission are underpinned by the following principles:

- Maximising victim-survivor autonomy and choice, by recognising that there is no 'right' way to seek justice following sexual violence, and ensuring access to a range of support options.
- Ensuring victim-survivors are given the right information, in a timely manner, to make informed choices about how to engage with the justice system.
- Understanding trauma and the gendered drivers of sexual violence. This includes recognising that all gender-based violence is rooted in misogyny and patriarchy, and incorporating that knowledge throughout the justice system.

Full Stop Australia is working to put a full stop to sexual, domestic, and family violence through **support, education, and advocacy.**

E: advocacy@fullstop.org.au

- Increasing practical support, so victim-survivors are supported to engage with the justice system if they choose to do so.

This submission uses the term *sexual violence* as a broad descriptor for any unwanted acts of a sexual nature perpetrated by one or more persons against another. This term is used to emphasise the violent nature of all sexual offences and is not limited to those offences that involve physical force and/or injury.

This submission was prepared by Taran Buckby, Legal Policy Officer, and Emily Dale, Head of Advocacy. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at emilyd@fullstop.org.au.

Affirmative consent

As noted in the Discussion Paper, there are extremely high rates of under-reporting of sexual violence, as well as significant attrition of sexual violence matters from the justice system. We reiterate the latest data from the Australian Bureau of Statistics (ABS), referred to in the Discussion Paper, that the majority (92% or 680,300) of women who experienced sexual assault by a male in the ten years prior to the survey did not report the most recent incident to police.¹ In addition, conviction rates for sexual offences are significantly lower than for other offences.²

This data shows that the justice system is not working for victim-survivors of sexual violence.

Question 1: Should the definition of consent in South Australia include a positive obligation to obtain consent, consistent with an affirmative model of consent?

Full Stop Australia strongly supports amending the definition of consent in South Australia to include a positive obligation to obtain consent, consistent with an affirmative model of consent.

As set out in the Discussion Paper, adopting an affirmative consent model would involve amending the *Criminal Law Consolidation Act 1935* (SA) (**CLC Act**) to:

[Place] a responsibility on the parties involved in sexual activity to continually ensure that consent is given throughout the activity [and place] particular responsibility on the initiator of the sexual activity, who must say or do something to determine whether the

¹ Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimization*. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

² There was an average conviction rate of 11.5% between 1990 and 2005, which is lower than other criminal offences, according to Sarah Bright et al, *Attrition of Sexual Offence Through the Victorian Criminal Justice System: 2021 Updates* (Crime Statistics Agency Report, 2021) 7, 17.

other person consents, in order to support the defence that they had a 'reasonable belief' as to the existence of consent.

Introducing a positive obligation to obtain consent appropriately shifts the fault element of sexual offences towards the accused—requiring them to show the steps they took to ensure a complainant was consenting.³ This is a reasonable expectation and an extremely low bar to meet. It represents a basic foundation of respectful interactions, in a sexual context or otherwise. There are hundreds of exchanges we engage in daily, for which we seek consent. This is part of existing in public spaces and being a member of society. Affirmative consent is a reasonable expectation for something as significant and consequential as engaging in sexual activity. The consequences of sexual activity without consent are grave.

There are several reasons why law reform introducing a positive obligation to obtain consent is important. Firstly, it would facilitate greater alignment between SA law, and best-practice legislative and policy approaches favoured across the country. The majority of other States and Territories have already legislated, or are in the process of legislating, an affirmative standard of consent that requires positive steps to be taken to obtain consent.⁴ The 2023 Australian Senate inquiry on consent laws explicitly supported a legislative model of affirmative consent—saying that an affirmative consent standard should be used as the basis for any harmonisation of Australia's sexual consent laws.⁵

Legislating an affirmative model of consent would align SA law with Federal Government policy, expressed in the recently released *Consent Policy Framework*. The *Framework* aims to 'promote a clear and consistent community definition of sexual consent across programs that focus on young people,' and articulates an affirmative, positively expressed, ongoing and mutual model of consent.⁶ National alignment of legislation and policy on consent promises to reduce confusion for victim-survivors navigating criminal justice systems, and deliver more consistent access to justice for victim-survivors across the country, regardless of where the relevant offence occurred.

Requiring positive steps to ascertain consent would also deliver greater clarity regarding the operation of the criminal law and expectations of parties to sexual

³ Gail Mason and James Monaghan, 'Autonomy and Responsibility in Sexual Assault Law in NSW: The *Lazarus Cases*' (2019) 31 *Current Issues in Criminal Justice* 24, 28.

⁴ NSW, Victoria, the ACT and Tasmania have already amended their legislation to adopt legislative provisions reflecting an affirmative model of consent, including a requirement for the accused to take positive steps to obtain consent, in order to allege they had a 'reasonable belief' in consent. QLD is in the process of introducing equivalent provisions—via the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Bill 2023*, which has been introduced but not yet passed.

⁵ Senate Legal and Constitutional Affairs Reference Committee, 'Current and Proposed Sexual Consent Laws in Australia,' (September 2023), Recommendation 4, [5.29].

⁶ Department of Social Services, 'The Commonwealth Consent Policy Framework: Promoting healthy sexual relationships and consent among young people,' (20 January 2024).

encounters. This would reduce confusion about what ‘consent’ means among those participating in sexual activity. It is therefore likely to lead to safer sexual interactions.

Legislation imposing a positive obligation to obtain consent makes a positive contribution towards addressing the victim-blaming, and intense scrutiny, that victim-survivors so commonly face in criminal proceedings—by appropriately shifting focus to the actions of the accused.⁷ Requiring positive steps to ascertain consent could help address misconceptions relating to women’s sexual behaviour and sexual relations, including commonly held myths about rape and sexual assault that women say ‘no’ when they really mean ‘yes’, that women who are raped are ‘asking for it’, and that rape can be the result of men not being able to control their need for sex so their responsibility is removed.⁸ By not requiring the accused to take positive steps to ascertain consent, the current position in the CLC Act has the potential to reinforce harmful and dangerous rape myths, and promote the public perception that consent may be assumed unless expressly negated.⁹

Question 2: What are the benefits of adopting an affirmative model of consent?

Benefits of adopting an affirmative model of consent include:

- Entrenching standards of respect, safety, and mutual and ongoing communication as cornerstones of all sexual interactions.
- Increased alignment between SA law and best-practice models of consent set out in legislation and policy across the country. This would reduce confusion among, and increase access to justice for, victim-survivors of sexual violence.
- Improved clarity regarding the operation of the criminal law, and the obligations of parties to sexual encounters. This promises to increase safety for those participating in sexual activity.
- The potential to address harmful rape myths that continue abound in both legal proceedings and society at large. In addition to improving victim-survivors’ experiences of the justice system, this has the potential to improve community understandings of consent¹⁰—for example, ‘problematic heterosexual scripts that privilege men’s entitlement to sex and position women as the “gatekeepers” who must resist men’s advances, including attitudes that disregard consent

⁷ Although, studies by Professors Julia Quilter and Luke McNamara show that more work is required to address this cultural problem. This is addressed further below.

⁸ New South Wales Law Reform Commission, *Consent in relation to Sexual Offences* (Report No 148, September 2020) [1.23] citing New South Wales, *Parliamentary Debates*, Legislative Council, Legislative Council, 7 November 2007, 3584-5 (John Hatzistergos); Mason and Monaghan (n 6) 25.

⁹ Wendy Lacombe et al, ‘I Think It’s Rape and I Think He Would be Found Not Guilty’: Focus Group Perceptions of (Un)reasonable Belief in Consent in Rape Law’ (2016) 25(5) *Social and Legal Studies* 611, 614.

¹⁰ New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2021, 7508 (Mark Speakman).

because an aroused man “may not realise” the woman does not want to have sex.”¹¹

- Increasing protection to victim-survivors who experience the common ‘freeze’ response to sexual violence. This involves a person becoming unable to communicate lack of consent during a sexual offence, due to fear.¹² This response, alongside surrendering, is the most reported response by victims of sexual assault.¹³ By requiring consent to be affirmative and based on mutual communication, lack of physical or verbal resistance cannot, by itself, amount to consent.

Full Stop Australia believes that a best-practice legislative model of affirmative consent should specify that:

- You can’t assume someone is consenting because they don’t say no. Silence or lack of resistance is not consent.
- Consent is an ongoing process of mutual communication and decision-making. A person can change their mind and withdraw their consent at any time.
- A person can’t consent if they’re so intoxicated that they can’t choose or refuse to participate.
- Consent can only be given freely and voluntarily. If you force or coerce your partner into sex, it’s not consensual.
- Consent must be present for every sexual act. If someone consents to one sexual act, it doesn’t mean they’ve consented to others.
- A person can’t consent if they’re asleep or unconscious.
- A person can only have a reasonable belief in another person’s consent where they’ve taken positive steps to seek that other person’s consent.¹⁴

We also support the model of affirmative consent articulated in the Federal Government’s *Consent Policy Framework*,¹⁵ and the guiding principles for affirmative consent set out in s 37B of the *Crimes Act 1958* (Vic). Among other things, these principles recognise the high incidence and under-reporting of sexual violence, and that women, children and other vulnerable people are disproportionately at risk of sexual offences.

We would support SA adopting an affirmative legislative consent model based on the above principles.

¹¹ Australia’s National Research Organisation for Women’s Safety (ANROWS), ‘National Community Attitudes Towards Violence Against Women Survey,’ (2021), p 25.

¹² See, eg, New South Wales, *Parliamentary Debates*, Legislative Assembly, 20 October 2021, 7507 (Mark Speakman)

¹³ Revised Explanatory Statement, Crimes (Consent) Amendment Bill 2022 (ACT) 11.

¹⁴ See Department of Communities and Justice, Affirmative consent becomes law in NSW (Media Release), 1 June 2022, available at: <https://dcj.nsw.gov.au/news-and-media/media-releases-archive/2022/affirmative-consent-becomes-law-innsw.html>.

¹⁵ Department of Social Services, above n 6.

Question 3: What are the risks of adopting an affirmative model of consent?

We don't see any risks associated with adopting an affirmative model of consent.

We reiterate that standards of behaviour required by affirmative consent laws—the recognition that sexual relationships should be founded on mutual and ongoing communication, and that sexual partners should take active steps to check in about whether the other person wants to have sex—set a low bar. This represents bare minimum standards for respectful interaction.

We are aware that some others—for example, the Law Council of Australia, in its submission to the Senate inquiry on consent laws¹⁶—have raised concerns about an affirmative legislative model of consent impacting legal principles like 'the presumption of innocence', the 'burden and standard of proof' and the 'accused's right to silence.' For completeness, we have addressed these concerns below.

Neither the presumption of innocence, nor the burden or standard of proof, would be altered or undermined by an affirmative standard of consent. As in all criminal cases, the prosecution would still be required to prove its case beyond reasonable doubt to secure a conviction. This is not shifted by affirmative consent laws. Rather, those laws make it clearer what is expected of all parties to a sexual encounter. In addition to reflecting contemporary social values, this makes the operation of the criminal law clearer.

The accused's right to silence would also not be undermined by an affirmative standard of consent. Affirmative consent laws simply provide that an accused cannot rely on a 'reasonable belief' in consent if they failed to take positive steps to seek consent. This doesn't require the accused to testify or provide evidence in support of the prosecution's case. This is addressed in the Second Reading Speech to the *Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021* (NSW)—the legislation introducing affirmative consent reform in NSW:

The onus remains on the Crown to prove each element of the sexual offence beyond reasonable doubt. In this bill, affirmative consent does not reverse this onus or abrogate an accused's right to silence. When a belief in consent is raised as a fact in issue, the reasonable belief test will be engaged, and the Crown must prove beyond reasonable doubt that the accused had no reasonable belief in consent. This may include evidence that the accused did not say or do anything to find out if the other person was consenting. It may also require the jury to assess whether any actions taken by the accused were sufficient so as to constitute a reasonable belief in consent in all of the circumstances.

¹⁶ Law Council of Australia, Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry on Current and proposed sexual consent laws in Australia, 2023, (Submission 73).

Finally, we note that a foundational principle of the rule of law is that everyone in society must be accountable to the law. With a bare minority of sexual violence matters clearing even the first hurdle for entry into the justice system—reporting to Police—the fulfilment of this principle causes far greater concern than abrogation of the rights of the accused. To ensure everyone is accountable to the law, we need a justice system that delivers fair outcomes and holds offenders accountable, and in which victims of crime feel safe and supported to come forward. Affirmative consent laws are one important step towards achieving this.

Question 4: Alternatively, should the trier of fact be required to have regard to what the accused said or did to ascertain consent? Should the trier of fact be required to have regard to any other matter?

Full Stop Australia does not consider requiring the trier of fact to have regard to the accused's actions a suitable alternative to adopting an affirmative consent model.

The affirmative model of consent operates with greater clarity, and consistency than the proposed alternative. The benefits of this are outlined above. The proposed alternative, by contrast, introduces significant subjectivity and the potential for lack of consistency about the standards of behaviour required when engaging in sexual activity. This is problematic both legally—it risks delivering inconsistent outcomes to victim-survivors, and introducing significant ambiguity to criminal proceedings—and for community understandings of consent.

The proposed alternative also may allow for the patently unjust and absurd possibility of a Court deciding that, even in circumstances where an accused took no steps to obtain consent, he nonetheless 'reasonably believed' consent was present. There should be no circumstances where an accused, who took no steps to obtain consent, is able to argue that he reasonably believed in consent.

Finally, we note that the justice system already imposes significant barriers and challenges to victim-survivors—for example, the retraumatisation of reporting to police and being cross-examined, and the fact that rape myths continue to abound in Court proceedings, even in jurisdictions that have adopted affirmative consent provisions.¹⁷ In these circumstances, allowing discretion in the question of whether there was consent, even though the accused took no positive steps to obtain consent, is patently inappropriate. This would be another way of negating victims' experiences, and a failure to recognise that consent is based on mutual communication, rather than one party's actions.

¹⁷ Dr Luke McNamara and Dr Julia Quilter, Submission to the Senate Legal and Constitutional Affairs References Committee Inquiry on Current and proposed sexual consent laws in Australia, 2023, (Submission 17).

Question 5: Should the list of circumstances in which a person is taken not to consent be changed?

Full Stop Australia supports increased alignment between state and territory jurisdictions on the circumstances where consent cannot be established. This has the potential to promote a unified understanding of consent across the country, and promises to deliver greater clarity, and more consistent outcomes, to victim-survivors navigating various justice systems.

To this end, we recommend amending section 46(3) of the CLC Act to add the following additional circumstances in which consent does not exist (which apply in other jurisdictions):

- When a person does not say or do anything to communicate consent.¹⁸
- When a person takes part in sexual activity because of a “fraudulent inducement.”¹⁹ Or alternatively, as is the case under Victorian law, where the act occurs in the provision of commercial sexual services and the person engages in the act because of a false or misleading representation that the person will be paid”.²⁰
- When a person participates in the sexual activity because of coercion, blackmail or intimidation.²¹
- When a person participates in sexual activity because they are overborne by the abuse of a relationship of authority, trust or dependence.²² This is particularly important in addressing sexual abuse facilitated by power imbalance. This is a significant risk in institutional contexts. For example, abuse by a carer of a person with disability, or abuse by a teacher of a young person, of the age of consent, but nonetheless significantly at risk.
- Section 46(3)(a) should be amended to include harm to animals and property, as well as other persons— such threats are common ways perpetrators of domestic and family violence intimidate their victims, to facilitate the commission of sexual violence.²³
- Section 46(3)(b) should be amended to include the unlawful detainment of other persons or animals, for the reasons set out above in relation to section 46(3)(a).²⁴
- Section 46(3)(g) should be amended to incorporate mistaken belief about being married to a person, in addition to mistaken belief about the identity of the person, as is the case under NSW law.

¹⁸ See, for example, *Crimes Act 1900* (NSW) s 61HJ(1)(a).

¹⁹ See, for example, *Crimes Act 1900* (NSW) s 61HJ(1)(k).

²⁰ See *Crimes Act 1958* (VIC) s 36AA(1)(m).

²¹ See, for example, *Crimes Act 1900* (NSW) s 61HJ(1)(f).

²² See, for example, *Crimes Act 1900* (NSW) s 61HJ(1)(h).

²³ An equivalent provision in NSW law captures these circumstances—see *Crimes Act 1900* (NSW) s 61HJ(1)(e).

²⁴ See, for example, *Crimes Act 1900* (NSW) s 61HJ(g).

Directions about sexual offences

Question 6: Should the list of jury directions in section 34N of the *Evidence Act* be expanded?

As noted in the Discussion Paper, misconceptions about, and violence-enabling attitudes towards, consent and sexual violence persist across Australian society. This impacts how Court proceedings are conducted. A 2021 study by Professors Julia Quilter and Luke McNamara found that, even in jurisdictions that have introduced affirmative consent laws, cross-examination still often runs contrary to legislation—questioning why victim-survivors “didn’t just say no,” and questioning victim-survivors’ credibility over their imperfect recall of (often trivial) events.²⁵

This form of cross-examination contributes to enabling violence, and denying justice to victim-survivors. Mandatory, comprehensive jury directions are one way of addressing these problems. We commend the SA Government for its recent amendment to section 34N of the *Evidence Act* to expand jury directions applicable to sexual violence matters. In addition to the matters already addressed in section 34N, we recommend introducing new jury directions:

- Addressing lack of complaint and delay in making a complaint. There is a significant evidence base around all the reasons a person may not choose to come forward with an allegation of sexual violence, and about the rarity of false allegations. Yet, myths about false allegations, and incorrect assumptions that delay in reporting indicates falsehood, remain prevalent. We recommend the following wording, modelled off NSW law:²⁶

(2) In circumstances to which this section applies, the Judge—
(a) must direct the jury that absence of complaint or delay in complaining does not indicate that the allegation that the offence was committed is false, and
(b) must direct the jury that there may be good reasons why a victim of a sexual assault may hesitate in making, or may refrain from making, a complaint about the assault.

- Covering the possibility of a ‘freeze’ response. While section 34N(1)(a) already contains a direction that there is no typical response to nonconsensual sexual activity, equivalent NSW and Victorian directions go further by additionally specifying that “people may respond to non-consensual sexual activity in different ways, including by freezing and not saying or doing anything,” and “the jury must avoid making assessments based on preconceived ideas about how people respond to non-consensual sexual activity.”²⁷ Including directions on

²⁵ Quilter and McNamara (2023), above n 17.

²⁶

²⁷ See *Criminal Procedure Act 1986* (NSW) s 292B; *Jury Directions Act 2015* (Vic) s 47E.

these matters would explicitly address the very common freeze response, thereby providing additional support to the large cohort of victim-survivors who experience this reaction to threat.

- Identifying a broader range of diverse relationships in which sexual violence may occur. Section 34N(1)(c) lists some relationships in which nonconsensual activity can occur—but we think this could be expanded to specifically refer to sexual violence perpetrated against sex workers, and the LGBTQ+ community. Both groups are disproportionately at risk of sexual violence and other forms of exploitation and abuse—which is why we think it's important to specifically include directions aimed at their protection. Relevant directions could be modelled off the *Jury Directions Act 2015* (Vic) s 47H:

(c) that non-consensual sexual activity can occur between different kinds of people including—

...

(iv) people who provide commercial sexual services and people for whose arousal or gratification such services are provided, or

(v) people of the same or different sexual orientations, or

(vi) people of any gender identity, including people whose gender identity does not correspond to their designated sex at birth.

- Specifying that it's common for victim-survivors of sexual violence to continue relationships with perpetrators following sexual violence—and as such, the fact of a continued relationship should not be used to test or undermine a victim-survivor's credibility. This could also be modelled off an equivalent Victorian provision:²⁸

(a) some people who are subjected to a sexual act without their consent will never again contact the person who subjected them to the act, while others –

(i) may continue a relationship with that person, or

(ii) may otherwise continue to communicate with them, and

(b) there may be good reasons why a person who is subjected to a sexual act without their consent—

(i) may continue a relationship with the person who subjected them to the act, or

(ii) may otherwise continue to communicate with that person.

- Specifying that differences in a complainant's accounts do not necessarily point to a lack of credibility. A common misconception in sexual offence cases is that complainants will always give full and linear accounts of relevant events, remember all details of an offence and be consistent in their descriptions of it.²⁹ However, research shows that it is common for a complainant to recount their

²⁸ *Jury Directions Act 2015* (Vic) s 54H.

²⁹ Victorian Department of Justice and Regulation, Criminal Law Review, *Jury Directions: A JuryCentric Approach Part 2* (2017) 20; New South Wales Law Reform Commission, above n 4, [8.15].

experience of a sexual offence differently at different times, because of the way they retain and recall memories, the context of the disclosure, or feelings of stress or embarrassment.³⁰ Victim-survivors may also have clear and specific recall of some events—and very limited or hazy recall of other (often more peripheral) events. Disordered and fragmented memories are common responses to trauma.

- A jury direction that specifically addresses differences in a complainant’s accounts, reflecting the fact that inconsistencies in accounts in trials for sexual offences are common but do not necessarily mean that a complainant is fabricating their story, will help address this reality. We recommend a direction modelled off New South Wales and Victorian law:³¹

(1) In circumstances to which this section applies, the Judge may direct the jury—

(a) that experience shows—

(i) people may not remember all the details of a sexual offence or may not describe a sexual offence in the same way each time, and

(ii) trauma may affect people differently, including affecting how they recall events, and

(iii) it is common for there to be differences in accounts of a sexual offence, and

(iv) both truthful and untruthful accounts of a sexual offence may contain differences, and

(b) that it is up to the jury to decide whether or not any differences in the complainant’s account are important in assessing the complainant’s truthfulness and reliability.

(2) In this section—difference in an account includes—

(a) a gap in the account, and

(b) an inconsistency in the account, and

(c) a difference between the account and another account.

We also recommend the following changes to existing jury directions in section 34N:

- It should be made clearer that sexual violence commonly occurs in the absence of physical violence or threat. Studies have found very low rates of injury during rape/sexual offences. In a 2014 study of 317 rape reports in Minnesota, 4% of victims experienced a physical injury, and 11% sustained anogenital injuries requiring medical intervention.³² In a 2016 survey of 400 cases of rape reported to the central UK police force, most victims (79%) sustained no physical injuries during the attack.³³ Currently, section 34N(1)(a)(iii) provides that “a person is not to be regarded as having consented to the sexual activity the subject of the charge merely because... the person was not physically injured in the course of,

³⁰ Victorian Department of Justice and Regulation, above n 88, vii; New South Wales Law Reform Commission, above n 4, [8.18].

³¹ *Criminal Procedure Act 1986* (NSW) s 293A; *Jury Directions Act 2015* (Vic) s 54D.

³² Carr, M., Thomas, A. J., Atwood, D., Muhar, A., Jarvis, K., & Wewerka, S. S. (2014). Debunking three rape myths. *Journal of Forensic Nursing*, 10(4), 217–225.

³³ Waterhouse, G. F., Reynolds, A., & Egan, V. (2016). Myths and legends: The reality of rape offences reported to a UK police force. *The European Journal of Psychology Applied to Legal Context*, 8(1), 1–10.

or in connection with, the sexual activity.” This direction does not adequately reflect the evidence base. This direction would be strengthened by acknowledging that sexual violence *often occurs* without physical injury (reflecting the above evidence base), and dealing with threats of violence as well as actual violence. We recommend the following wording:

“Non-consensual sex frequently occurs in the absence of violence, physical injury, or threats of injury or violence. The absence of injury or violence, or threats of injury or violence, does not mean that a person is not telling the truth about an alleged sexual offence.”

- Section 34N(e) should deal with “acting flirtatiously,” in addition to existing subsections (i)-(iii). This would replicate an existing direction in Victorian law.³⁴
- Rather than referring to a victim-survivor “not telling the truth,” section 34N(d)(ii) should be reframed to reflect extensive research on trauma. We recommend wording along the lines of: “Many victims respond to trauma in a calm and controlled manner as a coping mechanism.” This reframing would recognise a strong evidence base showing the commonness of a “controlled response” as a coping mechanism to trauma, with many victims recounting evidence of sexual violence appearing “numbed” and like their emotions are under control.³⁵

Question 7: Are there any other common misconceptions about sexual violence that could be addressed through jury directions?

See our response to Question 6 above.

Question 9: Should the *Evidence Act* specify the timing or frequency of directions?

Full Stop Australia recommends that SA law should specify that jury directions must be given at the following times:

- Firstly, all jury directions on sexual violence and consent should be required to be given at the outset of every sexual violence trial. It is critical that jury directions are given early in all cases, to address misconceptions about sexual violence that might otherwise take root during a trial. For consistency, giving such directions at the outset of proceedings should be mandatory—rather than being left up to the discretion of individual judges.
- Secondly, jury directions should be required to be repeated during the sexual offence trial if there is a good reason to do so, or if a party to proceedings

³⁴ See *Jury Directions Act 2015* (Vic) s 47G.

³⁵ Petrak, J., & Hedge, B. (Eds.). (2003). *The trauma of sexual assault: Treatment, prevention and practice*. West Sussex: John Wiley & Sons. See also Klippenstine, M. A., & Schuller, R. (2012). Perceptions of sexual assault: Expectancies regarding the emotional response of a rape victim over time. *Psychology, Crime & Law*, 18(1), 79–94.

requests the direction be repeated and there is no good reason not to do so—as is the case under NSW law. This would enable misconceptions about consent and sexual violence to be addressed in real time, and reflects evidence that “repetition of jury directions helps jury comprehension.”³⁶

This approach is a mix between the timing for jury directions under NSW and Victorian law—where they are required to be given as a corrective, and where they are required to be given at the earliest opportunity the Judge deems appropriate, respectively. We have recommended this mixed approach in response to ample evidence that jury directions are most effective when given early in proceedings and used proactively to address assumptions introduced by improper questioning.

In 2004, the Victorian Law Reform Commission found that the timing of jury directions significantly impacts the jury’s deliberation process, with directions delivered early being much more effective in combating misconceptions and myths about sexual assault.³⁷ Research by Professors Quilter and McNamara found that “for maximum effect, it is preferable if judges give ‘corrective’ directions (e.g. that delay in complaint does not necessarily mean fabrication) at the time this suggestion is raised—most commonly during the complainant’s cross-examination.”³⁸ Quilter and McNamara also found that “more needs to be done to ensure that relevant directions are given in every trial where they are warranted [and that in many cases] a direction on delay or differences in account was warranted, but was not given.”³⁹

Finally, we note that there is value in legislation explicitly requiring judges to give applicable directions at particular points in the trial. The current position in SA law—silence as to *when* during a trial jury directions must be given—isn’t sufficiently clear, and has the potential to result in inconsistent outcomes, and contribute to injustice, for victim-survivors.

³⁶ Criminal Law Review, Department of Justice and Regulation (Vic), *Jury Directions: A Jury-Centric Approach* (Report, 2015) 9.

³⁷ Victorian Law Reform Commission (VLRC), *Sex Offences: Interim Report*, Report No 78 (2004) Ch 7.

³⁸ Quilter, J, McNamara, L & Porter, M (2022b) ‘New Jury Directions for Sexual Offence Trials in NSW: The Importance of Timing’, *Criminal Law Journal*, 46(3), 138-150.

³⁹ Quilter & McNamara (2023), above n 17.

Question 10: Should a trial judge be required to give themselves the same directions that must be given to jurors in a jury trial?

Trial judges should be required to give themselves the same directions as must be given to jurors. Rape myths and misconceptions are saturated across the community and all actors in the justice system—including the judges overseeing sexual violence proceedings—should be subject to consistent directions intended to combat pervasive and insidious beliefs about sexual violence. We hope this will increase access to justice for victim-survivors, and contribute to cultural change in the justice system.

Image-based sexual offences

Question 12: Should there be any increase in the current penalties?

The Discussion Paper identifies the possibility of moving image-based offences into the CLC Act and increasing the penalties where aggravating circumstances exist. We support penalties for image-based abuse being increased in circumstances of aggravation. This approach enables sentencing for image-based abuse to take into account broader patterns of control, intimidation, abuse of power and exploitation of vulnerability—with circumstances of aggravation under section 5AA of the CLC Act including offending against older victims, offending against child victims, abuse of authority, and offending against people with disability or cognitive impairment.

Protection of victims in sexual offence trials

Question 15: Should the categories of witnesses that may give evidence at pre-trial special hearings be expanded to expressly include witnesses of sexual abuse generally?

As set out in the Discussion Paper, the provisions of the *Evidence Act* that deal with who may give evidence at a pre-trial special hearing “do not expressly include witnesses of sexual abuse generally.” We support adding victim-survivors of sexual violence to the category of witnesses with access to pre-trial special hearings. Enabling victim-survivors of sexual violence to give their evidence in this way would eliminate a significant source of trauma for them—the possibility of encountering their abuser in Court. There is significant evidence of the link between an experience of sexual violence and long-term trauma impacts, and an overwhelming number of victim-survivors have reported that engaging with the justice system—and especially the Court process—exacerbated the effects of trauma for them. Measures like this—that reduce retraumatisation—are therefore urgent.

We note that this change seems aligned with existing provisions in the *Evidence Act*. Section 5AA already recognises victim-survivors of sexual violence as vulnerable witnesses. Meanwhile, section 12AB(14)(d) recognises victim-survivors of domestic

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abuse as a category of person who may give evidence at a pre-trial special hearing—an existing acknowledgment of the dynamics of gender-based violence giving rise to vulnerability, and the need for additional protection in Court proceedings.

Question 16: Should 'ground rules' hearings be available in trials for victims of sexual abuse who have been offended against as adults?

We support 'ground rules' hearings being made available to all adult victims of sexual violence. This has significant potential to reduce retraumatisation for victim-survivors who appear as witnesses in Court. As set out above, research suggests that even in jurisdictions that have introduced affirmative consent reform, cross-examination still commonly involves victim-blaming, rape myths and stigmatisation of victim-survivors. Ground rules hearings have the potential to address this, by establishing clear rules on:

- the style and parameters of questioning, so that questioning is not improper or irrelevant;
- the scope of questioning, including questioning on sensitive topics and evidence to reduce re-traumatisation; and
- the preferences and needs of complainants.

Ground rules hearings also have the potential to support victim-survivors to give better evidence, thereby going some way towards countering disproportionately low conviction rates for sexual violence. The research of Quilter and McNamara referred to above also found that the style of cross-examination can impact victim-survivors' capacity to recount events at trial—resulting in a higher chance of providing inaccurate responses or making mistakes when cross-examined with questions that are closed, leading, repeated or complex. Ground rules hearings can address, and seek to eliminate, this style of questioning.

Question 17: Should police be required to record interviews with all sexual abuse victims regardless of their age?

We support police being required to record interviews with adult victims of sexual violence—and those police interviews being admitted at trial, subject to an application under section 13BA of the *Evidence Act*—as an alternative to the witness giving evidence in Court. We agree with the points in the Discussion Paper—that this would lead to “a reduction in the amount of time that a witness needs to spend giving evidence in court (and having to interact with the perpetrator) and the fact that their account is given at a point in time when events are more fresh in their memory.” We reiterate the prevalence of retraumatisation from the Court process—and emphasise the importance of taking all measures available to mitigate this.

Victims' right to privacy

Question 18: Do you consider there to be a gap in the way that the South Australian laws operate?

It is critical that victim-survivors' communications with health practitioners are adequately protected, so they can report and disclose their experiences of sexual violence confidentially, and receive necessary care. Legislative provisions protecting counselling communications were introduced in response to defence counsel issuing subpoenas seeking access to complainants' counselling or treatment records, with the aim of searching for inconsistencies in the victim's reporting.⁴⁰ Historically, this material was frequently adduced in court to highlight discrepancies in victims' accounts, with the goal of undermining their credibility.⁴¹

While SA law goes some way towards protecting victim-survivors' right to privacy, we think broader protections are warranted. We recommend the following changes to SA law—to achieve policy objectives of prioritising the privacy and agency of victim-survivors, recognising the confidentiality of all health information, and ensuring victim-survivors feel safe to seek critical medical care:

- We recommend that a victim-survivor's consent should be required to disclose any information recorded in the course of receiving healthcare. This could be modelled off the following provisions in Tasmanian law:⁴²

(3) A counselling communication must not be disclosed in any criminal proceedings unless the victim has consented to the disclosure.

(4) A person must not be required, in or in connection with any criminal proceedings, to produce a document that records a counselling communication unless the victim has consented to the production of the document.

(5) Evidence of a counselling communication must not be adduced or admitted in any criminal proceedings unless the victim has consented to the adducing or admission of the evidence.

- Privilege should apply to all medical communications and records—as well as communications and records held by social workers, drug and alcohol rehabilitation services, and specialist domestic, family or sexual violence services—not only psychological or psychiatric records. See our response to Question 19 below.

⁴⁰ Danuta Mendelson, 'Judicial Responses to the Protected Confidential Communications Legislation in Australia' (2002) 10 (1) *Journal of Law and Medicine* 49, 53; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process* (2016, Report), 221.

⁴¹ *Ibid.*

⁴² *Evidence Act 2001* (TAS) s 127B.

- Privilege should be applicable to civil proceedings, where the relevant evidence was found to be privileged in a criminal matter, as is the case in NSW:⁴³

(2) If evidence was found to be privileged in a criminal proceeding under ...[relevant section]... the evidence may not be adduced in a civil proceeding to which this section applies.

Question 19: Should protected communications be expanded to include health information, such as personal information that is collected in providing a health service?

Full Stop Australia strongly supports protected communications being expanded to include all health information collected by health practitioners. Currently, the protection in South Australia is limited to communication made in a therapeutic context—specifically, communications made for, or in the course of, psychiatric or psychological therapy.⁴⁴ In our view, a broader range of health records should be encompassed as ‘protected communications’—including:

- All records taken in the course of receiving medical treatment or advice, not only psychological or psychiatric records;
- Records made by social workers;
- Records held by specialist domestic, family or sexual violence services; and
- Records held by drug and alcohol rehabilitation services.

Full Stop Australia supports the broader definition of ‘health information’ under Victorian law:⁴⁵

- (1) ... health information is protected health information for the purposes of a proceeding if*
- - a. The proceeding is a criminal proceeding; and*
 - b. The proceeding relates (wholly or partly) to a charge for a sexual offence; and*
 - c. The health information is about a person against whom –*
 - i. That sexual offence is alleged to have been committed; or*
 - ii. Any other sexual offence has been committed or is alleged to have been committed; and*
 - d. The person who recorded or collected the information (or, if the information is an opinion, formed that opinion) did so in a professional capacity.*
- (2) It does not matter whether the information was recorded or collected (or, if the information is an opinion, was formed) before or after the conduct constituting the sexual offence occurred or is alleged to have occurred.*

⁴³ Evidence Act 1995 (NSW) s 126H.

⁴⁴ Evidence Act 1929 (SA) s 67D.

⁴⁵ Evidence (Miscellaneous Provisions) Act 1958 (VIC) s 32BA.

We also support Victoria's more complete approach to defining 'health information', which includes personal information—whether true or not—that discloses:

- any information or opinion about the physical, mental or psychological health of an individual;
- an individual's disability;
- any expressed wishes for future provision of health services by an individual; and
- any health service provided.⁴⁶

Finally, we strongly support this privilege encompassing any contact victim-survivors have with alcohol and drug rehabilitation services. Records created for such purposes are intended for a specific context and should not be adduced in court or treated as relevant to a complainant's credibility in a criminal trial.⁴⁷

We hope protecting complainants' privacy by expanding the approach to protected communications will encourage more victim-survivors to seek counselling and support services, and in turn ensure that their long-term recovery is prioritised. We also hope this approach will lead to more victim-survivors feeling safe to report crimes, without fear of their private information being made public through the Court process.

Question 20: Should a victim be made aware of applications for disclosure of their protected communications?

Victim-survivors should be informed of any application to disclose their protected communications. The Victorian Law Reform Commission has recognised that involving victim-survivors in decision-making regarding disclosure of their medical records is not only integral for psychological safety, but also empowering.⁴⁸

The requirement to notify victim-survivors of applications to disclose their protected communications could be modelled off NSW law:⁴⁹

- (1) An applicant for leave under this Division must, as soon as is reasonably practicable, give notice in writing of the application to each other party and each relevant protected confider (or the protected confider's nominee) that—*
- (a) specifies the document that is sought to be produced or the evidence that is sought to be adduced, and*
- (b) in the case of a notice to a protected confider who is not a party to the proceedings—advises the protected confider that the protected confider may appear in the proceedings concerned, and*

⁴⁶ *Health Records Act 2001* (Vic).

⁴⁷ VLRC n 42, 222.

⁴⁸ *Ibid* 142.

⁴⁹ *Criminal Procedure Act 1986* (NSW) s 299C.

- (c) in the case of an application for leave to compel (whether by subpoena or any other procedure) a person to produce a document—specifies the day on which the document is to be produced, and*
- (d) in the case of an application for leave to adduce evidence—specifies the day (if known) when the proceedings are to be heard, and*
- (e) includes any other matter that may be prescribed by the regulations.*

In addition, when deciding whether to admit medical records, Courts should be required to consider the healthcare, recovery and safety needs of victim-survivors of sexual violence. We recommend including a requirement to consider the following factors, which apply under NSW law:

- (a) the need to encourage victims of sexual offences to seek counselling,*
- (b) that the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship,*
- (c) the public interest in ensuring that victims of sexual offences receive effective counselling,*
- (d) that the disclosure of the protected confidence is likely to damage or undermine the relationship between the counsellor and the counselled person,*
- (e) whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias,*
- (f) that the adducing of the evidence is likely to infringe a reasonable expectation of privacy.⁵⁰*

Finally, to increase victim-survivors' autonomy and control over medical records, and support them to assert their right to privacy, legislative change should be combined with publicly funded support for people impacted by applications for relevant records. This would support would provide support to the proposed legislative protections. For example, Legal Aid NSW runs a Sexual Assault Communications Privilege Service—which provides legal advice and representation to victim-survivors of sexual assault who want to prevent the disclosure of protected communications or enable their release in an informed way. Enabling victim-survivors to make informed choices about the release of their medical records would increase their sense of agency and control over legal proceedings, reducing disempowerment and retraumatisation.

Question 21: Should a victim be made aware of applications by the defence to ask questions or admit evidence about the prior sexual history of the victim?

Full Stop Australia supports introducing a requirement to make victims aware of applications by the defence to ask questions or admit evidence about the prior sexual activities of the victim. This notice requirement could form part of the ground rules hearing process.

⁵⁰ *Criminal Procedure Act 1986* (NSW) s 299D (2).

This would promote victims having greater agency and awareness of matters that affect them in sexual violence proceedings. Being less 'passive' and having more visibility of Court processes that affect them, could help reduce the sense of disempowerment and retraumatisation so many victims report experiencing in Court proceedings.

More generally, we make the following points about the admissibility of evidence of a victim's past sexual activities under SA law:

- Evidence of a victim's 'sexual reputation' is inadmissible under section 34L of the *Evidence Act*. We strongly support this position.
- Evidence of a victim's past sexual activities continues to be admissible in some cases. Allowing this kind of evidence to be adduced is retraumatising and can reinforce harmful stereotypes about sexual violence. This kind of evidence is also often of limited evidentiary value. It is common for a victim to have consented to some sexual activity with the accused prior to sexual assault, or to have consented to participating in a different sexual activity with the accused at the time of the alleged assault.⁵¹ This has nothing to do with whether the victim consented to the sexual activity in question.

To recognise the limited value of this evidence, we recommend some amendments to the way it's dealt with in section 34L:

- Section 34L(2) should explicitly require the judge to weigh probative value against the victim's distress. Rather than simply requiring the Court to "give effect to the principle that alleged victims of sexual offences should not be subjected to unnecessary distress, humiliation or embarrassment through the asking of questions or admission of evidence," it should be necessary for the probative value of evidence of a complainant's past sexual activities to "*outweigh* any distress, humiliation or embarrassment that the complainant might suffer as a result of its admission."⁵² This is the position under NSW law.
- Evidence of a victim's past sexual activities should only be admissible where it is "part of a connected set of circumstances in which the alleged sexual offence was committed"⁵³—i.e. there needs to be some connection to the offence.
- There should be restrictions placed on the admissibility of evidence of "recent sexual activities with the accused," which does not appear to be the case under section 34L(1)(b). Such evidence should only be admissible in the circumstances outlined in alignment with the amendments we've proposed above to 34L(2), and with the permission of a judge.

⁵¹ Harrison Lee et al, 'The Effects of Victim Testimony Order and Judicial Education on Juror Decision-Making in Trials for Rape' (2022) *Psychology, Crime and Law* 1, 4.

⁵² See, for example, *Criminal Procedure Act 1986* (NSW) s 294CB.

⁵³ *Criminal Procedure Act 1986* (NSW) s 294CB(4)(a)(ii).

Question 22: Should a victim be entitled to be heard in relation to such applications?

Full Stop Australia supports victim-survivors being given standing to make submissions in relation to applications by the defence to ask questions or admit evidence about their past sexual activity.

This would enable victims—through dedicated legal representatives—to challenge improper and irrelevant lines of questioning, which reinforce dangerous and outdated rape myths and victim-blaming narratives. As set out above, this continues to retraumatise victims and deny them justice.

Currently, victims of sexual violence don't have their own legal representatives in criminal proceedings—whereas the accused has defence counsel and the prosecution's interests may not align with a victim-survivor's. In addition to causing feelings of disempowerment among victim-survivors who appear as witnesses in Court, this also means there isn't a reliable mechanism for addressing inappropriate questioning (as Quilter and McNamara's study above demonstrates).

To support legislative reform, Full Stop Australia recommends making this form of legal support freely available to victim-survivors through legal services such as Legal Aid or community legal centres. We think there are strong public interest grounds for doing this.