

# Review of Criminal Justice Responses to Sexual Offending.

Full Stop Australia's Submission to the Western Australian Government  
16 October 2023



## About Full Stop Australia

Full Stop Australia (FSA) thanks the Office of the Commissioner for Victims of Crime for the opportunity to provide input on its review of criminal justice responses to sexual offending (Review).

FSA 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 better equipped to respond to, and ultimately prevent, gender-based violence.

Our advocacy is guided by the lived expertise of over 350 survivor-advocates in our [National Survivor Advocate Program](#) (NSAP), which gives survivors a platform to share their experiences in order to drive positive change. 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 responds to Questions 1 to 4 on the Review website, as well as addressing some of the specific issues raised in the four Discussion Papers published on the Review website.

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 victim-survivors have a range of support options available to them.
- 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.
- Increasing practical support, so victim-survivors are supported to engage with the justice system if they choose to do so.

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](mailto:emilyd@fullstop.org.au).

## Incorporation of lived expertise and trauma-specialist knowledge

This submission is informed by invaluable input from survivor-advocates in the NSAP, which aims to centre survivors' voices in FSA's advocacy work by giving them opportunities to tell their stories and provide input on submissions.

In preparing this submission, we drew on past surveys FSA has conducted with victim-survivors regarding their experiences of sexual violence and navigating the criminal justice system. Quotes from victim-survivors used in this submission are taken from responses to those surveys. We sincerely thank the victim-survivors who contributed to those surveys for generously sharing their insights. We have heard their voices and attempted to shine a light on their experiences, to drive necessary change for those impacted by sexual violence.

In addition to the invaluable lived expertise of victim-survivors, this submission has also been guided by the organisational perspective of FSA as a trauma-specialist counselling service that's been operating in the field of sexual, domestic and family violence for over fifty years.

## Terminology

Throughout this submission, Full Stop Australia 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.

Those who have experienced sexual violence are referenced as *victim-survivors*, *people with lived experience* or, in the case of their involvement with the NSAP, *survivor-advocates*.

## Question 1: How the process for reporting sexual offending could be improved for victim-survivors

Across Australia, criminal justice systems are failing people impacted by sexual violence. Despite decades of legislative reform, sexual offences remain under-reported, under-prosecuted and under-convicted.<sup>1</sup> Data from the Australian Bureau of Statistics (ABS) shows a 13% national increase of victims of sexual assault from 2020 to 2021, the highest number of victims since relevant data was first collated twenty-nine years ago.<sup>2</sup> Despite this rise, the legal and justice systems responding to sexual violence continue to be ill-fitted for victim-survivors. Criminal justice processes result in re-traumatisation more commonly than in justice,<sup>3</sup> leaving Australia's national response to sexual violence at crisis point.

The latest data from the ABS starkly demonstrates both the prevalence of sexual violence in Australia, and that the vast majority of crimes are never reported to police. The 2021-2022 Personal Safety Survey shows that 22% of Australian women have experienced sexual violence since the age of 15.<sup>4</sup> Yet, of the 737,200 women who experienced sexual assault by a male perpetrator in the ten years prior to survey, 92% (680,300 women) did not report the most recent incident to police.<sup>5</sup>

These figures clearly demonstrate that the entry point to the criminal justice system – reporting to police – is not working for victim-survivors of sexual violence. This has significant implications for victim-survivors' access to justice, and more broadly, the operation of the rule of law – a foundational principle of our justice system, which says everyone should be held accountable to the law.

Unfortunately, too many victim-survivors report finding the process of engaging with police challenging and re-traumatising, due to lack of police understanding of how to work with victim-survivors of trauma and sexual violence. Victim-survivors have recounted the following experiences to FSA:

*“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...”*

*“The police dismissed me, minimised my concerns and did nothing to protect me or keep me safe.”*

*“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.”*

*“Terrible. 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.”*

---

<sup>1</sup> W. Larcombe, 'Falling Rape Convictions Rates: (Some) Feminist Aims and Measures for Rape Law' (2011) 12 *Feminist Legal Studies* 27.

<sup>2</sup> Australian Bureau of Statistics, *Recorded Crimes - Victims 2021* (28 July 2022).

<sup>3</sup> Larcombe, above n 1.

<sup>4</sup> 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>.

<sup>5</sup> Australian Bureau of Statistics. (2021-22). *Sexual violence*. ABS. <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22>.

*“The police were somewhat understanding but couldn’t really understand why I wanted to report the incident if I didn’t want to press charges.”*

*“The police, although friendly, were not trauma informed. Also, I feel they should have suggested to take notes of what I would like my statement to include, as it is difficult to recall every little detail in one or two sittings. It is also retraumatizing, so naturally that would also affect your recall at the time. The police also concentrated on the sexual acts and not the grooming, as the grooming were not sexual acts. I felt it was important to add this to the statement - this would have been particularly helpful when relying on that statement in the civil proceedings as well.”*

FSA considers the following changes to WA’s police reporting process would remove barriers and improve victim-survivors’ experience of engaging with police. We believe these changes would lead to higher rates of reporting – and consequently, a more effective justice system.

### **Mandatory training on trauma and gender-based violence for any police officer who might receive or deal with a complaint of sexual violence**

Training on the effects of trauma, gendered drivers of sexual violence, and addressing sexual violence by perpetrators known to their victims (especially intimate partners), should be mandatory for any police officer who may have contact with a victim-survivor of sexual violence at any stage of the reporting process.

Trauma can impact memory, the way victim-survivors recount events, and their tolerance for recounting what happened to them. According to research:

- Victim-survivors of one-off traumatic events (including sexual violence) typically recall only three to five clear details – therefore, many details are often lacking.<sup>6</sup>
- Following rape trauma, memories may be impaired with amnesiac gaps, or may contain differences between accounts.<sup>7</sup>

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 – with positive flow-on effects for the administration of justice and rule of law. As noted in *Discussion Paper 2: Reporting sexual offences*, “research shows 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.” An understanding of trauma – how it manifests and what can be done to support people experiencing it – is foundational to a respectful and supportive police response.

It is also important that training on sexual violence recognises its gendered drivers – that sexual violence is rooted in patriarchal systems and values, which tell men they are entitled to be in control. Applying this lens to policing is necessary to address the root cause of sexual violence.

---

<sup>6</sup> 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), 3–17.

<sup>7</sup> Ibid. See also Conway, M. A., Meares, K., & Standart, S. (2004), Images and goals. *Memory*, 12, 525–431; McNally, R. J. (2003). *Remembering Trauma*. Cambridge, MA: Harvard University Press.

Thirdly, training should specifically focus on equipping police to deal with cases where sexual violence was perpetrated by an intimate partner or another person known to the victim. Sexual violence perpetrated in this setting comes with additional challenges for victim-survivors – as noted in *Discussion Paper 2: Reporting sexual offences*, 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.” It’s important that police are trained in how to address these concerns, given the reality that this is the most prevalent form of offending – as noted in *Discussion Paper 2*, “research suggests that around 77% of sexual offending is perpetrated by someone the victim-survivor knows [and] most commonly an intimate partner or family member.”

Finally, police training should be co-designed with (or at a minimum, developed in consultation with) victim-survivors of sexual violence, to ensure they respond to victim-survivors’ lived experience and needs.

### **Building a highly specialised sexual violence workforce within WA Police**

In addition to the above mandatory training, the WA government should invest in:

- Best practice trauma-informed and gender-based violence-informed training for all members of its Sex Assault Squad. This training should be more in-depth than the training recommended above, and it should be mandatory for it to occur at regular intervals – so police officers working with victim-survivors of sexual violence are constantly building their knowledge and aware of the latest research base. This would ensure the gendered dynamics of sexual violence, and the impacts of trauma, are managed by a specialist workforce capable of providing a tailored response to victim-survivors’ needs.
- Recruiting more women to WA’s Sex Assault Squad. According to a statement by WA Police in March 2023, women currently make up only 25% of the WA police force.<sup>8</sup> This would recognise the reality that many victim-survivors feel more comfortable speaking to a female than a male officer. This reflects the gendered dynamics of sexual violence, with 84% of Australian victim-survivors of sexual violence being female and 97% of Australian sexual offenders being male.<sup>9</sup>
- Increasing the availability of specialist officers from the Sex Assault Squad in rural, regional and remote commands.
- Increasing specialisation in the needs of diverse populations (including LGBTQ+ people, Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities and people with disability), by mandating specific training modules on the needs of victim-survivors from those populations for all members of the Sex Assault Squad. FSA supports an intersectional approach to addressing gender-based violence, which recognises the unique challenges faced by diverse populations.
- Developing a culturally informed and responsive approach to working with Aboriginal and Torres Strait Islander people, particularly in remote and regional areas, is a critical priority.

---

<sup>8</sup> Hampton, Shannon, ‘International Women’s Day: Det-Sen. Sgt Laura Russ and Insp. Andrea Smith among WA Police’s female leaders,’ *The West Australian*, 8 March 2023, available at: <https://thewest.com.au/news/gender-equality/international-womens-day-det-sen-sgt-laura-russ-and-insp-andrea-smith-among-wa-polices-female-leaders-c-9931508>.

<sup>9</sup> For the period 2018-19. Australian Bureau of Statistics (2020) Recorded Crime – Victims, <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2020#australia>.

## Introduction of sexual violence reporting hubs and women-only police stations

FSA supports the introduction of “sexual violence reporting hubs,” as a way of ensuring holistic wraparound support is available to victim-survivors from the first time they report sexual violence. We support the Multi-Disciplinary Centre model in Victoria, detailed in *Discussion Paper 2: Reporting sexual offences*, insofar as it would enable victims to speak to police alongside other key supports – including counselling and advocacy, health services, and forensic exams.

We would also support the introduction of women-only police stations – which not only offer holistic support in the same way as sexual violence reporting hubs, but also recognise and respond to the gendered drivers of sexual violence (i.e. that it is a form of violence primarily perpetrated by men against women, whose victims may feel more comfortable telling their stories to and accessing services from women). Women-only police stations have delivered positive results for victim-survivors in overseas jurisdictions. In Argentina, these stations are staffed by women, focus entirely on gender-based violence and offer wrap-around support alongside police services – such as childcare, financial counsellors, legal help and psychologists for women trying to leave abusive relationships.<sup>10</sup> Journalist, advocate and author Jess Hill has noted the positive effect of these stations for victim-survivors of domestic violence: “The domestic homicide rate where these police stations are present has been reduced by 17% overall. And it’s been halved among 18–26-year-olds.” Professor Kerry Carrington, from the Queensland University of Technology’s Centre for Justice, notes that, by offering holistic support, these stations have the potential to centre victim-survivor choice and autonomy to a greater extent than existing commands.<sup>11</sup>

## Independent advisers for all victim-survivors of sexual violence

We also recommend funding “independent sexual violence advisers,” with a view to increasing practical support to victim-survivors moving through the justice system.

The role of independent advisers was set out in the Victorian Law Reform Commission’s 2021 report on *Improving the Justice System Response to Sexual Offences*:

*“In England and Wales, independent sexual violence advisers 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 advisers 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 adviser supports them through and beyond the criminal justice process. The adviser’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... Advisers 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*

---

<sup>10</sup> Cunningham, Katie, ‘All About Women: female police stations could help fix family violence, and other takeaways,’ *The Guardian*, 9 March 2020, available at: <https://www.theguardian.com/lifeandstyle/2020/mar/09/all-about-women-female-police-stations-could-help-fix-family-violence-and-other-takeaways>.

<sup>11</sup> Ruddick, Baz, ‘Queensland police commissioner unconvinced by calls for women-only police stations,’ *ABC*, 17 March 2021, available at: <https://www.abc.net.au/news/2021-03-17/qld-woman-only-police-stations/100013538>.

*dealing with the disruptions caused to their relationships. They also provide support to families of victim survivors.”<sup>12</sup>*

Among other things, introducing independent advisers as a single point of contact and service coordination for victim-survivors would provide victim-survivors 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. Advisers have the potential to support victim-survivor autonomy, choice and recovery 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 acting as a liaison point with these services; and
- Reducing emotional and administrative burden on survivors, by liaising with actors in the justice system such as police and prosecutors.

The potential of independent advisers 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.”<sup>13</sup> Another review identified the model as “one of the key reforms that improves support of victims.”<sup>14</sup> A review of a similar model in Scotland found such support “invaluable and life-changing,”<sup>15</sup> 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.”<sup>16</sup>

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.”<sup>17</sup>*

<sup>12</sup> Victorian Law Reform Commission (VLRC), *Improving the Justice System Response to Sexual Offences*, September 2021, available at: [https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf).

<sup>13</sup> Vivien Stern, *The Stern Review: An Independent Review into How Rape Complaints Are Handled by Public Authorities in England and Wales* (Report, Home Office (UK), 2010) 105

<sup>14</sup> VLRC, above n 12. See also Elaine Wedlock and Jacki Tapley, *What Works in Supporting Victims of Crime: A Rapid Evidence Assessment* (Report, Victims’ Commissioner for England and Wales and University of Portsmouth, March 2016) 5.

<sup>15</sup> Julian Molina and Sarah Poppleton, *Rape Survivors and the Criminal Justice System* (Report, 20 October 2020) 7, 26, 42, 56, 59, 64.

<sup>16</sup> VLRC, above n 12.

<sup>17</sup> *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, we note that there is the potential for this model to assist with the provision of culturally responsive support for Aboriginal and Torres Strait Islander women, through a focus on recruiting First Nations independent advisers.

### **Increasing continuity of Police investigation process**

*Discussion Paper 2: Reporting sexual offences* released by the Office of the Commissioner for Victims of Crime for the purpose of this Review outlines that victim-survivors of sexual violence in WA must go through the following process to report a crime to police:

*“When an adult victim-survivor makes a report, the police officer they speak to will ask them questions about what has happened, but they will not make the victim-survivor go into lots of detail. The person taking the report should also make sure the victim-survivor knows about options for support, including forensic medical and counselling services such as the Sexual Assault Resource Centre (SARC). When a victim-survivor makes the first report, the person taking the report will arrange a face-to-face meeting with a police officer who will ask some more questions about what happened. This initial report will then be sent to the Sex Assault Squad. A senior officer from the Sex Assault Squad will ask a victim-survivor more questions to determine if there is an immediate risk to the victim-survivor’s or public safety. The case is then allocated to a police officer in the Sex Assault Squad who will contact the victim-survivor to arrange a time for them to make a formal statement.”*

There are four different people to whom a victim-survivor must tell their story throughout this process. Victim-survivors report that it is extremely retraumatising to have to repeat their story to multiple people as they engage with police and other criminal justice processes. To reduce retraumatisation, we would recommend streamlining the process of reporting to police, by allocating all victim-survivors a dedicated police officer from the Sex Assault Squad at the earliest possible opportunity. For example:

- When a victim-survivor comes in to make a report, they are assigned to a police officer, who will ask questions about what happened but not require them to go into lots of detail. That police officer will also ask questions to determine if there is an immediate risk to the victim-survivor’s or public safety, and provide options for support.
- That police officer will then send a record of what happened to the victim-survivor to the Sex Assault Squad.
- The case is then allocated to a police officer in the Sex Assault Squad, who will contact the victim-survivor to arrange a time for them to make a formal statement.

In the above process, the victim-survivor would only be required to tell their story to two officers. FSA considers it important to minimise the need for victim-survivors to re-tell their stories unnecessarily.

### **Alternative reporting options**

FSA supports the expansion of alternative reporting options for sexual violence, including online options. We acknowledge the importance of increasing choice for victim-survivors about how they want to engage with the justice system.

We note the 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. FSA considers 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.

### Community education

We would support a community education campaign dedicated both to raising awareness about options for reporting sexual offending, and shifting harmful values that deter victim-survivors from reporting.

The ABS' latest Personal Safety Survey shows that some of the leading reasons victim-survivors did not report to police were:

- That the victim-survivor felt they could deal with it themselves (34% of victim-survivors who experienced sexual violence in the 10 years prior to the survey);
- The victim-survivor did not regard the incident as a serious offence (33% of victim-survivors); and
- The victim-survivor felt ashamed or embarrassed (31% of victim-survivors).<sup>18</sup>

A survey of survivor-advocates in FSA's NSAP showed many chose not to go to police following an experience of sexual violence because they were 'concerned the incident would be viewed as their fault' (79% of survivors surveyed, n=26/33) or they didn't think they 'would be believed' (70% of survivors surveyed, n=23/33). This is further evidenced in recent reports which speak to the mistrust many have when considering victim's motives and intentions when reporting sexual offences.<sup>19</sup>

It is critical that community education addresses these attitudes, and the reluctance they engender in victim-survivors to report sexual violence, for fear of having a negative experience with police or not being believed. Common rape myths and misconceptions must be addressed across the broader community to ensure such harmful prejudices are eliminated and victim-survivors feel empowered to report and speak out following an incident of sexual violence.

### Question 2: How the process for investigating sexual offending could be improved for victim-survivors

We recommend the following initiatives to improve the investigation process for victim-survivors.

#### Free legal advice regarding evidence collection by Police

*Discussion Paper 2: Reporting Sexual Offences* considers providing legal assistance to victim-survivors in relation to rights and obligations to provide evidence during Police investigations. FSA would support a

---

<sup>18</sup> Ibid.

<sup>19</sup> ANROWS 2021, 'Chuck her on a lie detector': Investigating Australians' mistrust in women's reports of sexual assault, 9.

free legal service for victim-survivors, covering their rights when supplying evidence or data to Police, and the consequences of doing so. It's important to ensure victim-survivors are aware of their rights and capable of providing informed consent to sharing private data with Police.

Some clients of FSA have reported negative experiences of sharing private information, particularly when giving their phones to Police to enable data to be downloaded, including:

- Police not explaining the consequences of the data download – i.e. that some data may form part of a police brief of evidence and be provided to the accused;
- Police not making it clear the client had a choice about whether to provide their phone to Police for data to be downloaded; and
- Police not making it clear how long the phone would be in Police custody.

Legal advice on the above matters would support victim-survivors to make informed decisions about whether, or to what extent, they agree to share their private data with Police for the purpose of an investigation.

### Improving access to forensic exams and cultural safety

It is essential to increase access to timely forensic examinations across the state. FSA clients in rural, regional and remote areas have reported their inability to access forensic exams locally – needing to travel, sometimes by plane, in the immediate aftermath of sexual assault. This is draining and retraumatising. To address limited access to forensic units in regional areas, we recommend allowing forensic exams to be performed using audio-visual link technology – this would involve a general practitioner performing the exam, with the guidance of a forensic specialist available via video link.

Forensic services must all be trauma-informed and culturally competent. This involves the employment of culturally appropriate forensic examination staff, so that Aboriginal and Torres Strait Islander victim-survivors have greater access to culturally appropriate forensic examinations.

### Question 3: How the Court process could be improved for victim-survivors of sexual offending

The presence of rape myths and regressive presumptions surrounding consent continue to abound in cross-examination, shaping the experience of survivors navigating the Court system. Victim-survivors have reported the following experiences in Court:

*"I felt unprepared, there didn't feel like there was anyone there to provide me advice, only emotional support. Whilst I am not on trial technically, I am 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. I found the questions incredibly confronting and angering, "Can you describe how you knew you were being raped" and found the perpetrator was just able to tell outrageous lies, which I never got to hear or challenge. I took the option of doing it via videolink, however it meant I never got to see the Jury, which has been quite significant following a not-guilty verdict. The not guilty verdict was also quite shocking to I think everyone given I had witnesses, however apparently there was insufficient evidence that I didn't consent prior to the*

*witnesses showing up and then fake the rape to save myself the embarrassment of having sex on the nature strip. So outrageous and unbelievable.”*

*“He simply lied and said that it was romantic and very consensual. I had very limited ability to challenge as I believe I completely disassociated during the experience so couldn't explain much of what occurred beyond knowing I was being raped and both of us being covered in my blood on the nature strip.”*

*“The ODPP dropped the charges at the very last minute citing an inability to win given it was ‘he said, she said’, which it wasn’t [as] I had forensic evidence and extensive injuries.”*

*“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.”*

*“Legal representation MUST be assigned to the complainant, at the stage of the rape kit or after... but especially when making the statement to police. I was not advised of my legal rights as a sexual assault victim, and the police recorded my sexual history, which was used against me in court.”*

*“I was nonverbal/ frozen with fear however the counterargument to this was that we were dating so it was fine.”*

FSA’s Counsellors have also spoken to the effect of the Court system on their clients, stating, “the system re-traumatises clients terribly” and “every client I have worked with has been re-traumatised by the Court process.”

We recommend the following improvements to Court process, to improve the experience of victim-survivors and address harmful attitudes and practices that continue to traumatise victim-survivors in the Court process.

### **Combating improper, irrelevant or retraumatising cross-examination**

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.<sup>20</sup> Cross-examination can also impact victim-survivors’ capacity to recount events at trial – as noted in *Discussion Paper 3: Journey through the criminal justice system*, “complainants in sexual offence trials can be more prone to making mistakes or providing inaccurate responses by cross-examination questions that are closed, leading, repeated and/or complex.”

To address this, we strongly support the introduction of ground rules hearings for all sexual violence trials. As noted in *Discussion Paper 3*, this would enable the prosecution, defence and judicial officer to decide on the following before a victim-survivor is questioned:

---

<sup>20</sup> 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).

- 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.

In addition, we would support victim-survivors being given standing to appear in sexual violence proceedings. This would enable victims’ legal representatives to challenge improper and irrelevant lines of questioning arising in cross-examination. The role of these legal representatives would be to advocate solely for victim-survivors’ interests. Victim-survivors don’t currently have anyone advocating for their interests in criminal proceedings for sexual violence – 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 demonstrates). FSA considers this form of legal support should be universally accessible through free legal services, such as Legal Aid or community legal centres, on public interest grounds.

Mandatory jury directions would limit cross-examination that reinforces victim-blaming and rape myths, or weaponises victim-survivors’ experience of trauma against them. Whereas it is currently up to an individual judge’s discretion when to intervene in cross-examination, legislating mandatory jury directions would require a judge to intervene each time particular improper questions are asked. Mandatory jury directions should address:

- The multitude of ways people might respond to sexual violence – including freeze and fawn responses;
- The impact of trauma on memory – that imperfect recall of facts (especially facts of no or marginal relevance) does not point to lack of credibility;
- That trauma may manifest in different ways, and may not appear as visible distress; and
- The irrelevance of a complainant’s past sexual activities, appearance and conduct.

Mandatory jury directions should be required to be given at the outset of proceedings and to correct improper assertions each time they arise in real time. This reinforcement is important, as research shows that, once a jury has built a narrative based on misconceptions at the start of a trial, it is more difficult to dislodge this later in proceedings.<sup>21</sup>

### Pre-recorded evidence

We recommend allowing all complainants in sexual violence matters to give pre-recorded evidence. The VLRC set out how this could operate in its 2021 report on *Improving the Justice System Response to Sexual Offences*:

*“We recommend... allow[ing] complainants in sexual offence trials and contested hearings to give their evidence in the form of a pre-recording. This should be available as a standard protection for complainants... The process should be developed to ensure continuity of counsel and judge or magistrate through the pre-recorded evidence procedure and trial. Strong case management should ensure matters are resolved as much as possible before the complainant completes their*

---

<sup>21</sup> Emma Henderson and Kirsty Duncanson, ‘A little judicial direction: Can the use of jury directions challenge traditional consent narratives in rape trials?’ (2016) 39(2) *UNSW Law Journal* 750, 759.

*pre-recorded evidence... The court should order pre-recording of evidence and its use in trial if the complainant wishes. The recording should be made available for appeals and any re-trials.”<sup>22</sup>*

The VLRC clarified that allowing pre-recorded evidence should apply to “all the complainant’s evidence (not just evidence-in-chief).”<sup>23</sup> It noted the following advantages of allowing complainants in sexual offence proceedings to pre-record evidence:

*“Pre-recording evidence would give complainants the option of giving evidence in a familiar and supportive environment (such as a remote witness facility), and would reduce the time they spend in court. In cases where there are delays in the criminal process, complainants could give their evidence without having to wait for the trial date. This might give them some relief.”<sup>24</sup>*

### **Training on trauma and gender-based violence for all actors in the Court system**

The Court system was not designed with the needs of victim-survivors in mind. As set out above, many victim-survivors find the adversarial system, process of cross-examination and lack of independent representation disempowering and retraumatising.

In this context, we note the importance of cultural change within the Court system. This requires all actors in the judicial system (including judges, Court staff, prosecutors and defence counsel) to undertake mandatory training on the effects of trauma and drivers of gender-based violence.

To ensure that a culture of understanding trauma and gender-based violence is embedded in sexual violence proceedings, we would also support the establishment of specialist sexual violence Courts. This would also have the secondary advantage of reducing delay in the final determination of sexual violence matters – which currently prolongs trauma experienced by victim-survivors, requiring them to relive painful events over many years, which can seriously impact their recovery journeys.

### **Legal support for sexual assault communications privilege**

FSA supports making free legal services available to victim-survivors in relation to sexual assault communications privilege.

As noted in *Discussion Paper 3*, under WA law, sexual assault communications privilege limits defence counsel’s access to victim-survivors’ counselling notes:

*“The Evidence Act contains provisions to protect the records of victim-survivors’ counselling sessions whether they relate to the sexual offence or not. A victim-survivor’s counselling records (known in the Evidence Act as protected communications) can’t be disclosed without leave of the court. This means that the defence lawyer for the accused can’t get the counselling records from the person who provided the counselling without permission from the court. If a defence lawyer applies for the counselling records, they must provide legitimate forensic reasons that must be more than a ‘digging expedition’. If the court considers the defence has raised legitimate reasons*

---

<sup>22</sup> VLRC, above n 12.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

*for the request, the court convenes a hearing that is also attended by the prosecutor to decide the issue.”*

Currently, whether this privilege is asserted isn't something over which victim-survivors have any control. As set out in *Discussion Paper 3*, “there may be times where the prosecutor’s decision about the protected communications does not match the wishes of the victim-survivor.”

To increase victim-survivors’ autonomy and control over their medical records, and ability to assert the right to privacy, we recommend adopting a model like Legal Aid NSW’s 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. It is important that victim-survivors can make an informed choice, and have a say, over the consequential matter of whether their counselling records will be released to defence counsel. This would increase victim-survivors’ sense of agency and control over legal proceedings, reducing disempowerment and consequential retraumatisation.

#### **Question 4: Other kinds of justice models that could be used to support victim-survivors of sexual offending**

Full Stop Australia recognises that there is significant potential for restorative justice to offer an alternative path to recovery for some victim-survivors of sexual offending. As mentioned in *Discussion Paper No 4: Alternatives to criminal justice responses*, restorative justice allows victim-survivors a pathway to share their experiences and speak to how the sexual offending has impacted their life, whilst also giving people who are responsible a chance to understand the consequences of their actions and take responsibility.

Whilst this would not be suitable for all matters of sexual offending or preferred by all victim-survivors, for some it may offer an alternative means to be acknowledged and believed.

In a recent study conducted by RMIT for the NSW Government, two victim-survivors spoke to their understanding of restorative justice:<sup>25</sup>

*“Everyone needs to sit down and tell him what needs to be done and what rehab he needs for his own issues. The whole point is that you don’t want him to reoffend...”*

*“I want to be able to look at him and speak to him about the impact it’s had on me and see what reaction he has, because... I know not everyone wants it, but I feel like to me, that will be able to give me... some sort of closure... I just want something out of it... Because I want an answer. I want to try and do something. It’s just, there’s nothing apart from restorative justice that gives you that...”*

The study recommends the development of a sexual violence restorative justice system which would sit alongside traditional legal processes to enable victim-survivors the option to pursue justice in a way that suits their recovery and wider justice needs.<sup>26</sup>

---

<sup>25</sup> RMIT, KPMG “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* (Report, July 2023) 95.

<sup>26</sup> *Ibid* 114.



FSA supports this recommendation and urges the Western Australian Government to expand alternative justice models from the current legislation which applies to youth offenders, to sexual offending.<sup>27</sup> Further, by implementing restorative justice avenues and recognising the important role alternative justice models provide for victim-survivor, Western Australia would be aligning themselves with the overarching recommendations in the *National Plan to End Violence Against Woman and Children 2022* which calls for the availability of restorative justice processes.<sup>28</sup>

Besides following best practice standards as established by the United Nations,<sup>29</sup> the following principles should guide the implementation of restorative justice practices:

- **Specialised:** Whilst there are numerous restorative justice practices operating across Australia, the use of such alternative modes of justices in instances of sexual offending need to be specially designed and delivered by actors with expertise on matters of sexual, domestic and family violence. As offences involving gendered violence
- **Trauma-informed and Culturally Specific:** It is essential that all restorative justice processes and actors are trauma-informed specialists. By embedding trauma-informed practice, restorative justice practices will be accessible, informed, consistent, and designed to ensure the individual victim-survivor is supported and their needs are met. Doing so will place the victim in a strong position to engage in the justice process in a way in which they are willing, safe and supported. Further, in order to ensure that all parties are safe and supported throughout the process, it is critical for design and delivery of these practices engage actively with CALD communities.
- **Self-determination:** First Nations communities should develop approaches that are self-determined and linked to cultural, language and community needs.
- **Victim-centred:** Victim-survivors' recovery, agency, choice and safety should be the primary considerations in whether this option is appropriate. Principles of restorative justice must be aware that this model intends to provide victim-survivors with an opportunity to feel heard, seek closure and obtain reparations. Therefore, it is paramount that the needs of victim are centred throughout the whole process.
- **Suitable:** As there is an inherent power imbalance in gendered violence, some instances will be inappropriate for restorative justice, especially in serious matters or where the perpetrator does not show genuine remorse or a willingness to take responsibility and change their behaviour. A risk assessment framework should be developed in consultation with sexual and domestic violence stakeholders, which is specific to restorative justice models to ensure only suitable cases engage with the restorative justice process. Additionally, the Victorian Law Reform Commission has proposed that this option should be available, among other cases, where harm is reported but there are insufficient grounds to file charges, or charges were filed but prosecution is discontinued. We are concerned that, if this becomes a guiding principle for the availability of restorative justice, it could encourage Police to funnel victim-survivors who would prefer for their cases to be heard in Court into restorative justice programs.
- **Integrated and Supplementary:** Restorative justice should part of an integrated justice response – with other criminal and civil justice options available, as well as therapeutic treatment programs. As such, restorative justice will be one option for victim-survivors, supplementing the criminal justice system to ensure the justice needs of victim-survivor who do not wish to engage in the traditional criminal justice system.

---

<sup>27</sup> AIC, *Restorative Justice in the Australian Criminal Justice System* (Report, May 2020) 12.

<sup>28</sup> Department of Social Services, *National Plan to End Violence Against Woman and Children 2022* (October 2022) 65.

<sup>29</sup> United Nations, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* (July 2002) E/RES/2002/12.



- **Optional:** Participating in the restorative justice process must remain optional and voluntary for suitable victim-survivors. It is paramount that victim-survivors are empowered and retain their autonomy in deciding to engage in alternative justice mechanisms. In order to be victim-centric, restorative justice must ensure that victim-survivors' agency and choice is prioritised.
- **Supported:** Throughout the restorative justice process, in order to be trauma-informed, it is critical that parties are offered specialised counselling support services. This support needs to be embedded in all future alternative justice models to ensure the victim-survivor is supported throughout the lifetime of recovery and best prepared to engage in the justice process.

In conclusion, FSA is supportive of restorative justice processes being offered to suitable and willing victim-survivors. This should be part of a suite of options provided to the victim-survivor, following an assessment of risk related to ongoing physical and psychological safety. As stated, FSA notes that any such model would need to be trauma-informed, and the risk of retraumatising survivors by putting them back in contact with their perpetrator would need to be carefully mitigated. If such a model is developed, it should enable survivors to be represented by both a lawyer and a social worker – to ensure they have access to both legal advocacy and the expertise of a trauma-informed professional.