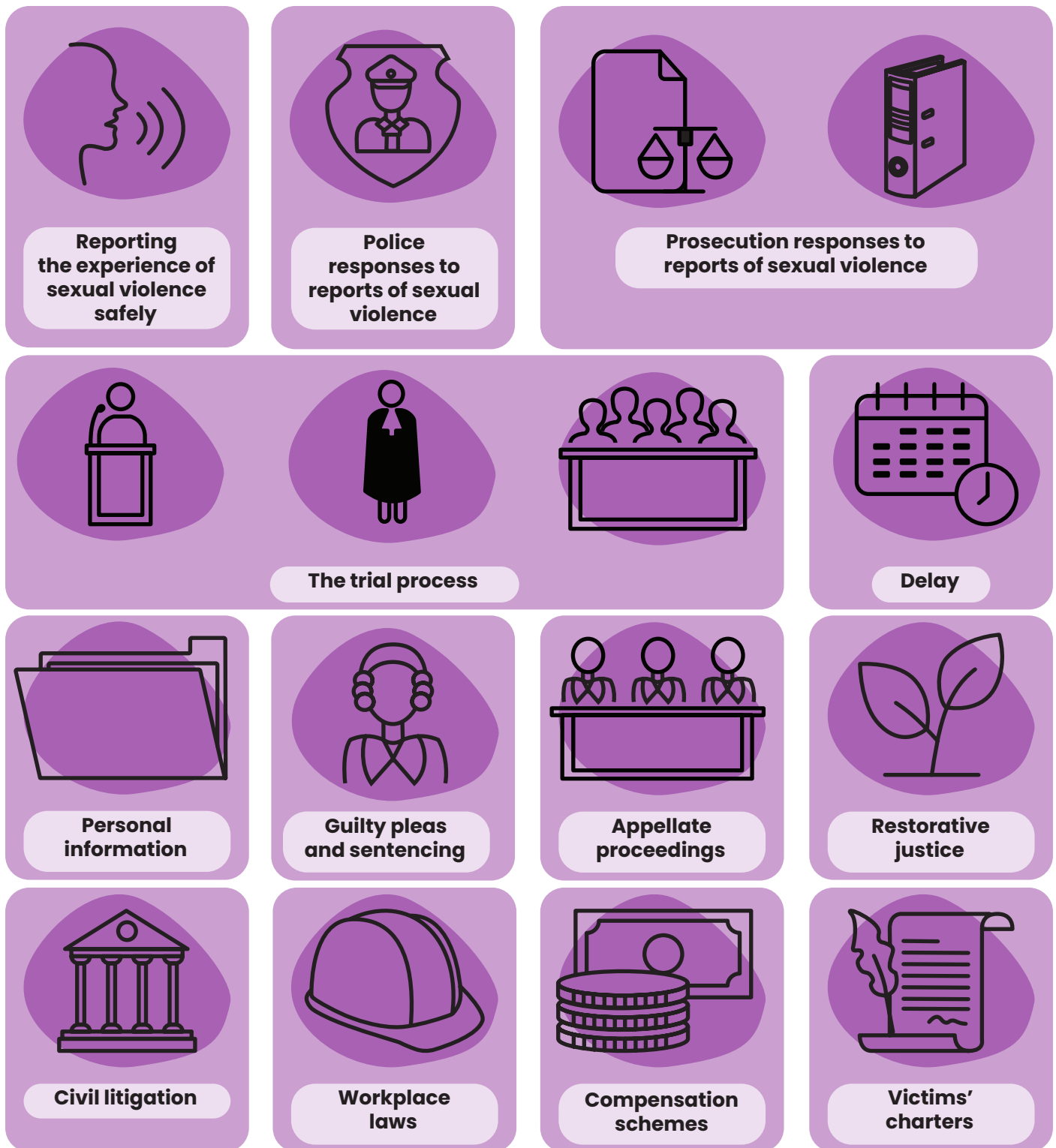


JUSTICE RESPONSES TO SEXUAL VIOLENCE

Questions in the ALRC's Issues Paper

This information sheet sets out the questions contained in the Issues Paper. If you would like to view the questions that relate to one of the topics set out below, you can click on the icon and be taken to the relevant questions.



The full Issues Paper is available at the ALRC website: www.alrc.gov.au/publication/jrsv-issues-paper-2024/



Australian Government
Australian Law Reform Commission

Reporting the experience of sexual violence safely

Question 1 If you are a victim survivor, did you decide to tell someone about your experience?

If you did tell someone, did you contact:

- a particular support service;
- the police;
- a health professional, a teacher, an employer; or
- a family member, friend, or some other person?

Was there sufficient information available to you to help you decide who to tell and what to do? Where did you find that information? Was the response you received adequate?

What supports did you need at that time? Were the supports adequate? How could they be improved?

If you decided not to tell someone about your experience, you may wish to share with us the reason(s) why.

Question 2 What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?



Question 3 How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better?

You might consider the kind of information given to victim survivors, the confidentiality of the process, and the requirements of particular groups in the community.

Question 4 Do you have other ideas for what needs to be done to ensure that victim survivors have a safe opportunity to tell someone about their experience and get appropriate support and information?

Police responses to reports of sexual violence

Question 5 If you are a victim survivor, did you contact the police? If so, how? What was your experience of the police response?



Question 6 What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?



Question 7 What are your ideas for improving police responses to reports of sexual violence? What can be done?

Prosecution responses

Question 8 If you are a victim survivor, did you have contact with the ODPP? What was your experience of the ODPP response? What support, if any, was provided to you?



Question 9 What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?



Question 10 Do you have ideas for improving ODPP responses to the prosecution of sexual violence?

The trial process

'Special measures': procedural changes

Question 11 If you are a victim survivor, did you experience any of the special measures described above? If so, what was your experience?

Question 12 Do you have views about the measures listed above? Have the measures reduced the trauma of giving evidence? Could they be improved? Have things changed? What is working well? What is not working well?

Are there other measures which have been implemented and are not listed above?

Question 13 Do you have other ideas for improving court processes for complainants when they are giving their evidence?



'Special measures': evidence in the form of audio-visual recordings

Question 14 If you are a victim survivor, was your interview (or interviews if more than one) with the police recorded? Was your evidence recorded in court at a pre-trial hearing?

What was your experience of the recording process?

Did you see the recording(s) before they were presented by the prosecution at trial?

How did you feel about not giving evidence in person at the trial?

Question 15 Has the use of recorded evidence been implemented in your jurisdiction? If so, to what extent?

How is this working in practice? What is working well? What is not working well? What could be improved?

Do any of the matters discussed when the recommendations were made (some of which are outlined above) need further discussion in the context of the reforms having been implemented?

Are there any other issues? What do you see as the advantages and disadvantages of using recordings of the complainant's evidence at trial?



'Special measures': intermediaries and ground rules hearings

Question 16 If you are a victim survivor, was an intermediary involved to assist with communication? If so, we would like to hear your feedback.

If an intermediary was not involved, do you think an intermediary would have been helpful? If so, in what way?



Question 17 Has an intermediary scheme been implemented in your state or territory? How is it working in practice? What is working well? What is not working well? How could it be improved? Have any of the issues described above arisen?

If an intermediary scheme has not been implemented in your state or territory, do you know why? Do you think such a scheme would be helpful? If so, what do you think the scheme should involve?

Do you have any ideas generally about the use of intermediaries in the criminal justice system?



Assessment of the credibility and reliability of complainants

Question 18 Are you aware of the research about memory and responsive behaviour in the context of sexual violence trauma? Do you have views about that research?

Do you have views about whether prosecutors should call expert evidence about that research (that is, about how people recall traumatic events and/or about how victim survivors of sexual violence typically respond)?

Is that expert evidence being called in your jurisdiction? If so, how is it working? If it is not being called, do you know why not?

Question 19 What is your view about the usefulness of jury directions in countering myths and misconceptions described by the research discussed above?

Do you have a view on whether the jury directions in your jurisdiction are sufficient? Could they be more extensive?

How are the directions in Victoria under the *Jury Directions Act 2015* (Vic) working in practice? Can they be improved?

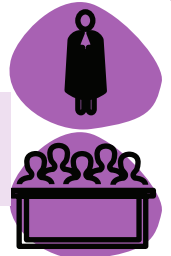


Question 20 Do you have a view about the other recommendations that have been made (educative videos, mixed juries, judge-alone trials, and education and training)?

Do you have other ideas for reform based on research which suggests the evidence of complainants is assessed according to myths and misconceptions about memory and responsive behaviour?

Judge-alone trials

Question 21 What is your view about a trial by judge alone in relation to sexual offending?



Cross-examination and the law of evidence

Question 22 If you are a victim survivor, what was your experience of cross-examination? Did the prosecution object to questions asked by defence counsel? Did the judge intervene to stop defence counsel asking questions?

Question 23 Are the legislative provisions adequate to protect complainants during cross-examination? If not, how could they be improved? Should they be harmonised?

Question 24 Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?



Interpreters

Question 25 If you are a victim survivor, did you need an interpreter in the court room? Was one made available? We would like to hear your feedback.

Question 26 Have changes been made to interpreting services for complainants over the last five years? Does there continue to be a problem with availability, training and accreditation?

Are there problems in regional areas?

Are the available interpreters culturally and linguistically appropriate and diverse, particularly for complainants who are Aboriginal and Torres Strait Islander people?

Is the unavailability of interpreting causing difficulties and challenges for courts to ensure pre-trial recordings and trials commence as listed?



Personal information

Question 27 If you are a victim survivor, were the records of your counselling or other therapeutic interventions sought prior to or during trial?

Question 28 Are the legislative provisions adequate to protect the disclosure and use of a complainant's personal information obtained during counselling or other therapeutic intervention? How are they working in practice? Should they be harmonised?

Is there a need for complainants to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions?



Types of evidence

Question 29 Have legislative reforms to the admissibility and use of complaint evidence been effective? Are there problems associated with that evidence? Is this an area in which the laws should be harmonised? If so, how should they be harmonised?

Should evidence of more than one complaint be admissible? Should complaint evidence be admissible as evidence of what is asserted by the complainant and/or to assess credibility?

Should complaint evidence be admissible at all? Does it perpetuate myths about responsive behaviour to sexual violence trauma (by expecting complainants of sexual violence to complain at some stage and placing weight on what was said)?

Question 30 Should there be legislative reform to the admissibility and use of distress evidence?

Is this an area which calls for legislative intervention and harmonisation? If so, how should they be harmonised? Should distress evidence be admissible at all?



Question 31 Are there further reforms to be considered to tendency and coincidence or discreditable conduct evidence in addition to the Evidence (Tendency and Coincidence) Model Provisions released by the Royal Commission into Institutional Responses to Child Sexual Abuse?

Question 32 Are there any other evidence issues relating to sexual violence trials that we should consider, including whether there should be harmonisation?

Specialisation and training of judges and counsel

Question 33 Do you have views about the creation of specialist courts, sections, or lists?

Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?



Delay

Question 34 If you are a victim survivor, what were the delays you experienced? What was the impact of those delays upon you and/or your family and friends?

Question 35 What are the causes of delay in your state or territory? Do you wish to comment on the past recommendations (as outlined above) and whether they have been or should be implemented in your state or territory?

What are your ideas for reducing delays? Can there be a national approach to reducing some aspects of the delay?



Guilty pleas

Question 36 If you are a victim survivor, did the offender plead guilty? Did the offender plead guilty as charged, or was there negotiation with the ODPP? We would like to hear about your experience of that process.

Question 37 Have any recent changes in sentencing laws had an impact upon the preparedness of accused persons to plead guilty to sexual violence offences?



Question 38 Are sentencing indication hearings (or their equivalent) effective in terms of resulting in guilty pleas? Can the process be improved? Are there other ways in which guilty pleas may be encouraged?

Sentencing

Question 39 Are there aspects of sentencing practices and outcomes which may be harmonised across jurisdictions?

Question 40 If you are a victim survivor, what was your experience of the sentencing process? What aspect(s) of the sentencing process were important to you?

Did you make a Victim Impact Statement? If so, how did you find that process? What could be improved?

Question 41 Have there been recent changes to the role of victims of sexual violence in the sentencing process in your jurisdiction? Are Victim Impact Statements given appropriate consideration by the sentencing judge?

Are there further improvements to be made? Should victims have independent legal representation during sentencing submissions?



Question 42 Do you have ideas for improving the sentencing process in matters involving sexual violence offences?

Appellate proceedings

Question 43 If you are a victim survivor, what was your experience of the appeal process?

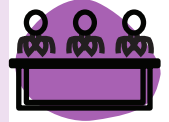
In responding, you may wish to consider the following:

What information or support did you receive about the appeals process and its possible outcomes? If you received some information or support, how useful did you find it?

What information or support did you receive about the decision made on the appeal? If you received some information or support, how useful did you find it?

What impact did the appeals process have on you?

If the appeal resulted in a re-trial, were you consulted about whether the prosecution should proceed with a re-trial?



Question 44 What are your ideas for improving the appeals process in matters involving sexual violence offences?

Restorative justice

Question 45 If you are a victim survivor, how do you feel about restorative justice? Is it an important option to have? If so, what do you think should be the approach to restorative justice in responding to sexual violence?

Question 46 What reforms have been implemented in your state or territory? How are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?

Question 47 What are your ideas for implementing restorative justice as a way of responding to sexual violence?



Civil litigation

Question 48 Which of the measures listed above are likely to most improve civil justice responses to sexual violence?

Question 49 Apart from those listed above, are there other recent reforms and developments which the ALRC should consider? Are there further reforms that should be considered?



Workplace laws

Question 50 If you are a victim survivor who experienced sexual violence in connection with a workplace, which factors led you to take legal action, or not take legal action, regarding the violence?



Question 51 What provisions or processes would best facilitate the use of civil proceedings in this context?

Compensation schemes

Question 52 If you are a victim survivor, did you apply for compensation? If not, why not? If so, how did you find the experience of applying for compensation?



Question 53 What changes to compensation schemes would best promote just outcomes for victim survivors of sexual violence?

Victims' charters

Question 54 If you are a victim survivor, how do you feel about Victims' Charters? Are they important to you? If so, what do you think should be included in the Charter?

Question 55 Have reforms been implemented in your State or Territory? If so, how are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?



Question 56 What are your ideas for ensuring victim survivors' rights are identified and respected by the criminal justice system? What can be done?