

Justice Responses to Sexual Violence

*ANROWS submission to the Australian Law
Reform Commission*

May 2024

ANROWS

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ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

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Overall comments

ANROWS thanks the Australian Law Reform Commission (ALRC) for the opportunity to provide a submission to support an inquiry into justice responses to sexual violence. ANROWS (2019, 2020a, 2023a, 2023b, 2024a, 2024b) has consistently responded to jurisdictional inquiries into justice responses to sexual violence and supports the Australian Government's commitment to strengthen and harmonise sexual assault and consent laws, and to improve outcomes and experiences for victims and survivors in the justice system. We are pleased to see a national approach will be taken to incorporate learnings and recommendations of existing reviews and inquiries.

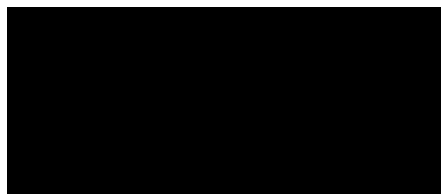
The submission is divided into three parts, focussed on:

- 1) Improving victim and survivor experiences in the criminal legal system.
- 2) Addressing myths and misconceptions about sexual violence in the criminal legal system.
- 3) Considering alternate avenues for justice for victims and survivors of sexual violence.

In each part, we draw on evidence from rigorous peer-reviewed research, including relevant ANROWS research, to answer a select number of the consultation questions outlined in the issues paper (Australian Law Reform Commission, 2024).

The Commission may also find it useful to consult ANROWS's Evidence Portal (ANROWS, 2023c), which is a living resource of interventions from high-income countries that aim to address and end violence against women.

We would be very pleased to assist the Commission further, as required.



Dr Jane Lloyd
Acting Chief Executive Officer

29th May 2024

Recommendations

ANROWS makes the following recommendations to improve victim and survivor experiences in the criminal legal system:

- **Recommendation 1:** Support the implementation of trauma-informed alternative reporting options for victims and survivors of sexual violence.
- **Recommendation 2:** Assess how the people and processes that make up the criminal legal process can implement trauma-informed measures that prioritise the safety and wellbeing of victims and survivors of sexual violence.
- **Recommendation 3:** Provide adequate resourcing to reduce delays for victims and survivors of sexual violence participating in the criminal legal process.
- **Recommendation 4:** Investigate ways to prevent perpetrators intentionally causing delays in the criminal legal process, through manipulating the legal system.
- **Recommendation 5:** Ensure victims and survivors maintain personal agency and choice throughout the criminal legal process, wherever possible.

ANROWS makes the following recommendations to address myths and misconceptions about sexual violence in the criminal legal system:

- **Recommendation 6:** Identify, assess and address opportunities and barriers to enhancing the uptake of contemporary evidence about the dynamics of sexual assault by actors in the criminal legal process, to ensure an informed response.
- **Recommendation 7:** Support the implementation and evaluation of jury directions as a mechanism to address myths and misconceptions about sexual violence.
- **Recommendation 8:** Support the implementation and evaluation of evidence-informed police training initiatives. Establish a community of practice for police training to provide an opportunity to standardise and improve the quality and effectiveness of police training across states and territories.
- **Recommendation 9:** Support the implementation and evaluation of evidence-informed judicial education relating to the complexities and dynamics of sexual violence. Support existing calls to develop and deliver a National Sexual Violence Bench Book that addresses myths and misconceptions of sexual violence.

ANROWS makes the following recommendations consider alternate avenues for justice for victims and survivors of sexual violence:

- **Recommendation 10:** Consider how to reduce barriers to accessing compensation schemes for victims and survivors of sexual violence.
- **Recommendation 11:** Consider how to address barriers to disclosure and reporting workplace sexual harassment, which underpins the ability for victims and survivors to seek legal action as an alternative form of justice.

Definitions

A note on terminology

Except when referencing the issues paper, this submission uses the term "criminal legal system" rather than "criminal justice system" to describe the system that encompasses policing and judicial responses to sexual violence. This term is used in recognition that many victims and survivors do not feel they have achieved 'justice' in their experiences and outcomes, particularly Aboriginal and Torres Strait Islander peoples, people with disability and women (McCausland & Baldry, 2023).

In addition, the definitions of "sexual violence", "sexual assault", "sexual harassment" and "intimate partner sexual violence" can vary between studies and surveys. The definitions below are those preferred by

ANROWS and are used when referring to sexual violence and intimate partner sexual violence as concepts in this submission.

Sexual violence

Sexual violence is defined as the intentional perpetration of sexual acts without consent (ANROWS, 2019c), capturing all forms of sexual assault and sexual harassment (Coumarelos et al., 2023). This definition of sexual violence refers to both criminal and non-criminal sexual activity perpetrated without consent to reflect that some emerging forms of sexual violence have not yet been addressed in legislation (Coumarelos et al., 2023).

Intimate partner sexual violence

Intimate partner sexual violence is the intentional perpetration of sexual acts without consent in intimate partner relationships (ANROWS, 2019c). Intimate partner relationships can include those with husbands, wives, partners, boyfriends, girlfriends and dates, and also include both cohabiting and non-cohabiting people (ANROWS, 2019c). Intimate partner sexual violence is a tactic of domestic and family violence (DFV).

Part 1: Improving victim and survivor experiences in the criminal legal system

Sexual violence is prevalent and harmful and must be better addressed by the criminal legal system

Sexual violence is prevalent in Australia. Findings from the Australian Longitudinal Study of Women's Health found that more than half (51%) of women born in 1989 to 1995 indicated that they had experienced sexual violence in their lifetime by the time they were 24 to 30 years of age (Townsend et al., 2022). Sexual violence is perpetrated both within and outside intimate partner relationships and encompasses a broad range of harms, impacting significantly on the lives and wellbeing of victims and survivors. Sexual violence has been associated with education, employment and financial stress, as well as an increased risk of experiencing other physical and mental health challenges (Townsend et al., 2022). The criminal legal system is critical to ensuring the ongoing safety and wellbeing of victims and survivors, including facilitating a path to justice.

Remove barriers that make systems inaccessible, unhelpful or harmful to victims and survivors

This section addresses the following questions:

- 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?
- Question 10: Do you have ideas for improving the Office of the Director Public Prosecutions responses to the prosecution of sexual violence?
- Question 12: Do you have views about the special measures listed in the issues paper? Have the measures reduced the trauma of giving evidence?
- Question 13: Do you have other ideas for improving court processes for complainants when they are giving their evidence?

The Australian National Research Agenda to End Violence against Women and Children (ANRA) 2023-2028 (Lloyd et al., 2023) highlights that current adversarial systems for prosecuting sexual violence are not victim centred or trauma informed. Victims and survivors of sexual violence are not a homogeneous group, and trauma may be experienced differently by women from diverse groups (Mitra-Kahn et al., 2016). Victims and survivors of domestic, family and sexual violence (DFS) can be apprehensive about approaching police, making a statement and testifying in court (Salter et al., 2020). There can be additional barriers to reporting and accessing services for victims and survivors from specific population groups, including women

with disability, people with diverse genders and sexualities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women (Mitra-Kahn et al., 2016; Langton et al., 2020; Ussher et al., 2020). These barriers include, but are not limited to, historical and cultural distrust of authorities, language barriers, geographical isolation, inaccessibility of services for women with disability, the cultural appropriateness of services (Mitra-Kahn et al., 2016; Langton et al., 2020), and blame and mistrust from police (Ussher et al., 2020). Further, victims and survivors can experience disempowerment and re-traumatisation during their interactions with the criminal legal system. For example, they may feel invalidated where an offence is not prosecuted or conviction is not achieved due to the criminal standard of proof (ANROWS, 2021a; Salter et al., 2020). An ANROWS study with victims and survivors of intimate partner violence or sexual violence found that only around 35.6 per cent sought help from police or legal services, and only 53.9 per cent of that group found this support helpful (Hegarty et al., 2022). It is essential that the criminal legal system is more accessible and responsive to the varied experiences and needs of victims and survivors of sexual violence.

Alternative reporting options can provide victims and survivors with avenues outside of formal police processes to talk about their experience of sexual violence. These options include anonymous or confidential reporting through self-administered surveys, tools or web platforms, as well as institutional reporting mechanisms in universities, the military or police (Heydon et al., 2023). Alternative reporting can serve as a pathway to making a formal report. On the other hand, some victims and survivors do not want to engage with the criminal legal process at all. Heydon et al. (2023) found that victims and survivors of sexual violence might prefer to use alternative reporting options:

- because of fear or intimidation associated with formal reporting
- to regain power and control
- to document their experiences
- to protect the community
- to gain access to support services.

There is a need for trauma-informed and well-designed options for victims and survivors. This includes clear and non-invasive questioning, with clear options for future support or contact, and a clear process of how alternative reports may or may not be used in criminal legal proceedings (Heydon et al., 2023). Further, research is needed to identify the alternative reporting needs for diverse communities not adequately served by mainstream services, including LGBTQ+ people, culturally and linguistically diverse people, Aboriginal and Torres Strait Islander people, those with disabilities, those living in institutional care settings, and young people (Heydon et al., 2023).

Recommendation 1: Support the implementation of trauma-informed alternative reporting options for victims and survivors of sexual violence.

Implement trauma-informed responses to victims and survivors of sexual violence

ANROWS advocates for trauma-informed responses to sexual violence. Trauma-informed approaches are underpinned by an understanding of complex trauma, the impacts of sexual violence, cultural competency and disability awareness (Blagg et al., 2018; Kaspiew et al., 2017; Maher et al., 2018). Several ANROWS studies support trauma-informed approaches to increase the likelihood of victims and survivors reporting and help to mitigate the ongoing serious health and psychological impacts (Blagg et al., 2018; Hegarty et al., 2017, 2022; Maher et al., 2018; Townsend et al., 2022; Vaughan et al., 2016). These approaches are critical to ensuring that the experience of trauma does not negatively impact an individual's ability to seek justice in the criminal legal system. Examples of potential measures to support a trauma-informed criminal legal process include:

- training actors within the legal system to identify and respond appropriately to trauma
- setting up policies and processes in the criminal legal system to identify the extent to which trauma informed approaches are being followed
- ensuring the availability of specialist services or advocates to explain court processes, including special measures available to victim survivors, at the time of reporting. This should be done in a

trauma-informed way, to ensure the victims survivor is empowered to choose to progress with their case, and reduce the likelihood of a victim survivor withdrawing (Burgin & Tassone, 2024).

- providing specialised and trauma-informed legal services to victims and survivors of sexual assault (Burgin & Tassone, 2024; Attorney-General's Department, 2023)
- desensitising the victim and survivor by rehearsing their testimony
- encouraging support people to attend court and managing the risk of vicarious trauma (Salter et al., 2020).

In addition, a recent integrative review by George et al. (2023) provides insights into best practice specialist measures that embody a trauma-informed approach to sexual assault proceedings, including:

- trauma-informed training for actors in the criminal legal system
- improved communication with victims and survivors
- prioritising victim and survivor needs and safety
- reducing delays in proceedings and trial-specific practices.

ANROWS emphasises the importance of, for particular jurisdictions or nationally, appropriately funding and undertaking evaluations of specific specialist measures to better understand the effectiveness of these measures in ensuring victims' and survivors' safety and wellbeing, while sharing these learnings appropriately.

Recommendation 2: Assess how the people and processes that make up the criminal legal process can implement trauma-informed measures that prioritise the safety and wellbeing of victims and survivors of sexual violence.

Reduce delays for victims and survivors to participate in the criminal legal process

This section addresses the following question:

- Question 35: What are the causes of delay in your state or territory? What are your ideas for reducing delays?

Delays in the criminal legal process can negatively impact a victims and survivors experience of justice. A survey of people working directly with victims and survivors and perpetrators of DFSV found that lengthy trial wait times can increase risks to victims and survivors' wellbeing and deter people from making reports (Cullen et al., 2022). These issues were partially attributed to under-resourcing and high workloads, particularly in relation to length of time taken for cases to be finalised. However, there was also a sense that, in some cases, delays were part of an intentional strategy by defence lawyers (Cullen et al., 2022). The *National Domestic and Family Violence Bench Book* (Australasian Institute of Judicial Administration, 2023) describes how perpetrators of DFV can purposely cause delays to legal processes, intending to deplete the financial resources and emotional wellbeing of victims and survivors as a tactic of abuse. This is sometimes referred to as systems abuse, which can have profound mental health impacts, economic instability and a loss of faith in the legal system (Reeves et al., 2023). Interviews with victims and survivors also highlight that poor communication or delayed responses from police, prosecutors and the courts can amplify distress (Hegarty et al., 2022). Although delays in the criminal legal process can occur for a range of reasons, the impact of these delays on victims' and survivors' wellbeing is significant.

Recommendation 3: Provide adequate resourcing to reduce delays for victims and survivors of sexual violence participating in the criminal legal process.

Recommendation 4: Investigate ways to prevent perpetrators intentionally causing delays in the criminal legal process, through manipulating the legal system.

Give victims and survivors choice and control over how they give evidence

This section addresses the following question:

- Question 15: Has the use of recorded evidence been implemented in your jurisdiction? What do you see as the advantages and disadvantages of using recordings of the complainant's evidence at trial?

The use of recorded evidence is a useful measure to reduce re-traumatisation which may be caused by victims and survivors re-telling their story multiple times (George et al., 2023). While the *option* to record evidence is beneficial, victims and survivors must be given the necessary information and control to make a choice over whether this happens (Women's Legal Service NSW, 2010; George et al., 2023). In contexts of experiences of domestic violence or sexual assault, victims and survivors can experience disempowerment or a complete loss of autonomy and personal agency (Tarrant et al., 2019). ANROWS research demonstrates that some responses within the mental health and prison systems can mimic the dynamics of DFSV, including disempowerment (Watson et al., 2020; ANROWS, 2020c). This has negative impacts on a victim's and survivor's healing, overall wellbeing and future help-seeking behaviours (Salter et al., 2020). It is therefore imperative that the criminal legal systems do not inadvertently mimic abusive dynamics by taking away the autonomy and decision-making power of victims and survivors. Victims and survivors may wish to actively participate in ongoing criminal legal processes as part of their healing and recovery and, therefore, not want to rely on a recording of evidence. In addition, victims and survivors should be aware of the potential drawbacks of pre-recorded evidence, including the experience of being cross-examined "cold" on the basis of pre-recorded evidence, or the impact of lengthy wait times between recording evidence and trial (Women's Legal Service NSW, 2010; George et al., 2023). It is critical that the criminal legal system allows victims and survivors to maintain choice and control over how they give evidence.

Recommendation 5: Ensure victims and survivors maintain personal agency and choice throughout the criminal legal process, wherever possible.

Part 2: Addressing myths and misconceptions about sexual consent and sexual violence in the criminal legal system

Myths and misunderstandings about sexual consent and sexual violence persist in the Australian community

Findings from the 2021 National Community Attitudes towards Violence against Women Survey (NCAS) indicate that a lack of understanding of the dynamics of sexual violence persists in the Australian community. While most respondents (69%) strongly or somewhat agreed that women were more likely to be raped by someone they know than by a stranger, one third of respondents either disagreed (18%) or did not know (12%; Coumarelos et al., 2023). This misconception is known as the "stranger rape myth", which portrays rape as generally occurring between two strangers and involving the use of physical force (Coumarelos et al., 2023; Toivonen & Backhouse, 2018). It is important to challenge beliefs that sexual violence cannot happen within an intimate relationship, which is emphasised in the *National Plan to End Violence against Women and Children 2022–2032* (Department of Social Services, 2022).

In addition, significant minorities of Australians still hold victim-blaming attitudes towards victims and survivors of sexual violence. For example, the 2021 NCAS found that around 1 in 10 respondents agreed that an intoxicated woman is partly responsible if she is sexually assaulted, and 7 per cent agreed that if a woman meets up with a man from a dating app, she's partly responsible if he forces sex on her (Coumarelos et al., 2023). Another recent ANROWS study, a deeper qualitative investigation of the NCAS findings, looked at Australians' attitudes towards women's reports of sexual assault and found that participants viewed

allegations with a default position of mistrust, informed by an interplay of rape myths and problematic stereotypes about women (Minter et al., 2021).

Rape myths and victim-blaming attitudes can influence police, legal officer and juror perceptions about the credibility of sexual violence allegations (Coumarelos et al., 2023; Salter et al., 2020; Burgin & Tassone, 2024). The Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022a) recommended the implementation of measures, such as training to dispel myths that women frequently make up allegations of sexual assault and domestic and family violence and that an ideal victim exists. One victim and survivor told the Commission of Inquiry (2022b) that the “reputation in community is that police are very misogynistic and sexist and do not believe women nor want to and perpetuate the problem” (p. 30). Rape myths can also impact how police view the integrity of a case being progressed through the legal system. For example, police may be concerned with how the victim and survivors demeanour may be perceived by a jury (Burgin & Tassone, 2024). There is both a lack of awareness of how victims and survivors may respond differently to sexual violence, as well as a misunderstanding that the police or victim and survivor themselves have to prove a case beyond reasonable doubt before progressing with legal avenue (Burgin & Tassone, 2024). Given that rape myths and misconceptions about sexual violence persist in Australia, it is important that police and legal professionals are supported to develop informed understandings of the dynamics of sexual violence and translate this into practice within their role.

Actors in the criminal legal system must understand the impact of trauma on memory and behaviour

This section addresses the following question:

- 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 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)?

Contemporary evidence around memory and trauma, including in the context of sexual violence, is outlined in Tidmarsh and Hamilton’s (2020) report *Misconceptions of Sexual Crimes against Adult Victims: Barriers to Justice*. Tidmarsh and Hamilton (2020) highlight that:

- omissions and differences between accounts are normal features of everybody’s memories, and that remembering many peripheral details of an event or experience is actually unusual
- victims and survivors of traumatic events typically recall only a few clear details, with many details often lacking
- following sexual violence trauma, memories may be impaired, there may be differences between accounts
- victims and survivors who experience brain damage, mental illness or use of medication may experience memory loss or memory inconsistencies
- when affected by alcohol, the recall of peripheral details can become more challenging. However, the recall of core memories remains robust. This finding is important because alcohol is frequently used to discredit victims, while little attention is focused on the way alcohol is used deliberately by perpetrators to perpetrate sexual violence (Tidmarsh & Hamilton, 2020).

Complex trauma is neither consistently nor well defined in Australian public policy (ANROWS, 2020b), yet it can significantly impact victims and survivors in a range of ways, including affecting memory (Salter et al., 2020). Complex trauma refers to multiple, repeated forms of interpersonal victimisation, and the resulting traumatic health problems and psychosocial challenges (Salter et al., 2020). Women who have experienced complex trauma, and professionals who work with them, have reported feeling that police and prosecutorial decisions are not transparent or accountable and can have a significant impact on their access to justice (Salter et al., 2020). Successful criminal justice outcomes for women with experiences of complex trauma can be rare (Salter et al., 2020).

It is essential that legal professionals develop a nuanced understanding of contemporary evidence surrounding trauma, memory and sexual assault, and that this evidence underpins a trauma-informed response in practice. For example, in the civil judgement of *Bruce Lehrmann v Network Ten Pty Limited*

(2023), Justice Lee references evidence from ANROWS (Cox, 2016) and the Australian Institute of Criminology (Tidmarsh & Hamilton, 2020) to challenge the misconception that sexual violence is easy to report. His judgement demonstrates that the behaviours of victims and survivors following a sexual assault must be viewed through a trauma-informed lens by acknowledging the range of reasons that an individual may not choose to report sexual violence. These reasons may include confusion or shock, fear of the perpetrator, fear they would not be believed, or even where victims and survivors do not recognise that they have experienced sexual assault or blame themselves for what has happened (Cox, 2016; Tidmarsh & Hamilton, 2020). Justice Lee's trauma-informed judgement demonstrates how legal practice can be supported by evidence that contradicts myths and misunderstandings about sexual violence. Given the persistent myths and misunderstandings of victims' and survivors' experience and response to sexual assault, referenced earlier in this submission, it is imperative that actors in the criminal legal system are informed by the current evidence base on the reality of sexual assault, how victims and survivors can respond to assault, and how trauma and complex trauma impacts the way they do or do not report violence and later recall the violence.

Recommendation 6: Identify, assess and address opportunities and barriers to enhancing the uptake of contemporary evidence about the dynamics of sexual assault by actors in the criminal legal process.

Implement jury directions to address misconceptions about victims and survivors of sexual violence

This section addresses the following question:

- Question 19: What is your view about the usefulness of jury directions in countering myths and misconceptions?

Jury directions allow judges to provide directions to the jury during court procedures in order to help them understand the law and issues that arise during the case before they reach a verdict. ANROWS evidence highlights that there is a need for jury directions to address misunderstandings about sexual assault and about victims and survivors and the circumstances of their reports of sexual assault (Minter et al., 2021). ANROWS has previously supported the use of jury directions to address misconceptions about consent and rape myths in submissions to reviews of consent laws in Australian jurisdictions and at the Commonwealth level (ANROWS 2019a, 2019b, 2020c, 2023a, 2023d, 2024). These submissions outline that jury directions could be used to address understandings of:

- the “stranger rape” myth
- how common it is for victims and survivors to either not report sexual violence or to not report immediately
- the reasons why victims and survivors may not report or not report immediately
- the freeze response to sexual assault
- the impact of trauma on victims' and survivors' memory and presentation.

Jury directions that directly challenge these myths and misconceptions can support juries to have an increased awareness of the challenges faced by victims and survivors and may help to reduce the likelihood that juries view allegations through a lens of mistrust.

ANROWS recognises the existing provisions for jury directions in various jurisdictions in Australia. While we support use of jury directions to counter myths and misunderstandings, ANROWS acknowledges the need to evaluate the use and effectiveness of these measures. For example, an analysis of jury directions in two Victorian sexual assault cases found that jury directions may be exercised too late in the trial process in order to disrupt problematic rape myths (Henderson & Duncanson, 2017). The ANRA specifically states that more research is required to understand the influence of community attitudes on jury trials (Lloyd et al., 2023; Minter et al., 2021) as well as what education might be required for juries and the judiciary in sexual violence matters. ANROWS supports the use of jury directions to address misconceptions in sexual violence proceedings, and in the broader context of efforts that seek to address community attitudes and understanding of sexual violence, ANROWS emphasises the need to evaluate the effectiveness of these provisions to inform implementation and improvement.

Recommendation 7: Support the implementation and evaluation of jury directions as a mechanism to address myths and misconceptions about sexual violence.

Provide education, training and capacity building to address myths and misconceptions in the criminal legal system

This section addresses the following questions:

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

ANROWS (2018, 2023a, 2024a) has consistently highlighted the need for education, training and resourcing for police and legal actors to address myths, misconceptions and victim-blaming attitudes. Although this can take many forms, this submission will focus on police training and training for judicial officers.

Police training

The ANRA highlights that more research is required on police officers' understanding of sexual violence and the reasons that reports of sexual violence are not proceeding to trial (Lloyd et al., 2023). Existing research with workers in the DFSV sector described how there is a lack of trauma-informed policing that can result in DFSV not being responded to appropriately and being under-prosecuted (Cullen et al., 2022). Workers have recounted dismissive verbal and non-verbal responses from police officers, as well as police officers not providing the appropriate physical environment and not providing access to specialised policing units and staff (Cullen et al., 2022). Under-resourcing and lack of information sharing can contribute to these issues, but evidence also points to a workforce capability and victim blaming in police attitudes (Cullen et al., 2022; Lawler & Boxall, 2023). It is important that police are provided with education and training to develop the requisite knowledge and capability to respond to reports of sexual violence.

A recent review of police training in responding to DFSV by Dowling (2024) identified priority training needs for police in Australia. These include:

- recognising and investigating non-physical violence (including image-based sexual abuse)
- working with victims who have been traumatised or who have suffered other negative mental health effects, to both improve their wellbeing and work effectively in the context of criminal investigation
- distinguishing “predominant aggressors” and defensive parties
- improving communication and cultural awareness to respond effectively to reports involving Aboriginal and Torres Strait Islander people (Langton et al., 2020), culturally and linguistically diverse people and LGBTQ people.

There is a need to focus on both elements of practical, job-specific training as well as address broader workplace cultures and problematic attitudes or misunderstandings of sexual violence already outlined in this submission (Dowling, 2024). Burgin & Tassone (2024) recommend that all general duties officers are provided with training in relation to sexual assault, to encourage “no wrong door” for victims and survivors reporting sexual violence. Implementing these capacity-building initiatives relies on leadership to prioritise and adequately resource them. This is because there may be challenges faced to balance ongoing and refresher training with operational and administrative duties, as well as potential clashes with wider agency practices and cultures (Dowling, 2024). Moreover, training programs should be evaluated for their effectiveness and continual improvement.

The mode of training matters. There is a general preference for training delivered by other police officers, particularly where it focuses on improving job-specific skills and knowledge, with practical and problem-solving scenarios (Dowling, 2024). The challenge, however, is that practically oriented training programs

may not always lead to attitude changes, even where there are improvements in knowledge and skills. There is also value in allowing people with lived expertise to tell their stories to police, and explaining how police can help them, as part of this training (Dowling, 2024).

Recommendation 8: Support the implementation and evaluation of evidence-informed police training initiatives. Establish a community of practice for police training to provide an opportunity to standardise and improve the quality and effectiveness of police training across states and territories.

Judicial education and training

Education and training targeted at judicial officers may help to address myths and misconceptions of sexual assault, as well as improve outcomes for victims and survivors in the criminal legal system. Research shows there is a need for judicial education to:

- address misconceptions about victims and survivors of sexual violence in a judicial context. For example, judges and juries may perceive emotional victims of sexual assault as more credible (Tidmarsh & Hamilton, 2020). However, we know that there is no typical response to sexual assault, and victims and survivors may respond in a calm and controlled manner as a coping mechanism
- increase understandings of the dynamics and complexities of sexual assault experienced in the context of intimate partner violence (Cox 2015; Wakefield & Taylor, 2015)
- support judicial leadership in creating a courtroom environment that is appropriate for sexual violence matters that also supports the wellbeing of victims and survivors through a trauma-informed approach (George et al., 2023; Wakefield & Taylor, 2015).

Judicial education could be applicable in the particular context of judges presiding over specialist courts, sections or lists, but may also be beneficial for all judicial officers. This is for two reasons:

- There can be challenges with implementing specialist sections or lists in regional and remote areas due to resourcing restraints (Wakefield & Taylor, 2015; George et al., 2023).
- DFSV matters can be relevant to a variety of judicial areas across magistrates' courts, district and supreme courts, children's courts and family courts (Cox, 2015; Wakefield & Taylor, 2015).

ANROWS supports previous recommendations made by the Senate Legal and Constitutional Affairs Reference Committee to develop and deliver a National Sexual Violence Bench Book, to assist judicial officers to recognise and respond to sexual violence in a culturally appropriate and trauma-informed manner, including to specifically address rape myths and misconceptions (Senate, Legal and Constitutional Affairs References Committee, 2023).

An ANROWS survey of judicial officers in Victoria and Queensland found that only around 20 per cent of participants agreed that judicial officers in their state received sufficient training in DFSV (Wakefield & Taylor, 2015). Education and training should be provided in conjunction with other measures to support judicial officers, including debriefing and/or professional supervision, access to professional support and peer-to-peer discussion (Wakefield & Taylor, 2015). Judicial education represents one mechanism through which myths and misconceptions can be addressed in the criminal legal system and should be accompanied by other appropriate supports for judges working on DFSV cases.

Recommendation 9: Support the implementation and evaluation of evidence-informed judicial education relating to the complexities and dynamics of sexual violence. Support existing calls to develop and deliver a National Sexual Violence Bench Book that addresses myths and misconceptions of sexual violence.

Part 3: Considering alternate avenues for justice for victims and survivors of sexual violence

Commission and conduct more research on alternate avenues for justice for victims and survivors of sexual violence

The criminal justice system alone cannot be relied on to address the high levels of sexual violence in Australia (Lloyd et al., 2023). ANROWS supports the ALRC's recognition that victims and survivors of sexual violence may seek to pursue alternative avenues, rather than the criminal justice system, for holding the person responsible for violence. There could be a range of reasons why a victim and survivor would seek alternatives to the criminal justice system, for example, to avoid possible re-traumatisation or because they do not believe they will achieve an acceptable outcome. This does not indicate a lack of seriousness of the crime or harm experienced by the victim and survivor. Alternative avenues for justice may include:

- civil responses, which can provide a more accessible option for victims and survivors to pursue justice as the standard of proof is often lower than that for criminal proceedings. This could include civil responses to workplace sexual harassment (WSH), further outlined below. However, the risk of re-traumatisation during cross-examination is often similarly experienced by victims and survivors seeking justice in both the civil and criminal systems (Victorian Law Reform Commission, 2021)
- compensation or redress schemes as another option for victims and survivors, which often have a lower standard of proof and provide an avenue to seek damages for harms caused by sexual violence. However, the potential limitations of compensation schemes are further outlined below
- the adoption of restorative justice approaches as an alternative avenue for justice, or offered alongside the criminal legal process for victim survivors of sexual violence. These approaches can demonstrate a shift towards healing and away from punishment as the sole purpose for justice. Restorative models of justice can also increase Aboriginal and Torres Strait Islander people's access to the justice system by providing a greater ground for self-determination practices (Blagg et al., 2018). However, implementing restorative justice mechanisms must be underpinned by in-depth consultation with Aboriginal and Torres Strait Islander communities, including victims and survivors of sexual violence.

ANROWS has encouraged researchers to trial and evaluate alternative justice mechanisms, co-designed with victims and survivors, that may better support victim and survivor safety, recovery and sense of justice (Lloyd et al., 2023). ANROWS acknowledges that the Standing Council of Attorneys-General in Australia has committed to building a shared evidence base to inform best practice policy development, implementation and evaluation of justice responses to sexual violence, which could include exploring restorative justice practices and alternative reporting mechanisms for sexual offending (Attorney-General's Department, 2022).

Ensure compensation schemes are accessible to victims and survivors of sexual violence

This section addresses the following question:

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

Victims and survivors may experience barriers when seeking compensation. Evidentiary requirements, for example, have been highlighted by workers from the DFSV sector as a barrier to accessing compensation schemes (Hegarty et al., 2022). Cumbersome evidentiary requirements may preclude victims and survivors from applying for victims' compensation because they have either not reported incidents of violence or they did not seek medical attention (Hegarty et al., 2022). There may be many reasons why an individual chooses not to seek medical attention or report sexual violence, including fear of the perpetrator (Cox, 2016). Workers from the DFSV sector have highlighted the particular example that compensation applications to

New South Wales's Victims Services are onerous because changes to the assessment process have meant that the onus is on the victim and survivor to provide medical and reporting evidence of DFSV incidents rather than this being prepared on their behalf. There can also be significant delays in processing applications. The Commission should consider how to ensure compensation schemes are accessible, equitable and trauma informed by assessing the evidentiary and preparations requirements, while ensuring victims and survivors maintain autonomy over their information and disclosure information.

Recommendation 10: Consider how to reduce barriers to accessing compensation schemes for victims and survivors of sexual violence.

Workplace sexual harassment legal mechanisms rely on victims and survivors reporting their experience

This section addresses the following questions:

- 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?

There are limited legal avenues through which victims and survivors can pursue legal action in response to workplace sexual harassment (WSH). Seeking justice in this manner is contingent on a victim and survivor reporting their experience to their workplace, or regulatory body, which does not always occur. A survey with perpetrators of technology-facilitated workplace sexual harassment found that of the respondents who had disclosed perpetrating these behaviours, less than half (38.6%) said that a formal report or complaint had ever been made against them (Flynn et al., 2024). In addition, in the context of technology-facilitated WSH which includes sexual and image-based abuse, legal avenues may not be appropriate due to lack of cooperation from internet and telecommunication service providers, or types of harassing behaviours that are on the edge of the legal parameters and may not be able to be detected by police (Flynn et al., 2024). There are significant initial barriers to pursuing legal avenues in response to WSH.

There could be several reasons why workers do not feel supported to report their experience, as a precursor to legal action. Workers might not report if they lack faith in reporting processes due to concerns that their report wouldn't be taken seriously, acted on, or result in an acceptable outcome (Cooper et al., in press). Reporting incidents of WSH can often lead to no sustained improvement or outcome and can sometimes lead to even further harm (Segrave et al., 2023). Forthcoming ANROWS research on sexual harassment in the retail industry found that workers may have concerns about the trustworthiness and confidentiality of reporting processes, and fear reprisal or retribution if reporting sexual harassment, which has been found to be of particular concern for casual or younger workers (Cooper et al., in press). Reporting processes for sexual harassment in the workplace need improvement, including the installation of safe disclosure mechanisms (Cooper et al., in press). Given the issues surrounding reporting and disclosure, the Commission should consider how feasible it is to consider workplace sexual harassment legal action as an alternate avenue to justice.

In addition to collecting valuable information from people with lived expertise as part of this inquiry, the Commission should also consider the forthcoming outcomes of the Australian Human Rights Commission's (AHRC) *Speaking from Experience* project. The AHRC consultation will seek to better understand the experiences and perspectives of victims and survivors, which may include those who have reported their experience and sought justice through the legal system (AHRC, 2024).

Recommendation 11: Consider how to address barriers to disclosure and reporting workplace sexual harassment, which underpins the ability for victims and survivors to seek legal action as an alternative form of justice.

For more research on workplace sexual harassment, please see the [2021–2024 ANROWS Sexual Harassment Research Program](#).

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ANROWS is an independent, not-for-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to build the evidence base that supports ending violence against women and children in Australia.

ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. Every aspect of our work is motivated by the right of women and children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

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