

May 2024

# Submission in response to ALRC Justice Responses to Sexual Violence Issues Paper



Our Watch

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## Acknowledgement of Country

Our Watch acknowledges the Traditional Owners of the land across Australia on which we work and live. We pay respects to Elders past and present and recognise the continuing connection Aboriginal and Torres Strait Islander people have had to land, culture, knowledge and language for over 65,000 years.

As a non-Aboriginal organisation, Our Watch understands that violence against Aboriginal and Torres Strait Islander women and children is a problem facing the whole community. As highlighted in Our Watch's national resource *Changing the picture*, there is an intersection between racism, sexism and violence against Aboriginal and Torres Strait Islander women.

Our Watch has an ongoing commitment to the prevention of violence against Aboriginal and Torres Strait Islander women and children, who continue to experience violence at significantly higher rates than non-Aboriginal women. We acknowledge all Aboriginal and Torres Strait Islander people who continue to lead the work of sharing knowledge with non-Aboriginal people and relentlessly advocate for an equitable, violence-free future in Australia.

## About Our Watch

Our Watch is a national leader in the primary prevention of violence against women and their children in Australia. We are an independent, not for profit organisation established by the Commonwealth and Victorian Governments in 2013. All Australian governments are members of Our Watch.

Our vision is an Australia where women and their children live free from all forms of violence. We aim to drive nation-wide change in the culture, behaviours, attitudes, systems, institutions and social structures that drive violence against women. Guided by our ground-breaking national frameworks, *Change the story* (2<sup>nd</sup> ed 2021)<sup>1</sup>, *Changing the picture* (2018)<sup>2</sup> and *Changing the landscape* (2022),<sup>3</sup> we work at all levels of our society to address the deeply entrenched, underlying drivers of violence against women. We work with governments, practitioners, and the community, at all levels of Australian society, to address these drivers of violence in all settings where people live, learn, work, and socialise.

## About this Submission

Our Watch welcomes the opportunity to provide a submission in response to the Australian Law Reform Commission (ALRC) Justice Responses to Sexual Violence Issues Paper. In line with Our Watch's expertise and evidence base on the primary prevention of violence against women, this submission focuses on opportunities to embed and strengthen prevention actions within the justice system's response to sexual violence.

Australia's justice system operates within a broader social context of gender inequalities and intersecting forms of discrimination, oppression, power and privilege. Primary prevention aims to stop violence before it starts by addressing this social context. In this submission Our Watch highlights the areas in which there are opportunities for primary prevention of violence against women in the legal and justice sectors, including in police, courts, and legal services.

Our Watch is a national organisation and works nationally as well as in every state and territory. The reflections and recommendations made in this submission reflect this experience and expertise, and are designed to assist the ALRC to consider recommendations that can be made at a Commonwealth, state and territory level as well as for potential harmonisation of laws.

This submission responds to the following Terms of Reference:

1. In undertaking this reference, the ALRC should have regard to:
  - b. Laws about consent*
  - c. Policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors*
  - d. Training and professional development for judges, police, and legal practitioners to enable trauma-informed and culturally safe justice responses.*
2. *In the context of the significant under-reporting of sexual violence and the limited prosecution of reported cases, the ALRC should take a trauma-informed, holistic, whole-of-systems and transformative approach. The ALRC should also consider the particular impact(s) of laws and legal frameworks on population cohorts that are disproportionately reflected in sexual violence statistics, and on those with identities intersecting across cohorts, including:*
  - b. First Nations people*
  - d. People with disability*
  - e. People who are Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Brotherboy, Sistergirl, or who have other genders and sexualities (LGBTQIA+).*

We welcome the opportunity to provide further advice or assistance to the Commission in relation to the issues outlined in this submission. Please contact Director of Government Relations, Policy and Evidence, Amanda Alford at [amanda.alford@ourwatch.org.au](mailto:amanda.alford@ourwatch.org.au).

### Key Recommendations

#### Question 1(b): Laws about consent

- 1(b).1. State and Territory Governments strengthen consent laws as a prevention mechanism, including through the implementation of an affirmative consent model.
- 1(b).2. Commonwealth and State and Territory Governments ensure reforms to consent laws are accompanied by community education, training and capacity building, workforce development and broader prevention initiatives and activities.

Question 1(c): Policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors

- 1(c).1. The Australasian Institute of Judicial Administration develop a National Sexual Violence Bench Book or strengthen the existing National Family and Domestic Violence Bench Book, to incorporate evidence-based information about sexual violence and the gendered drivers of violence.
- 1(c).2. The Law Council of Australia and Australian Bar Association work with state and territory legal profession peak bodies to consider ways to ensure practice rules, procedures and practice appropriately address the gendered drivers of violence against women.

Question 1(d): Training and professional development for judges, police and legal practitioners to enable trauma-informed and culturally safe justice responses

- 1(d).1. Ensure education and training for the judiciary, legal practitioners and the police incorporates a comprehensive understanding of violence against women, including the gendered drivers of violence, evidence-based information about sexual violence, and intersectionality.
- 1(d).2. The Law Council of Australia and state and territory peak legal professional bodies support mandatory high-quality, evidence-based, best-practice ongoing training and professional development for all legal practitioners in relation to domestic, family and sexual violence, including the gendered drivers of violence against women.
- 1(d).3. Universities, colleges and legal profession peak bodies work collaboratively to identify ways to more formally integrate knowledge and skills in relation to domestic, family and sexual violence and the gendered drivers of violence against women into legal education.

Question 2: ...the particular impact(s) of laws and legal frameworks on population cohorts that are disproportionately reflected in sexual violence statistics.

- 2(b).1. Implement the essential actions identified in national frameworks *Changing the picture* and *Changing the landscape* for Aboriginal and Torres Strait Islander women and women with disability, as well as recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability relevant to the justice system.
- 2(b).2. In line with the Closing the Gap National Agreement, governments engage in full and genuine partnership with Aboriginal and Torres Strait Islander communities, Aboriginal Community Controlled Organisations and peak

bodies to design justice system reforms that promote the safety of women and children.

## Context

### Violence Against Women

Violence against women is recognised as a serious and widespread problem across Australia, with significant individual and community impacts and social costs.

Women are sexually assaulted at a rate much higher than men. Based on the 2021-22 Personal Safety Survey (PSS), 22 per cent of women and 6.1 per cent of men have experienced sexual violence since the age of 15.<sup>4</sup> Women are far more likely than men to experience sexual violence (and other forms of violence) from an intimate partner, and with more severe impacts.<sup>5</sup> At least one in two women have experienced sexual harassment during their lifetime, with some data suggesting the rate is much higher, especially for women who experience intersecting forms of discrimination and oppression such as racism, ableism, and homo-, bi- and transphobia.<sup>6</sup>

Problematic misconceptions about sexual violence, sexual consent, and victims and survivors remain evident in the Australian community. The 2021 National Community Attitudes Towards Violence Against Women Survey (NCAS) found that a sizeable minority of respondents believed women lie about sexual assault as a way of “getting back at men” (34 per cent) or because they later regret consensual sexual interactions (24 per cent).<sup>7</sup> Women who experience violence while intoxicated are often implicitly or explicitly blamed for the violence perpetrated against them; 10 per cent of Australians believe that if a woman is raped while drunk or affected by drugs, she is at least partly responsible.<sup>8</sup>

### Prevention of violence against women

Our Watch’s evidence-based national framework, *Change the story*, identifies that gender inequality sets the social context in which violence against women occurs and makes clear that the drivers of this violence are gendered. It outlines a primary prevention approach to stop violence against women from occurring in the first place and to change the underlying social conditions that produce and drive this violence. *Change the story* identifies legal and justice sectors, including youth justice, corrections, police, courts, and legal services, as priority settings for primary prevention of violence against women.

The factors *Change the story* terms as the ‘gendered drivers’ of violence arise from gender-discriminatory institutional, social, and economic structures, social and cultural norms, and organisational, community, family and relationship practices that together create environments in which women and men are not considered equal, and violence against women is both more likely, and more likely to be tolerated and even condoned.

The gendered drivers of violence against women are:

- Driver 1: Condoning of violence against women.

- Driver 2: Men's control of decision-making and limits to women's independence in public and private life.
- Driver 3: Rigid gender stereotyping and dominant forms of masculinity.
- Driver 4: Male peer relations and cultures of masculinity that emphasise aggression, dominance and control.<sup>9</sup>

The justice system plays a significant role in influencing and reinforcing these community norms, and as a result it has a crucial role to play in addressing the gendered drivers.

*Change the story* also identifies four reinforcing factors:

- Reinforcing Factor 1: Condoning of violence in general.
- Reinforcing Factor 2: Experience of, and exposure to, violence.
- Reinforcing Factor 3: Factors that weaken prosocial behaviour.
- Reinforcing Factor 4: Backlash and resistance to prevention and gender equality.

These are factors that each play a role in influencing the occurrence or dynamics of violence against women.<sup>10</sup>

*Change the story* outlines eight essential actions and four supporting actions that correspond to addressing the gendered drivers of violence against women, the social context of gender and other inequalities, and the reinforcing factors.<sup>11</sup>

The intersectional approach embedded throughout *Change the story* recognises that violence and gender inequality exist in relation to multiple and intersecting systems of sexism, racism, colonialism, classism, heteronormativity, cisnormativity, homo-, bi- and transphobia, ableism and ageism, and their corresponding systems of power and privilege. An effective primary approach addresses these intersecting systems of structured inequality.

The National Plan to End Violence Against Women and Children 2022-2032 (the National Plan) identifies four priority areas for action – prevention, early intervention, response, and recovery and healing. Primary prevention is a distinct approach that complements and enhances each of the other priority areas. The justice system has an existing role in addressing violence against women in early intervention, response and healing and recovery domains. There are opportunities for a stronger primary prevention focus and action within the justice system. This includes building understanding about the dynamics of violence against women and challenging the persistence of myths and misconceptions about this violence.

## **Prior Inquiries and Reviews**

As acknowledged in the Terms of Reference for the ALRC Inquiry, there have been a number of relevant inquiries regarding sexual violence and the justice system, a number of which are cited in this submission.

Our Watch encourages the ALRC to consider findings and recommendations made in previous inquiries and reviews about ways to strengthen justice system approaches to the prevention of violence against women, including sexual violence. For example, there is an opportunity to build upon recommendations previously made by the ALRC in *'Family Violence- A National Legal Response'* (ALRC Report 114).

While many of the relevant inquiries and reviews have been jurisdictional specific, there are opportunities to consider the common threads and themes as well as for potential



harmonisation. For example, the Victorian Law Reform Commission report on *Improving the Justice System Responses to Sexual Offences* recognised the important role the justice system can play in preventing sexual violence. It provides a series of recommendations to the Victorian Government related to prevention, including resourcing, and supporting ongoing public education about sexual violence including best-practice Respectful Relationships Education (RRE) in schools, reviewing and amending legislation to eliminate sexual harassment and sexual violence as far as possible, and development of a Sexual Assault Strategy that addresses prevention, early intervention, response, and recovery and healing. The ALRC should consider these recommendations and their applicability at the national level to prevent sexual violence.

## Responses to Terms of Reference

### Question 1(b): Laws about consent

Our Watch supports strengthening consent laws as a prevention mechanism, including through the implementation of an affirmative consent model. However, legislation alone does not create societal change. Its efficacy is reliant upon resourcing, effective implementation, and accompanying community education. This includes, for example, evidence-based primary prevention activities such as whole-of-school Respectful Relationships Education (RRE), primary prevention workforce development activities including education and training across the justice system, and effective monitoring and evaluation of the effectiveness of consent laws.<sup>12</sup>

#### Affirmative Consent and Prevention

A primary prevention approach includes ensuring sexual relationships are based on the principles of consent, agency, communication and mutual pleasure. In adopting an affirmative model of consent, states and territories challenge rigid norms, practices and structures that have historically condoned, excused or ignored violence against women.

Affirmative consent models have been adopted in Tasmania, Queensland, Victoria, New South Wales, Australian Capital Territory.<sup>13</sup> Affirmative consent means individuals have a responsibility to obtain consent before engaging in sexual activity. Under the Commonwealth Consent Framework, this consent must be:

1. Free and voluntary;
2. Specific and informed;
3. Affirmative, meaning sexual partners need to actively say or do something to check for consent;
4. Ongoing and mutual; and
5. Reflect capacity; everyone involved in a sexual act needs to have the capacity to reach, communicate or withhold consent.<sup>14</sup>

#### Education and Cultural Change

Legal frameworks that assess consent based on a set of physical actions or verbal responses require adequate resourcing, effective implementation, and community



education. For example, New South Wales's affirmative consent legislation was accompanied by the #MakeNoDoubt campaign, which provides videos on how and when to seek consent, language guides on affirmative consent, and accessible explanations on the components of sexual consent.<sup>15</sup>

### ***Respectful relationships education***

The fundamental principles of bodily autonomy, mutual respect, enthusiasm, and willingness should be the focus of a comprehensive approach to consent education, as opposed to a focus on legal definitions only. Consent education should occur as one part of broader education as outlined in evidence-based RRE prevention activities. RRE is a whole-of-school approach that includes teaching and learning about gender equality, sexuality, and respectful relationships in addition to consent.<sup>16</sup> RRE uses the education system as a catalyst for generational and cultural change by engaging schools, as both education institutions and workplaces, to comprehensively address the drivers of gender-based violence, including sexual violence, and create a future free from such violence. Implementing RRE—in which education on consent is one part of—will support broader cultural change required to promote respectful sexual behaviour and relationships and prevent violence, as outlined in the Commonwealth Consent Policy Framework (2023).<sup>17</sup>

### ***Workforce development activities across the justice system***

There are opportunities to ensure that reforming consent laws are accompanied by clear communication and workforce development activities for members of the judiciary, legal professionals and the police to support accompanying cultural change. Our Watch recommends building the knowledge, capabilities and skills on the drivers of violence against women and the principles and legalities of consent through workforce development activities.<sup>18</sup> Activities can consider opportunities to challenge outdated ideas of consent that are found within the justice system that condone violence against women (Gender driver 1).<sup>19</sup> Our Watch's evidence review Growing with change: Developing an expert workforce to prevent violence against women outlines ways to build primary prevention knowledge, capabilities and skills across the justice system.

### ***Measuring the impact and effectiveness of consent laws***

Our Watch suggests that any new consent legislation be accompanied by monitoring, evaluation, and regular review. In addition to review of the implementation of the legislation, there is an opportunity to evaluate the broader impact of changes to the law and accompanying strategies. Counting on Change: A guide to prevention monitoring (2017) explains that decreasing the prevalence of violence against women is a long-term goal, and that other short-term and medium-term indicators are necessary to track progress towards this goal.

## **Recommendations**

- 1(b).1. State and Territory Governments strengthen consent laws as a prevention mechanism, including through the implementation of an affirmative consent model.

- 1(b).2. Commonwealth and State and Territory Governments ensure reforms to consent laws are accompanied by community education, training and capacity building, workforce development and broader prevention initiatives and activities.

**Question 1(c): Policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors and Question 1(d): Training and professional development for judges, police and legal practitioners to enable trauma-informed and culturally safe justice responses**

Our Watch encourages the ALRC to make recommendations that strengthen policies and practices across the justice system to address the gendered drivers of violence. Legal, justice and corrections agencies provide an important foundation for primary prevention of violence against women by ensuring safety for victim-survivors and accountability for perpetrators.<sup>20</sup> The justice system has the opportunity to influence community norms and attitudes, both through judgements and sentencing of perpetrators, but also by legal practitioners, judges and police promoting equality and respect, in line with addressing gendered drivers 1, 2 and 4 in *Change the story*. There is an opportunity to build upon recommendations previously made by the ALRC in 'Family Violence- A National Legal Response' (ALRC Report 114) in 2010, including in relation to education and training in family violence, to encompass a specific focus on sexual violence.<sup>21</sup>

**Driver 1: Condoning of violence against women**

The justice system plays a significant role in influencing and reinforcing community norms and may inadvertently tolerate, condone, justify, or excuse violence against women. Levels of gendered violence are higher when societies, institutions, communities or individuals support or condone violence against women,<sup>22</sup><sup>[OBJ]</sup>

Action 1 (Challenge the condoning of violence against women) in *Change the story* highlights the need to reform legal, policy and institutional systems and practices that in their operation may implicitly or explicitly condone violence against women or reduce men's accountability for their violence. It also speaks to the importance of shifting community attitudes and social norms that justify, excuse, trivialise or downplay violence against women.<sup>23</sup>

***Legal practitioners and the judiciary***

Evidence indicates that there are ongoing misconceptions about sexual violence by some legal practitioners and members of the judiciary. For example, the 2023 Commonwealth Senate *Inquiry into Current and proposed sexual consent laws in Australia* (the Senate Inquiry) heard that some legal practitioners intentionally or unintentionally deploy rape myths and misconceptions during the course of a trial<sup>24</sup> and that rape myths, held by both defence and prosecuting barristers, are a persistent impediment for achieving justice for sexual offence complaints.<sup>25</sup> The Senate Inquiry heard that this contributes to the

prevalence of sexual violence and the ways in which some members of the community, police, legal practitioners, and judicial officers respond to sexual assault.<sup>26</sup>

There are a range of existing professional rules and standards that govern professional conduct for legal practitioners. However, there are opportunities for reform to strengthen these rules, standards and associated sanctions, in addition to mandatory education and training, to ensure an evidence-based understanding of sexual violence and inappropriate judicial process violence against women proceedings.<sup>27</sup> There may appropriately be a role for the Law Council of Australia, Australian Bar Association state and territory legal profession peak bodies to lead and contribute to this work. There are a number of examples of bench books, best practice guidelines and similar being developed across jurisdictions.

In addition, there have been a range of consultations and discussions about ways in which knowledge and skills in relation to domestic, family and sexual violence (as well as the gendered drivers of violence against women) could be more formally integrated into undergraduate legal education and practical legal training. Building on the ALRC's recommendations in Report 114 in relation to family violence, Our Watch encourages the ALRC to further consider this issue and make recommendations on progressing increased learning and development nationally.

There is also value in ensuring ongoing training and education for the judiciary, building on existing training, to mitigate norms, practices and structures that may reinforce myths and misconceptions. Our Watch supports the Senate Inquiry's recommendation to deliver a National Sexual Violence Bench Book or, at a minimum, a section within the existing National Family and Domestic Violence Bench Book, to recognise the gravity of sexual offences and include reference to the gendered drivers of violence against women.

### ***Police and law enforcement***

Services, institutions, and organisations responsible for responding to violence against women, including police, can also play a role in dismissing or downplaying violence.<sup>28</sup> The police are a key part of the law enforcement and justice system that intersects with the courts, corrections, youth justice, child protection, social services, the media and community. Police have a critical role as first responders that can impact whether further harm is caused to victim survivors and communities impacted by violence against women and in shaping behaviours and attitudes in the community. However, evidence indicates that rape myths continue to impact the way in which some police respond to reports of sexual violence<sup>29</sup> and engage with victims.<sup>30</sup>

### ***Jurors***

Community misconceptions about sexual violence can also influence how jurors make sense of evidence, who they view as responsible and blame-worthy for sexual violence, and how they determine the verdict. The Senate Inquiry referred to above heard that jurors, like other members of the community, can be influenced by myths and misconceptions about sexual violence and consent, including, for example, that physical resistance is required to demonstrate a lack of consent.<sup>31</sup>

### ***Conclusion***

Our Watch acknowledges existing Commonwealth Government commitments to implement justice system training on sexual violence. These include commitments under the First Action Plan 2023-2027 Activities Addendum under the National Plan, to invest in a national training and education package to enhance police responses on a series of family, domestic and sexual violence matters; funding for a national justice sector education and training package on the nature and impacts of sexual assault; and action under the three priority areas of the Standing Council of Attorney-General's Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027.<sup>32</sup>

Our Watch welcomes these commitments and recommends that all training and education provided to police, members of the judiciary and legal practitioners is evidence-based; grounded in an understanding of the gendered drivers of violence, evidence-based information on sexual violence and the intersecting forms of oppression and discrimination that impact the forms, dynamics, prevalence of violence for some women; and subject to regular monitoring and evaluation.

**Driver 2: Men's control of decision-making and limits to women's independence in public and private life; and Driver 4: male peer relations and cultures of masculinity that emphasise aggression, dominance and control.**

Promoting gender equality within the justice system is crucial to preventing violence against women. Men continue to hold the majority of leadership and decision-making roles (Gender driver 2) in legal institutions, including the police force and judiciary, affording them power and influence, while issues such as workplace sexual harassment remain prevalent.<sup>33</sup> At a national level, female solicitors now outnumber male solicitors in all states and territories – 53 per cent of all solicitors are female.<sup>34</sup> However, women remain under-represented in senior leadership roles, including as partners, principals, barristers, and judicial members.<sup>35</sup> The police force is also a male dominated setting with proportion of female staff varying across jurisdictions from 22.3 to 33.8 per cent.<sup>36</sup> Systemic and institutional expressions of gender inequality within the justice system can reinforce or perpetuate the gendered drivers of violence against women.

As a result of these institutional inequalities, men have much greater control of public resources, power, and decisions generally, but also over the kinds of policies and laws that directly affect women. Institutions and/or organisations that are dominated by men, particularly at a leadership or governance level, are more likely to be influenced by negative masculine peer cultures. Structural factors – such as poor organisational cultures, a lack of effective policies, a lack of cultural leadership and inadequate penalties – can reinforce, support or excuse violence-supportive, homophobic, or sexist attitudes and behaviour in these contexts.<sup>37</sup>

These norms and behaviours remain evident across the justice system. According to the Law Council National Attrition and Reengagement Study (the NARS), approximately one in four women have experienced sexual harassment in their legal workplace.<sup>38</sup> Research by the University of Sydney showed that more than three-quarters (78 per cent) of women and just over half of men (53 per cent) surveyed agreed that sexual harassment is a problem in the legal profession, with only 16 per cent of women and 33 per cent of men agreeing that it is being adequately addressed. They also found that significant gendered inequalities played

out across multiple dimensions, including bullying, access to prestigious cases and projects, in client's relationships, promotion opportunities, and in support for work-life balance.<sup>39</sup>

Similarly, evidence indicates that there is a culture of organisational sexism within police forces, including high rates of workplace sexual harassment.<sup>40</sup> For example, several reviews across jurisdictions (Queensland, Victoria, South Australia) highlight the influence of hierarchical workplace structures, the value placed on masculine stereotypes (tough, assertive, non-emotional), behaviours and attitudes that condone violence against women, and influence of informal organisational culture as contributing to a culture of everyday sexism and "high tolerance for sexualised behaviour and interactions in the workplace".<sup>41</sup>

The justice system is an important setting for action and there are opportunities for further prevention action. For example, essential actions 2, 5 and 7 in *Change the story* aim to increase women's representation at community, organisational, institutional and policy levels and promote and normalise gender equality in public life. Essential Actions 4 and 7 address harmful expressions of masculinity, including at an organisational and institutional level.

There are opportunities to expand on existing initiatives to support organisations and institutions to promote safety, respect and equality across the justice system. This includes, by way of example, adopting and implementing Workplace Equality and Respect and broader training and education on the drivers of violence against women and gender equality across the justice system. The Women's Legal Service Victoria's It Starts With Us Framework guide provides a useful example of resources that can support creation of gender equitable and safe legal and justice workplaces.

## Recommendations

Our Watch considers that there are opportunities to make recommendations that could address gendered drivers of violence against women, including sexual violence, in the justice system, including through policy and practice, and training and development, as outlined below.

### Policy and Practice

- 1(c).1. The Australasian Institute of Judicial Administration develop a National Sexual Violence Bench Book or strengthen the existing National Family and Domestic Violence Bench Book, to incorporate evidence-based information about sexual violence and the gendered drivers of violence.
- 1(c).2. The Law Council of Australia and Australian Bar Association work with state and territory legal profession peak bodies to consider ways to ensure practice rules, procedures and practice appropriately address the gendered drivers of violence against women.

### Training and Professional Development

- 1(d).1. Ensure education and training for the judiciary, legal practitioners and the police incorporate a comprehensive understanding of violence against women, including the gendered drivers of violence, evidence-based information about sexual violence, and intersectionality.



- 1(d).2. The Law Council of Australia and state and territory peak legal professional bodies support mandatory high-quality, evidence-based, best-practice ongoing training and professional development for all legal practitioners in relation to domestic, family and sexual violence, including the gendered drivers of violence against women.
- 1(d).3. Universities, colleges and legal profession peak bodies work collaboratively to identify ways to more formally integrate knowledge and skills in relation to domestic, family and sexual violence and the gendered drivers of violence against women into legal education.

**Question 2: In the context of the significant under-reporting of sexual violence and the limited prosecution of reported cases, the ALRC should take a trauma-informed, holistic, whole-of-systems and transformative approach. The ALRC should also consider the particular impact(s) of laws and legal frameworks on population cohorts that are disproportionately reflected in sexual violence statistics.**

The drivers, perpetration and experience of violence vary significantly for different groups of Australian women, including LGBTIQ+ people, Aboriginal and Torres Strait Islander women, women and girls with disabilities. For many women, there are additional barriers to reporting experiences of violence and engaging safely in the justice system due to the ways in which different and multiple systems and structures of oppression and discrimination intersect and reinforce each other. Preventing this violence and addressing barriers to reporting should be a priority of reform for the justice system.

Our Watch's response to this question highlights Aboriginal and Torres Strait Islander women, women and girls with disabilities, and LGBTIQ+ people due to our existing evidence base and/or ongoing projects. We recommend the ALRC adopt a comprehensive and intersectional approach to preventing violence against all women that may not be explicitly referred to here.

In addition, Our Watch made recommendations earlier in this submission about education and training for police, members of the judiciary and legal practitioners. Importantly, this training should incorporate evidence-based information on the experiences of specific population groups whose experiences of violence and discrimination can be compounded, including Aboriginal and Torres Strait Islander women, women with disabilities and LGBTIQ+ people. Training should address the specific drivers of violence identified in *Changing the picture* and *Changing the landscape*, as well as heteronormativity and cisnormativity and the social context of gender and intersecting inequalities and be monitored and evaluated for effectiveness.

## **2 (b) *Aboriginal and Torres Strait Islander Women and the justice system***

Aboriginal and Torres Strait Islander women experience disproportionately high rates of violence, and violence that is often more severe and complex in its impacts. Data is limited; however, figures show Aboriginal and Torres Strait Islander peoples are around three and a half times more likely to have been the victim of sexual assault compared to non-Aboriginal Australians.<sup>42</sup> Gender inequality cannot be separated from other forms of oppression and

inequality. *Changing the picture*, a national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children, outlines additional drivers of violence against Aboriginal and Torres Strait Islander women, including:

- The ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people, families and communities.
- Ongoing impacts of colonisation for non-Indigenous people and society.
- Additional gendered drivers of violence against Aboriginal and Torres Strait Islander women.<sup>43</sup>

In addition to these drivers of violence, *Changing the landscape*, a national resource to prevent violence against women and girls with disabilities, outlines the ableist drivers of violence, which mean that for Aboriginal and Torres Strait Islander women with disabilities, experiences of violence are compounded. This increases their risk of experiencing sexual violence and leads to greater disadvantage and victimisation.<sup>44</sup>

Aboriginal and Torres Strait Islander women also face a number of specific, complex and compounding barriers to accessing the justice system, including fear of child removal, lack of cultural safety and family violence sensitivity, risk of re-traumatisation and further violence, and limited resourcing of specialist culturally safe services. Our Watch encourages the ALRC to align any recommendations it makes in this Inquiry with the *Closing the Gap* targets.

There continues to be low representation of Aboriginal and Torres Strait Islander people working in the justice system. For example, the proportion of Aboriginal and Torres Strait Islander solicitors stands at 0.8 per cent and has not changed since 2014.<sup>45</sup> Similarly, nationally in 2022-23, 2.3 per cent of police (operational and non-operational) identified as Aboriginal and Torres Strait Islander. In all jurisdictions except New South Wales and the Australian Capital Territory, the proportion of Aboriginal and Torres Strait Islander police was lower than the proportion of Aboriginal and Torres Strait Islander people in the population.<sup>46</sup> Addressing this imbalance is crucial for fostering a justice system that is trusted, fair, and representative of the entire population.

The *Wiyi Yani U Thangani* report explicitly highlights the mistrust of police and intergenerational context of police violence since colonisation.<sup>47</sup> Similarly, the current standalone *Aboriginal and Torres Strait Islander Action Plan 2023-2025* identifies the complexities of Aboriginal and Torres Strait Islander women's engagement with law enforcement, stating:

*What we do know is that Aboriginal and Torres Strait Islander women are less likely to seek help or report violence because of racism, including past government practices, and a mistrust of police and mainstream services often arising from previous experiences of reporting violence, misidentification of victims as perpetrators, lack of services availability, and experiences of incarceration and child removal.*<sup>48</sup>

The Action Plan also states:

*The criminal justice system and police, as first responders, can impact whether further harm is caused to Aboriginal and Torres Strait Islander women and children. Aboriginal and Torres Strait Islander women described a fundamental mistrust and fear of the police and concern for their ability to act in the interest of the victim-survivors or believe*



*they won't get a positive response. Police forces across the country can be strengthened by including human rights, trauma-informed, cultural and gender-responsive training to better respond to violence against women and the impact of child removal.*<sup>49</sup>

The Action Plan outlines actions for the development of trauma-informed and culturally safe response models to minimise re-traumatisation of victim-survivors of sexual violence through the criminal justice system and increase how often victim-survivors feel they have been believed and treated with sensitivity and empathy. There are opportunities to embed these actions across the justice system.

Our Watch encourages the ALRC to consider the essential actions identified in *Changing the picture* to prevent violence against Aboriginal and Torres Strait Islander women which are relevant to the justice system. These include:

- increasing access to justice for Aboriginal and Torres Strait Islander people; addressing power inequalities, particularly in decision-making positions
- identifying and amending racist and discriminatory laws, policies and organisational and institutional practices
- challenging the condoning of violence against Aboriginal and Torres Strait Islander people
- challenging the condoning of violence against Aboriginal and Torres Strait Islander women
- supporting Aboriginal and Torres Strait Islander women's participation in leadership and decision-making.<sup>50</sup>

In light of the commitment to develop a new standalone National Plan to End Violence against Aboriginal and Torres Strait Islander Women and Children, Our Watch encourages the ALRC to engage with the Advisory Committee developing the Plan and consider ways it may appropriately identify and respond to these issues and actions.

Finally, prevention that seeks to engage Aboriginal and Torres Strait Islander people should be undertaken by practitioners who understand the impacts of intergenerational trauma. It is important practitioners have the knowledge, training and skills to recognise and effectively respond to the impacts of this collective and individual trauma in ways that support Aboriginal and Torres Strait Islander people to manage its impacts constructively. Where prevention work is undertaken by mainstream services or agencies in the justice system, Our Watch encourages the ALRC to highlight the importance of organisations' cultural awareness and competency to ensure they provide a culturally safe environment for Aboriginal and Torres Strait Islander people. In particular, this could involve appropriate training to better understand the transgenerational trauma that Aboriginal and Torres Strait Islander people and communities experience, and its implications.

## **2 (d) Women and girls with disabilities and the justice system**

Across Australia, women and girls with disabilities experience abuse and neglect at a much higher rate than men with disabilities or people without disabilities.<sup>51</sup> Data from the 2021-22 PSS showed that in the previous two years a higher proportion of women with disability had experienced sexual violence (4 per cent) compared to women without disability (2.5 per

cent) and higher rates of sexual harassment in the previous 12 months (14 per cent and 12 per cent respectively).<sup>52</sup>

Women and girls with disabilities are more likely to experience additional forms of violence such as denial of legal capacity, forced treatment, restrictive practices, seclusion, restraint, and indefinite detention. Building understanding of the gendered and ableist drivers of violence against women with disabilities among legal practitioners is vital to ensure legal processes and justice are accessible for all.

In cases of sexual violence, allegations brought by women and girls with disability can involve additional scrutiny as a result of ableist attitudes and practices which means they can be less likely to be believed.<sup>53</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability reported a lack of understanding by the police about the experiences and needs of women with disability reporting sexual or family violence. Without this understanding, police risk being a barrier.<sup>54</sup>

*Changing the landscape*, a national resource to prevent violence against women and girls with disabilities, identifies four ableist drivers of violence against women and girls, these include:

- Driver 1: Negative stereotypes about people with disabilities.
- Driver 2: Accepting or normalising violence, disrespect and discrimination against people with disabilities.
- Driver 3: Controlling people with disabilities' decision-making and limiting independence.
- Driver 4: Social segregation and exclusion of people with disabilities.

There are opportunities for prevention work and initiatives across the justice system to recognise the intersections between the gendered and ableist drivers identified in *Changing the landscape*. Ableist driver 4 specifically points to barriers that people with disability face in accessing the justice system as an example of social segregation and exclusion that contributes to high rates of violence.<sup>55</sup>

*Changing the landscape* identifies six essential actions that must be adopted to tackle the underlying drivers of violence against women with disabilities.<sup>56</sup> Essential Action 2, for example, identifies the need to 'Challenge the acceptance and normalisation of violence against women and girls with disabilities.' This includes reforming systems and practices that contribute to discriminatory attitudes and ensuring equal access to reporting mechanisms, rights protection, an inclusive justice system, and support services.<sup>57</sup> As a result, the justice system has a role to play in preventing violence against women and girls with disabilities, including sexual violence, by increasing understanding across the system of the drivers of this violence, and undertaking steps to improve justice responses to sexual violence cases and ensuring the justice system is inclusive of women and girls with disabilities.

In line with the National Agreement on Closing the Gap and Targets 10 and 11, there are opportunities for governments across Australia to engage in 'full and genuine partnership'<sup>58</sup> with Aboriginal and Torres Strait Islander communities, Aboriginal Community Controlled Organisations and peak bodies to design justice system reforms that address these issues.

## **2 (e) LGBTIQ+ people and communities and the justice system**

LGBTIQA+ people experience particularly high rates of sexual violence. Almost half (49 per cent) of respondents to the national Private Lives 3 survey indicated having experienced sexual assault.<sup>59</sup> Violence against LGBTIQA+ people have far-reaching impacts, including homelessness and poor mental health outcomes.<sup>60</sup> Trauma informed, holistic and whole-of-systems and transformative approaches to address sexual violence against LGBTIQA+ must consider these broader consequences on LGBTIQA+ people's lives. This is recognised in the National Plan which highlights the need for safe, inclusive and affirming services for all LGBTIQA+ people who have experienced violence.

Evidence indicates that there is significant overlap between the drivers of violence against women and LGBTIQA+ communities, including rigid gender norms, heteronormativity and cisnormativity and the social context of gender and intersecting inequalities.<sup>61</sup> As a result, work towards preventing violence against women mutually reinforces work to prevent violence against LGBTIQA+ people.

Our Watch supports the work and expertise of specialist LGBTIQA+ organisations in leading the prevention of violence against LGBTIQA+ people and communities. For example, Our Watch has partnered with [Rainbow Health Australia](#) to develop a national framework to prevent gender-based violence against LGBTIQA+ people and communities. Our Watch encourages the ALRC to consider the intersecting forms of rigid gender norms, heteronormativity and cisnormativity and the social context of gender and intersecting inequalities contribute to violence against LGBTIQA+ people.

There are significant data gaps in relation to experiences of violence by members of the LGBTIQA+ community, including in relation to prevalence of sexual violence amongst LGBTIQA+ Aboriginal and Torres Strait Islander peoples. Our Watch suggests there are opportunities for the ALRC to consider and make recommendations about strengthening existing data collection mechanisms to respond to these gaps and ensure a strong foundation for evidence based decision making.

## **Recommendations**

- 2(b).1. Implement the essential actions identified in national frameworks *Changing the picture* and *Changing the landscape* for Aboriginal and Torres Strait Islander women and women with disability, as well as recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability relevant to the justice system.
- 2(b).2. In line with the Closing the Gap National Agreement, governments engage in full and genuine partnership with Aboriginal and Torres Strait Islander communities, Aboriginal Community Controlled Organisations and peak bodies to design justice system reforms that promote the safety of women and children.

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