

A false consensus

Submission to the ALRC inquiry on Justice Responses to Sexual Violence

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Key points

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- This submission draws on recent research about the general veracity of sexual assault allegations. Our work has garnered support from some sexual violence academics, and led to the AIFS, ANROWS and the ABC removing or revising statements on the issue.
- We found that the recent consensus among sexual violence academics and women's safety advocates that evidence shows that almost all sexual assault allegations are true, and that false allegations are extremely rare, is itself false. There is no robust way to determine the prevalence rate of false sexual assault allegations.
- This weakens several mainstream positions pertaining to sexual violence, and has several ramifications for the inquiry.

About this submission and the authors

This submission is made in response to Issues Paper 49 released by the Australian Law Reform Commission (ALRC) on 16 April 2024. The issues paper contains a range of questions on which feedback is specifically sought, while also noting that the ALRC will welcome other material that is relevant to the inquiry.

This submission focuses on the prevalence of false sexual assault allegations. While the issues paper does not mention this topic directly, the view that false sexual assault allegations are not uncommon is one of the "myths and misconceptions" about sexual assault that are often discussed in the sexual violence literature, and which are referred to in the issues paper. It also seems likely that the ALRC would want, for various reasons (discussed below), to consider the prevalence matter in formulating its report to government.

Last year we published a research paper that reviewed the key empirical studies on the prevalence rate. That review, and our related interactions with women's safety advocates, informs much of this submission. Importantly, our research has received support from some key academics in the sexual violence field, including the lead researcher for one of the prevalence studies we reviewed, and has led to two women's safety agencies and the national broadcaster withdrawing or amending their reports about the prevalence of false allegations. We gave several other sexual violence academics opportunities to respond to our review but most declined to do so.

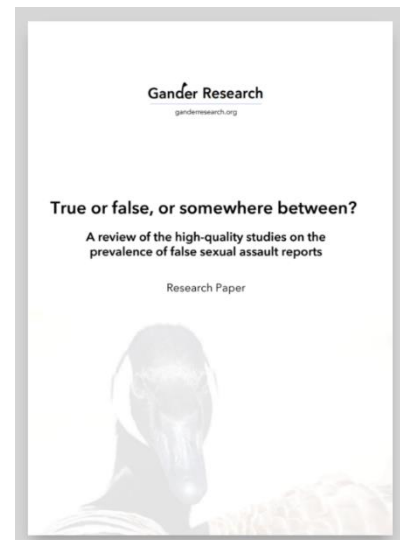
For further background, we both worked for more than thirty years as governmental researchers and policy advisors dealing with various social, cultural, economic and legal issues, and we have extensive experience in handling statistics and critiquing empirical research. Between us we have

masters degrees in economics and public policy, and one of us is currently engaged in further gender studies, including in critical criminology. We are now independent researchers and have established ganderresearch.org to host research on gender issues.

The prevalence rate issue

Below we explain what the prevalence rate is and why perceptions about it matter (including for the ALRC's inquiry); how the recent consensus that evidence shows that the prevalence rate is very low has come about; what women's safety advocates have made of low prevalence rate estimates; and why the "consensus view", as we shall call it, is incorrect.

Much of what follows is drawn from our research paper (right) and related documents, and the references cited therein. These are available at ganderresearch.org. We have also used boxes to partition less-essential material that provides examples of, or elaboration on, the main points covered.



Why views on the prevalence of false sexual assault allegations matter

Rape and other forms of sexual assault can ruin lives. Most perpetrators are male; the victims are mainly female. There is little doubt that the majority of sexual assault allegations are true, although the sexual violence literature also recognises that some are false. The share of all sexual assault reports that are false is termed the prevalence rate.

A feature of sexual assault cases is that it is often difficult to determine with much certainty whether a crime occurred or not. Many alleged sexual assaults have no witnesses, and evidence is often scant or ambiguous (ejaculate, genital or anal injuries, or other signs of sex do not answer questions of consent, for example). This can leave a largely "her word against his" dilemma.

In these circumstances, the relative credibility of the complainant and the accused take on a heightened importance. The views of lawyers, police, prosecutors, judges and juries, and others in the criminal justice system, about the general prevalence rate can feed into such assessments. (While we presume that readers of this submission will understand why, for completeness we have outlined the main mechanisms in box 1 on the next page).

Views about the prevalence rate can also matter for policy-makers, including the ALRC in the context of this inquiry. For example, were the ALRC to take as fact the view that almost all sexual assault allegations are true, this would slant its calculus of the pros and cons of reforms it might recommend to help complainants. Under the consensus view, any reform that enabled more complainants to pursue cases through the justice system, and/or reduced the burden of proof, and/or in other ways yielded higher conviction rates, would have only a very small probability of seeing more innocent people wrongly convicted, and a high probability of seeing only more guilty people convicted and more genuine victims gaining some justice. By contrast, were the ALRC to recognise that there might be many more false allegations than the consensus view suggests, this should make it more cautious about recommending such reforms. (There might still be other good reasons for some reforms, of course, but the point here is that views on the prevalence rate can alter the assessed merits and risks of such reforms).

Why an unbiased understanding of the prevalence rate matters: the general case

Without corroborating evidence, complainants and alleged perpetrators' credibility can significantly influence the course and success of a sexual assault case. Each case has its own particular individuals. Ideally, their credibility would be judged predominantly on their character, demeanour, actions, accounts, and the other evidence available. However, people often use rules of thumb to help assess credibility. For instance, we put more store in a doctor's word than a drug dealer's, at least without other, better information about them as individuals.

What does this mean for sexual assault cases?

- If lawyers, police, prosecutors, judges and juries believed that complainants in sexual assault cases routinely make false allegations, that would be a daunting hurdle for a particular complainant to overcome.
- If, at the other extreme, those in the criminal justice system believed that almost all sexual assault allegations are true, that would be a formidable challenge for the accused.
- If, however, they thought the truth lay somewhat away from either of these extremes or recognised that they just could not know, that would reduce or neutralise the role of such rules of thumb in their assessments of complainants' and alleged perpetrators' credibility.

The broader community's perceptions about the prevalence rate also matter. If people in general doubt complainants, that will make sexual assault victims more hesitant to talk about their assault, seek help, or report an allegation to police. It will also embolden potential perpetrators. Conversely, if people believe that almost all sexual assault allegations are true, that will affect alleged perpetrators' "good standing" and potentially their relationships, career prospects, and mental health. This can happen whether they are charged or not, and potentially even if they are charged but acquitted. Further, a general belief that almost all sexual assault allegations are true could, of itself, induce some people to fabricate allegations, feeling safer knowing that their story probably would be believed.

Prevalence studies and the emergence of the recent consensus view

There is a long history of attempts to estimate the prevalence of false sexual assault allegations. Rumney (2006), a British criminologist, documented around twenty different empirical studies into the issue. The published estimates of the prevalence rate varied wildly, from under 2% to upwards of 40%, with the odd outlier much higher again. This variation stems from differences in how studies define false reports (if they do), their samples and methodologies, and the inherent challenges in separating fact from fiction in many sexual assault cases.

However, a consensus has emerged recently among prominent academics in the sexual violence field that the prevalence rate is able to be estimated within tight bounds, and is very low. The consensus appears to have crystallised around a 2010 symposium conducted in conjunction with the journal *Violence Against Women* (see Renzetti 2010). In particular, one of the papers, led by David Lisak, identified a subset of prevalence studies that Dr Lisak and his colleagues saw as providing more credible estimates. In these "high-quality" studies, typically the researchers independently analysed crime reports or summaries, used clear and consistent definitions of false reports, specified what data had been used, and attempted to corroborate information with victims, police officers and other trained individuals.

The Lisak et al. (2010) paper identified eight studies that largely met these criteria, with their prevalence rate estimates laying between 2% and 10%. A later meta-analysis by two Australian-based academics, Dr Claire Ferguson and Prof John Malouff (2016), of almost the same selection of studies generated a weighted prevalence rate estimate of 5%, although the authors carefully caveated the estimates (see further below).

What feminist academics and women's safety advocates have made of these estimates

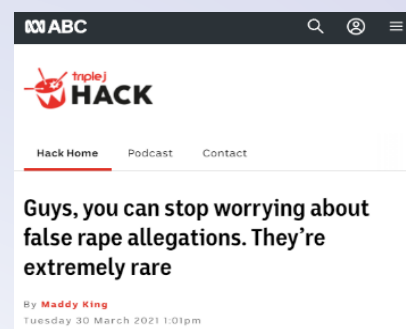
Feminist academics and women's safety organisations, and their media and governmental allies, have drawn heavily on the estimates from the high-quality studies to advance the view that research shows sexual assault allegations are overwhelmingly true and false rape allegations are extremely rare. Box 2 provides several examples of such statements from the Australian Broadcasting Corporation (ABC) and other media outlets, while box 3 provides examples of similar statements contained in publications by the Australian Institute of Family Studies (AIFS) and Australia's National Research Organisation on Women's Safety (ANROWS). Note that these statements typically draw on the Ferguson & Malouff (2016) meta-analysis and/or the Lisak et. al. (2010) estimates, or other papers that refer to them or to much the same set of studies.

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What the ABC and some other media have said

During 2021, the ABC published several articles about sexual assault, its prevalence, community attitudes to it, its impact on victims, and how police deal with it.

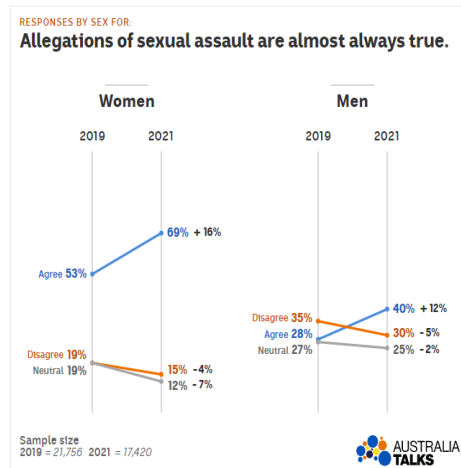
Several of these articles claimed that research shows that such allegations are "almost always" or "overwhelmingly" true and that false allegations are "extremely rare". The estimated prevalence rate of false allegations was reported to be 5 per cent, although the remarks of some experts interviewed by the ABC suggested that the true prevalence rate is probably lower still.



Men are less inclined to agree sexual assault allegations are almost always true

The Australia Talks data showed a considerable divide in how women and men perceived allegations of assault.

While nearly 70 per cent of women agreed that allegations of sexual assault were almost always true, just 40 per cent of men did.



The statements made in the different articles included:

Extensive research shows allegations of sexual assault are overwhelmingly true.¹

[F]alse allegations are really rare. The estimates vary a little across studies, but the most commonly cited figure is that around 5 per cent of reports are false.²

In reality, the overwhelming majority of sexual offence reports are true.³

The ABC also contrasted its finding that "allegations of sexual assault are almost always true" with the results of a question from its "Australia Talks" survey that asked respondents whether they agreed with the proposition. The survey found that just 40 per cent of men did agree, compared to 70 per cent of women (many of whom agreed "strongly").

(In response to representations from one of us, the ABC issued a partial correction to its articles in September 2022. We discuss the ABC's response later. Our full correspondence with the ABC, including references to the above statements, will be available at ganderresearch.org by mid-June.)

Although we have not sought to keep a comprehensive catalogue, other media outlets have run many similar stories. As one recent example, Jacqueline Maley writing in the *Sydney Morning Herald* last August cited a finding from the 2016 Ferguson & Malouff meta-analysis to support the statement that "Statistics show false complaints of sexual assault are incredibly rare."⁴ Likewise, an article of similar vintage by Rachel Burgin in *The Guardian* spoke of "the consistent evidence that false rape allegations are extremely low".⁵

What women's safety research bodies have said about the prevalence rate



In its 2017 publication called *“Challenging misconceptions about sexual offending”*, the Australian Institute of Family Studies (AIFS) said:

The rate of false allegations of sexual assault is **very low**.

Studies estimate 5% of rape allegations are false (meta-analysis of seven studies in Western countries: Ferguson & Malouff, 2016). Therefore, the overwhelming majority of sexual offence reports are true.⁶

The AIFS developed the report in conjunction with Victoria Police, and it was intended to be used partly to help educate police officers, presumably including those tasked with investigating sexual assault reports.

(Note that following my representations to the AIFS about the errors in this passage, the AIFS removed the publication from its website in December 2022, albeit without issuing a correction notice. Our full correspondence with the AIFS will be available at ganderresearch.org by mid-June).

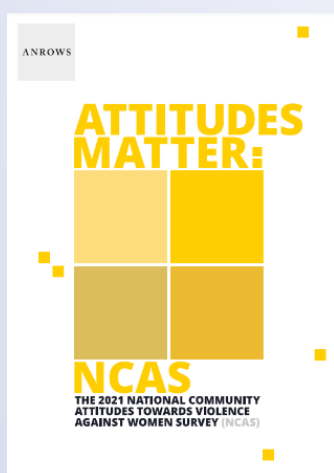
In a 2021 study on why people often mistrust women's reports of sexual assault, ANROWS made several statements indicating that empirical evidence shows that false allegations are extremely rare. These include:

Contrary to the facts (Ferguson & Malouff 2016), participants perceived false allegations as being commonplace rather than extremely rare. (p. 6)

... empirical evidence tells us that false allegations of sexual assault are extremely rare (e.g. Ferguson & Malouff, 2016; Kelly, 2010; Wall & Tarczon, 2013) (p. 9)

The ANROWS study went on to state:

Given the rarity of false allegations of sexual assault, the default position should be to believe women who report sexual assault. Education strategies should address myths that false allegations are a prevalent problem by highlighting the established facts about the prevalence of sexual assault.⁷



In its 2023 report on the results of the 2021 *National Community Attitudes Towards Violence Against Women Survey*, ANROWS likewise spoke of “the fact that false allegations of sexual assault victimisation are extremely rare” and “the Australian and international evidence that false allegations of sexual assault are exceedingly rare”.⁸

(Note that following our representations about the errors in these reports, ANROWS has agreed to make amendments to them. These amendments involve including a clarification at the front of the web version of these two reports and slight edits in the bodies of the reports.

ANROWS anticipated that these amendments would be made by the end of May but, at the time of writing, they have yet to be made. We comment on the changes foreshadowed by ANROWS later in this submission. Our correspondence with ANROWS will be available at ganderresearch.org by mid-June.)

In turn, the consensus view that evidence shows that almost all false sexual allegations are true, with false allegations rare, has come to be accepted by many members of the Australian public. This is evident in the results of the ABC's Australia Talks survey reported in box 2. Our interactions with several feminist academics and women's safety advocates also suggest that this view has, perhaps understandably, become something of an "article of faith" for people working in the sexual violence field. Further, the view has also clearly informed various policy documents, such as the *National Strategy Against Violence Against Women and Children 2022-32* and policies and initiatives formed in support of that strategy's goals. (Some of the positions advocates have used the consensus view to help justify are discussed later, in box 5).

How the estimates from the high-quality studies have been misconstrued

Nonetheless, as stated earlier, the consensus view about the general veracity of sexual assault allegations is false. Our research shows that the high-quality studies from which the consensus estimates are drawn have several limitations that mean that their estimates, at best, provide a lower bound for the prevalence rate. They cannot and do not count all false reports. The true prevalence rate is unknown (and is probably unknowable) but could be materially higher. Our full, detailed reasoning for this conclusion is set out in our research paper, which is available at ganderresearch.org, and readers requiring that detail are advised to go there. Below we outline the main reasons for this conclusion.

The key limitation in the high-quality studies is that the rules they follow to determine whether to classify a report as "false" exclude many false and potentially false reports. The studies' estimates are, in effect, premised on there being no false allegations among the many equivocal or ambiguous cases classified as having insufficient evidence, or where the alleged victim withdrew their complaint, or where the accused was tried but acquitted. Of course, our research paper recognises that many of the allegations in these categories will be true, but there are also sound reasons to believe that a good number of the allegations in these categories will not be true. The consensus view effectively ignores this crucial point.

Although of less importance, we also found that some of the high-quality studies suffer from incomplete or poor-quality data, limited interview response rates and mathematical errors.

Our conclusion that the estimates from the high-quality studies do not capture the full prevalence of false sexual assault reports is supported by the Ferguson & Malouff (2016) paper itself. After discussing the way the high-quality studies classify cases as false (or not) and documenting several exclusions from the studies' estimates of false reports, those authors stated:

Although limiting the sample, this is a necessary step as it prevents opening the floodgates to many equivocal cases that are suspected but not demonstrably false. It errs on the side of caution by not including cases in doubt, mistaken cases, or those claims made to anyone other than police. Use of such a conservative definition is not meant to imply that all other cases are true reports, but just that they cannot responsibly be deemed confirmed false. (Ferguson & Malouff 2016, p. 1187).

The last sentence is key: the estimates in the high-quality studies are merely estimates of the subset of false cases that have been "confirmed" as such; they are not a measure of all (confirmed plus unconfirmed) false reports.

In our research paper, we carefully reviewed each of the high-quality studies covered by Ferguson & Malouff. For each of the studies, we described the study's background, outlined the sample and methodology, reported its (lower bound) prevalence estimate, explained why that estimate does not cover the full field of false reports in the study's sample, and explored the scope for devising an upper bound estimate from the information in the study.

Although the information in the studies did not allow us to pinpoint the prevalence rate or even to devise a credible upper bound, we showed that the true prevalence rate could be materially higher than the (lower bound) estimates on which the recent consensus has been based.

While the inherent uncertainties surrounding many sexual assault allegations mean that it is not possible (and may never be) to estimate the prevalence rate with any certainty, what can be said with certainty is that the view promulgated by feminist academics and women's safety advocates — that "it is a fact that false allegations are very rare", as ANROWS put it, or that "extensive research shows allegations of sexual assault are overwhelmingly true", as the ABC put it — is itself false.

(As alluded to earlier, the ABC, AIFS and ANROWS have acknowledged inaccuracies in some of their work that relied on the estimates and have issued some corrections or, in the case of AIFS, removed the document that contained the erroneous statements from its website. The responses of these agencies are discussed further in box 4).

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How the ABC, AIFS and ANROWS responded to our representations

One of us (Tom Nankivell) first alerted the AIFS and the ABC to the errors in their publications in 2021, while ANROWS was alerted in mid-2023. Our full correspondence with the bodies will be available at ganderresearch.org by mid-June.

Although all three bodies eventually accepted a need for some remedial action, none raced to correct the record; nor in our view would the solutions decided upon properly remedy the misleading effects of the statements in their publications:

- The AIFS delayed withdrawing its offending publication until December 2022, and did so only quietly — without publicly acknowledging its clear errors or issuing a notice of withdrawal.
- The ABC issued a low-key, partial correction to some of its articles, but alas in our view the ABC's edits and explanations did not clearly address the main problem identified with its reports, and would have left its audience little wiser about the substantial misinformation the broadcaster had spread.
- ANROWS delayed confronting the issue until April this year and then promised to make only some limited corrections. While the foreshadowed corrections will acknowledge that there are limitations to the existing studies, ANROWS indicated to us, without advancing any evidence*, that it will continue to assert that "evidence indicates that most allegations are genuine and false allegations are rare" (rather than "extremely rare").

In all three cases, we experienced difficulties in obtaining timely responses to our representations. For example, in the case of AIFS, there were numerous delays and backtracks on understandings reached between us and, in total, it took more than 50 communications over 18 months before the matter was "resolved". At times it appeared that the AIFS would have preferred that the issue simply go away. We met with some similar responses from some (though not all) sexual violence academics when we sought their input and feedback on our research. Alas, not all welcomed scrutiny of their work or of the false allegations consensus more broadly.

* It is notable that, during our negotiations with the AIFS, it had also sought to address the problems we had identified by replacing the words "extremely rare" with just "rare" in its document, but backed down when we pointed out why the evidence does not justify that view that false allegations are rare. We have not yet seen what evidence ANROWS might adduce to justify the equivalent revision to its documents, but from our interactions, research and knowledge of the sexual violence literature we suspect that the statement is based mainly on conviction and/or a perceived need to 'hold the line' in what can alas be a politically-charged policy space.

Some ramifications for the inquiry

That the consensus view is false has important implications for how the ALRC approaches some of the matters under reference. Below we discuss three high-level issues.

First, some discussions around sexual assault appear to proceed from the presumption that almost any increase in convictions would be desirable. While this presumption largely reflects concerns about the low reporting and high attrition rates in sexual assault cases, it also depends on or draws comfort from the view that almost all sexual assault allegations are true. And indeed, as noted earlier, were the consensus view true, reforms that yielded higher conviction rates would generally have only a very small probability of creating more wrongful convictions, with a high probability of seeing more perpetrators behind bars and more genuine victims gaining some justice.

That the consensus view is false, however, changes the calculus. The possibility that there are a significant number of allegations that are false means that (otherwise unmerited) reform ideas that simply lead to more convictions risk creating significant injustices for many accused persons.^a The upshot is that the ALRC should look particularly sceptically on reforms proposed wholly or largely to simply lift convictions. There may of course be reforms warranted on other grounds that would have this effect, but that effect should not be determinative in the assessment of the merits of possible reforms.

More generally, we submit that the ALRC also needs to remain alert to the potential for reforms it might recommend to enable more false allegations to make it to and through the criminal justice system, with adverse consequences for falsely accused persons. These risks would need to be considered alongside any benefits for sexual assault victims and others that the reforms would bring.

Second, several views pertaining to sexual violence that have become “mainstream” positions to hold within academia (and increasingly in public discourse) are premised on, or partly supported by, the consensus view about the veracity of sexual assault allegations. The most obvious is the view that almost all complainants are genuine and should be believed by default. Other mainstream views are that many people (including police and members of the general public) have an exaggerated view of the prevalence of false allegations. As explained in box 5, proponents of these positions will often draw on the consensus estimates to directly support their position, or compare data on the relevant group’s beliefs about the prevalence rate with the (much lower) consensus estimates.

^a To anticipate a possible counterpoint, some sexual violence academics have argued that only a limited share of false reports involve named offenders, and that the quest to debunk rape myths, instil trust in complainants, and put more offenders behind bars should not cede any ground to what one sexual violence academic has labelled “male-centred overconcern with false sexual assault allegations” (Weiser 2017, 54). We addressed this argument in our research paper (at page 18) and showed that, just as there is no robust way to determine the prevalence rate, so there is no robust way to determine what share of false reports involve named offenders.

Some (potentially unsafe) positions that have been justified with reference to the consensus view

Some of the mainstream positions in the sexual violence literature that proponents have used the consensus view to help justify are that:

- *members of the public overestimate the prevalence of false sexual assault allegations.* This conclusion is reached in part by contrasting surveys of the public or focus group responses to the consensus estimates. For example, in the 2021 ANROWS publication mentioned earlier, ANROWS stated: “Contrary to the facts (Ferguson & Malouff 2016), participants perceived false allegations as being commonplace rather than extremely rare.” It then used this finding to argue for education measures to address this alleged misconception (see box 3).
- *police (and criminal justice system officials) also exaggerate the prevalence of false sexual assault allegations.* Again, this conclusion is reached in part by comparing the views or survey responses of police to the consensus estimates. A prior example of this approach can be found in a journal article by Prof. Liz Kelly (2010), wherein the author compared police estimates of false allegations with the much lower estimates from her own 2005 study. Note that Kelly et. al.’s (2005) study was one of those included in the list of high-quality studies by Lisak et. al. (2010) and Ferguson & Malouff (2016).
- *men have little to fear from false sexual assault allegations.* This position, evident in articles on the ABC (see box 2) and in the sexual violence literature (eg Weiser 2017), is reached with reference to (a) the very low estimates from the consensus studies; and/or (b) the additional fact that researchers have further found that only a limited share of the false allegations identified in studies involve a named suspect. (We explain the particular problems with the latter argument on page 18 of our research paper.)
- *people should “believe women” who allege sexual assault.* This suggestion has been made by several bodies, including in the 2021 ANROWS paper quoted earlier (see box 3). It stated “Given the rarity of false allegations of sexual assault, the default position should be to believe women who report sexual assault.” As noted above, its view that false allegations are rare was based on the consensus estimates.

Importantly, we have labelled these mainstream positions as “potentially unsafe” because it is not our view that they are necessarily wholly wrong; it is just that the consensus estimates that have been used to help justify the positions are not fit for that purpose. So, for example, despite the limitations of the consensus estimates, it remains quite possible that some people, and perhaps many, do indeed have an exaggerated view about the prevalence of false allegations. However, it is very challenging to gauge whether and to what extent this is so without a reasonable sense of the actual prevalence rate.

However, given that the consensus estimates are not in fact a measure of the true prevalence rate, they do not provide a sound basis for the proponents' conclusions. For example, the fact that police or the public believe that the prevalence rate is higher than the (lower bound) consensus estimates does not of itself mean that police or the public are mistaken. We therefore submit that, in discussing what is known about the sexual violence landscape, the ALRC needs to avoid uncritically accepting or promulgating viewpoints and positions that are regarded as mainstream and accepted in sexual violence circles.

Following on from this, the third point is that a range of already-implemented justice initiatives as well as future reform proposals rely on these mainstream positions and thus may need to be revised or, at least, sceptically scrutinised. For example, the views that police and others in the criminal justice system routinely overestimate the rate of false allegations has led to "re-education" efforts. The 2017 AIFS document "Challenging misconceptions about sexual offending" had this purpose. It was commissioned by Victoria Police and intended to be "an evidence-based resource for police and legal practitioners". While the AIFS removed the document from its website in 2022, we are unsure of whether those who were earlier exposed to the document's messages have been made aware of the incorrect statements it contained. To the extent that police and legal practitioners have been re-educated to hold the consensus view, the risk is that this could be prejudicing how they interact with both complainants, a subset of who will be making false allegations, and alleged perpetrators.

This example highlights the risks of reforms that are based on mainstream propositions that rely on, or worse still seek to diffuse, the consensus view on false allegations. Our simple message for the ALRC is that it should be alert to, and wary of, such reform proposals. It should also be open to the possibility that, just as some new initiatives may be warranted to address sexual violence, some earlier initiatives, that drew on the consensus view, may need to be unwound or corrected.

References

References for journal articles and research reports are listed below. References for newspaper articles are contained in the end notes.

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