



INQUIRY INTO JUSTICE RESPONSES TO SEXUAL VIOLENCE

Submission of the
Community Restorative Centre

31 May 2024

CRC community
restorative
centre

Acknowledgement of Country

CRC acknowledges the Traditional Custodians of the land on which we work and live. The offices of CRC stand on the lands of the Gadigal, Wangal, Bediagal, Wiljkali, Baarkintji, Darug, Wiradjuri, Dharawal, Awabakal, and Worimi Peoples. We recognise their continuing connection to land, water, and community and pay respects to Elders, past and present. We particularly acknowledge their ongoing advocacy on social justice matters such as those discussed in this submission.

This always was, always will be Aboriginal Land.

About this submission

We thank the Australian Law Reform Commission (ALRC) for this opportunity to provide a submission to the Inquiry into Justice Responses to Sexual Violence (JRSV). This submission is informed by our experience as a long running community organisation supporting people impacted by the criminal justice system in NSW.

This submission was prepared by staff of the CRC's Advocacy, Policy and Research Unit (ARPU) (William Frazer, Lucy Phelan, Sophie Russell, and Vendula Belackova) with support and insight from CRC's CEO Alison Churchill, and CRC program managers and staff (Marisa Moliterno, Ashley Borg, Reyelene Galloway, and Alex Faraguna)

About the Community Restorative Centre

The Community Restorative Centre (CRC) is the lead NGO in NSW providing specialist support to people affected by the criminal justice system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and complex needs. CRC has over 70 years specialist experience in this area. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal justice system involvement, and build pathways out of the criminal justice system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma.

All CRC services utilise a human rights framework which recognise the inherent value of all people and aim to create genuine opportunities for people affected negatively by the criminal justice system. People leaving prison and their families have the right to be treated fairly and have the ability to make genuine choices about building pathways out of the criminal justice system and into the community.

CRC has a number of transitional support programs listed in the table below. All our programs support women, and two work exclusively with women; The Miranda Project, and Women's Transitional and Post-Release Service.

Table 1: List of CRC's Transitional Support Programs

CRC Program (A to Z)	Overview
Alcohol and Other Drugs (AOD) Transitional Support (Greater Sydney Metropolitan)	The Transitional Alcohol and Other Drugs (AOD) Project is an outreach-based holistic counselling service for men and women with a history of involvement in the criminal justice system and complex AOD issues. It provides pre-release and outreach AOD support to people exiting NSW correctional centres across the Greater Sydney metropolitan region, including people on remand. The project is focused on working with people who have complex needs including mental illness and/or cognitive impairment.
Extended Reintegration Service (ERS) (South Western Sydney)	This project works with people on release from prison who are homeless or at risk of homelessness, have a Corrective Services risk assessment of high to medium-high (utilising the LSI-R tool) and have a mental illness and/or intellectual disability. ERS is a partnership with NSW Corrective Services, South-Western Sydney Area Health Service and NSW Housing. CRC transitional workers offer pre-release support and planning, and intensive holistic case management for up to nine months post-release.
The Miranda Project (Penrith)	The Miranda Project provides a range of supports to women who are at risk of both ongoing criminal justice system involvement and family and domestic violence. It is based at Penrith Women's Health Centre and is a unique specialist service run by women for women. It provides both intensive casework and group work for women with complex support needs.
Pathways Home	Pathways Home provides outreach case management to young people aged 10-24 who have been involved in the criminal justice system and require AOD support. It provides case management to help young people address the drivers of their criminal legal system interactions through helping them plan and access what supports they will need post release. The program runs in Central, Eastern and Western Sydney.
Reintegration Housing Support program (RHSP)	The Reintegration Housing Support Program (RHSP) aims to connect people who are leaving custody, or who have been released in the last month, and are at risk of homelessness with specialist support workers who will assist with securing access to suitable accommodation, as well as wrap-around psychosocial support. CRC support workers based in six DCJ Housing Offices work alongside DCJ Housing staff to assist program participants to secure and sustain long-term housing once they leave custody.
Transitional and Post-Release Support (Nepean / Blue Mountains)	The Penrith/Nepean/Blue Mountains project works with people on release from prison who have experienced multiple and/or complex disadvantage, and who are at risk of both homelessness and ongoing criminal justice system involvement. This project is focused on people who want to reside after custody in the Nepean, Penrith or Blue Mountains region. CRC staff are co-located with Wentworth housing.
Transitional Boarding House Support (Newtown)	The CRC/Boarding House Project works with people on release from prison who are homeless or at risk of homelessness, and who are seeking to live in a boarding house in the Inner Western Sydney region. The CRC transitional worker offers pre-release support and planning, and short, medium and long-term intensive holistic case management. CRC staff are co-located with Newtown Neighbourhood centre.

Transitional Indigenous service (NSW Far West)	<p>This project works with First Nations people on release from prison into the Broken Hill, Wilcannia and Menindee regions who have experienced multiple and complex disadvantage and are at risk of ongoing criminal justice system involvement. CRC transitional workers offer pre-release support and planning along with short, medium and long-term intensive holistic case management.</p>
Women's Transitional and Post-Release Service (Inner City Sydney and South Western Sydney)	<p>The Women's Transitional and Reintegration Services are outreach case management, transitional and reintegration services for women exiting NSW correctional centres who have experienced multiple and complex disadvantage and are at risk of homelessness and ongoing criminal justice system involvement.</p> <p>The Inner City Women's Transitional Service supports women who will return to the inner city and surrounding suburbs. It is part of the Inner City Service for Women with Complex Needs and operates in partnership with specialist services B Miles and Detour House.</p>

1 Executive Summary

Sexual violence is a major health and welfare issue in Australia. As a community-based organisation that works with people in contact with the criminal justice system and their families, our submission is focused on the needs of these groups. Sexual violence, and issues around justice responses to sexual violence, disproportionately impacts people who have previous experiences with the criminal justice system (CJS).

In our experience of more than 70 years working with people leaving prison in NSW, it is our view that the CJS can perpetuate trauma and harm, and that prison environments cannot support people to heal from violence and trauma.

Combatting sexual violence as an individual act, as the justice system currently does, is largely ineffective at reducing sexual violence and supporting victim survivors (Moore, 2016). As such, we do not seek an extension of punitive individualised justice responses by way of the prison system to respond to sexual violence. Increasing the carceral net and punishment does not work to reduce rates of sexual violence (Goodmark, 2009, p. 51). Further, expanding criminal responses often has disproportionate impacts on First Nations people and other marginalised groups due to factors such as over policing, more limited access to appropriate support services and factors in bail refusal (Anita Knudsen & Lenny Roth, 2023).

We advocate for responses to address sexual harm that come *outside* the criminal justice system (as it stands now). We believe there needs to be a focus on prevention; transformative and restorative justice approaches; community-based supports for people experiencing and escaping sexual violence; and increased support for men (both as victims of sexual violence, including abuse which occurred in childhood, and as people convicted of sexual violence/ at risk of causing sexual violence).

A summary of our recommendations is below:

Reporting

- To overcome barriers to reporting sexual violence directly to police, continue to promote and develop alternative and anonymous reporting options such as NSW Police Force's [sexual assault reporting option](#) (SARO).
- Expand and promote alternative (non-criminal legal system) responses for victim survivors such as the NSW Victims Support Scheme.
- Improve first responder training to respond to sexual violence reports in a sensitive, trauma informed and culturally appropriate way.
- Embed specialist social workers and/or counsellors in police stations to provide more support and safety for victim/ survivors at all stages of the reporting and investigation process.

Investigation

- Improve the justice systems understanding of the complexities of people who have CJS experience, and the impact of stigma on justice processes and access to services.
- Improve access to specialist wrap-around support during the entire justice process for victim/survivors of sexual violence, particularly those who have complex needs.

Court processes

- Provide more consistent support to people, especially victim survivors, within courtroom proceedings through intermediaries, and specialist wrap-around support.

- Courts should embed trauma-informed practices and processes which enhance the emotional wellbeing of people attending court.
- To overcome problems of memory decay in recalling sexual violence it is recommended for people to take physical notes of their account; Government could consider developing an app or data capture tool for people experiencing sexual violence that is trauma informed and culturally appropriate.
- Improve training of judicial officers, legal professionals and juries on the impact of trauma on people and their memories.

Cross examination

- Inherently, some courtroom processes such as cross-examination are unable to be safe and not traumatic for victim survivors highlighting the need for non-justice approaches to sexual violence.

Trial delays

- Trial delays need to be minimised and service funding needs longer time frames to adequately support people through lengthy court processes.

Sentencing

- People with convictions involving sexual violence are excluded from diversionary sentencing pathways such as MERIT and NSW Drug Court.
- Develop and fund evidence based diversionary programs and practices for offences related to sexual violence.
- Character references and mental health assessments for sexual violence cases should be included and considered in sentencing processes.
- Address the gap in post-sentencing supports and programs both in community and in custody for people convicted of sexual violence offences.

Restorative Justice and alternative justice responses

- Restorative justice provides a strong alternative way to uphold victims wants and needs in a justice process.
- Restorative justice is effective at reducing reoffending and has positive feedback from victim/survivors in the process. While NSW currently has extremely limited use of restorative justice for sexual violence cases, groups such as Transforming Justice Australia (TJA) are facilitating restorative justice with positive results.
- There are proven programs (such as Circles of Support and Accountability (CoSA) and Revive) for people who have committed sexual violence which utilise principles of restorative justice and therapeutic and behaviour change principles which should be funded and implemented in response to cases involving sexual violence. These would need adequate resourcing and political messaging to ensure effectiveness.
Further work needs to be done in preventative and early intervention measures to stop sexual violence before it occurs.

2 Background

Sexual violence is a major health and welfare issue in Australia. According to data from the Australian Institute of Health and Welfare (AIHW) (AIHW, 2024) 14% of people over the age of 18 years have experienced sexual violence since the age of 15. Sexual violence is serious, harmful and has long-term negative health, wellbeing, social, and financial impacts on those who experience it.

There are clear gendered dynamics of sexual violence: 22% of women and 6.1% of men have experienced sexual violence since the age of 15 (AIHW, 2024). Further, sexual violence is more commonly perpetrated by men (AIHW, 2024). Groups who are particularly affected by gender-based violence include:

- First Nations women and children,
- Women with disability,
- Women and children from culturally diverse, migrant and refugee backgrounds,
- LGBTIQ+ people, and
- Sex workers (AIHW, 2024).

Experiences of sexual violence amongst people who have been in prison: the 'victim' and 'offender' overlap

People who have been in prison have statistically **experienced higher rates of violence and sexual violence** compared to the general community. Research on experiences of sexual and physical assault amongst people in prison in Australia found that in a sample of 2,426 people in prison, 13% of men and 60% women had experienced sexual abuse (Schneider et al., 2011). Similarly, a study by Corrective Services NSW reported that 59% of women in prison had been forced or frightened into doing something sexually they did not want, and that revictimisation was common (Stathopoulos et al., 2014). Women who have been in prison are also subject to other forms of gendered violence: in the post-release period they are 16 times more likely to be killed from violence in comparison to women of the same age in the general population (Willoughby et al., 2021).

People in prison also experience higher rates of **childhood sexual abuse** in comparison to those in the general community whereby 60% of women and 37% men in prison reported they had experienced childhood sexual abuse. (JH&FMHN 2017). A study of 789 men and women in prisons across NSW, found that approximately 50% of women and 16% of men reported being sexually abused before the age of 16, with the authors concluding that childhood sexual abuse is 'much more common in NSW prisons than in the general community and is associated with long term mental health and behavioural risks' (Butler et al., 2001, p. 109). The Royal Commission into Institutional Responses to Child Sexual Abuse spoke to a range of people across Australia who had experienced sexual abuse at a young age. 22.7% of the people spoken to had committed a criminal offence at some point in their lives. According to another study, child sexual abuse victims were almost five times more likely to be charged with an offence than their peers in the general population (Commission into Institutional Responses to Child Sexual Abuse, 2017, p. 144)

By its very nature, the criminal justice system upholds a distinction between 'victim' and 'offender', whereby prison is intended as punishment for offenders. But these categories are more often more nuanced, as **people who have used sexual violence have often experienced sexual violence themselves**. Thus, there is an overlap between 'victims' and 'offenders', and we find CRC clients have typically experienced violence and abuse throughout their lives. This creates significant trauma and influence a range of factors that can lead to criminalisation. People who have been in prison face higher rates of substance use, housing stress, mental health diagnoses, and financial issues which can

be driving factors behind criminalisation (Australian Institute of Health and Welfare, 2023). This pathway is particularly distinct for women who have experienced domestic and sexual violence. Despite the prevalence of violence in the lives of our clients, we find they are infrequently seen as 'genuine' victims, and are seen as 'offenders' first, and 'victims' second. This means they are frequently excluded from mainstream services due to their history of contact with the criminal justice system. We believe this is a broader failure to see 'criminal' behaviour as a response to the victimisation people have experienced.

Thus this complexity related to the blurring of binaries of 'victim' and 'offender' has real implications for how people engage with the justice system, and access to support services. Misunderstanding of the overlap between 'victims' and 'offenders' creates a range of issues for victim/survivors of sexual violence who are also people who have been convicted of crimes. This may include having existing (often negative) relationships with police, which can lead to fear of reporting to Police or being misidentified as a person who has committed a crime. Criminal records may also exclude people from accessing services such as women's refuges or alcohol and other drug (AOD) residential rehabilitation services. In the criminal justice process, it may mean that police, juries or judges may be more biased against a criminalised person's account of events. Until recently, people who had survived institutional child sexual abuse were excluded from the National Redress Scheme, despite recommendations from the Royal Commission.

3 Response to questions

3.1 Reporting

This section relates to questions 2, 3 and 4 in the issues paper

Reporting sexual violence is difficult for all victim/survivors. Often there is shame and fear involved with reporting, and the avenues to report may not be easily accessible. Recent surveys estimate only 7.7% of women who experienced sexual assault by a male in the last 10 years contacted police (AIHW, 2024). Reporting sexual violence is also more difficult for those who are at the intersections of marginalisation and disadvantage: research suggests that those who experience the highest rates of gender-based sexual violence – including First Nations women and children; women with disability; women from migrant and culturally and linguistically diverse groups; LGBTIQ+ groups and sex workers (AIHW, 2024) – are less likely to report sexual violence to police (Stardust et al., 2021). This is important because we know that those who experience multiple and interlocking forms of disadvantage are also overrepresented in our prison systems (Baldry, 2017).

Barriers to reporting sexual violence are made more complicated for those who have previous involvement with the criminal justice system. This is due to the fact that many people have ongoing relationships with police due to their criminalisation and have experienced abuse from institutions (including police, prisons, and child ‘protection’) which has eroded their trust in systems and authority.

Erosion of safety and trust equals silence

We have at times seen our clients come to understand their abuse as normal and inevitable, which has implications around reporting abuse. Systems have failed these clients at many points across their lives. Interviews of people who had experienced childhood sexual abuse, as conducted by the Royal Commission into Institutional Responses to Child Sexual Abuse, found that **32.7% spoke of a lack of trust in authority, as a direct result of their institutional abuse.**

The impact of these histories of abuse, and being frequently failed, and often harmed by systems, elicits an understandable deep distrust of people and services. We find **clients keep themselves safe by often not reporting or disclosing their abuse to others**, especially in the context of unequal power dynamics.

Disempowered and not believed

Another important element to consider is that people are hesitant about speaking up about their experience of abuse for **fear of not being believed**. Not being believed occurs at multiple levels; within families, community services, and government services including police and corrections. We hear too often from our clients that they have sought help from the police (often related to domestic violence) but have been dismissed, or disbelieved, likely because of the **stigma of being a criminalised person**.

Fear of repercussions of speaking up

There is also a very real and valid fear amongst the clients we support of the repercussions of reporting abuse. Often this fear comes from real experiences of being harmed by systems that are meant to protect them. This is especially the case for First Nations clients who carry intergenerational trauma and fear from colonial practices of child removal and abuse of authority.

We find this fear of repercussions appears in our work with clients, who might only allude to, or share details of abuse in a deliberately vague manner, as to avoid their support worker having any compelling and solid information. Repercussions that clients may fear include:

- Not being believed and potentially being mis-identified as the person who has committed the crime by police or the justice system (see also ANROWS, 2020).
- Negative interactions while on bail, parole, or other orders.
- Negative interactions with other ongoing legal matters such as AVO's or family law matters.
- Fear of having children removed or negative interactions with by government welfare agencies.
- Fear of repercussions from the person who has been causing them harm.
- For First Nations clients with strong kinship or community ties, there may be fear of repercussion on, or from, their community and families.

Inaccessible reporting pathways

Due to fear, disempowerment and fraught relationships with police, reporting pathways are often inaccessible for formerly imprisoned people. One key part of this is that reporting is usually at a police station. For CRC clients **a police station can be a distressing location**. They may already have reporting requirements to attend police stations or have had traumatic experiences at these locations. Reporting to police may also feel culturally unsafe making it an inappropriate pathway for many First Nations people who have been criminalised.

Pathways are also inaccessible for people that have children in their care. Not only is there the practical issue of needing someone to take care of their children during the reporting process, there is also fear that reporting sexual violence to police may have child protection implications. This is especially the case for First Nations clients who have an understandable, intergenerational fear of child removal and state involvement in family matters.

Sexual violence that occurs within prisons

Prisons can be sites of sexual violence. **We commonly hear stories of clients being abused by prison staff or being traumatised by practices such as strip searching.** Due to the power differentials present in prisons, it is extremely difficult for someone to make a complaint about experiencing sexual violence within prison. Further, we have heard from clients who were told formal reports of abuse in custody would be confidential, only to be punished later by the abusive officer who was informed of the disclosure.

In relation to this, CRC recently made a submission to the NSW Government's Astill Inquiry advocating for women who had experienced sexual violence by prison staff. Our key recommendations focussed on expanding support and complaint mechanisms for people in prison. Our recommendations were to:

- Create an independent agency which can receive confidential complaints and reports of abuse from people within prison.
- Make the complaints and reporting process easy to understand and transparent (and accessible from prison).
- Provide non-punitive protections to people who make complaints and reports of abuse.
- Expand the Women's Advisory Unit so it is more readily accessible throughout all women's prisons in NSW.
- Create other opportunities for access to confidential support services for people in prison, including therapeutic support.
- Provide confidential external support for people in prison who have experienced abuse including faster access to medical care (notably Sexual Assault Investigate Kits- SAIK, and reproductive and sexual health care).

- Update and review training for custodial staff to include more information on trauma informed care and practice, and specific supports for women who have experienced abuse in custody.
- Consider the drivers of abuse of women in custody, especially the role of gender and power dynamics to create recommendations for change, for example investigating whether an all-female custodial staff in women's prisons might increase safety and reduce opportunities for gendered based violence.

3.1.1 Recommendations to improve reporting

Continue to promote and develop alternative reporting options

One useful tool CRC uses with clients is the NSW Police Force's [sexual assault reporting option](#) (SARO). SARO is an online form people may fill out to notify police of a sexual assault and keep a record of the event, without leading to direct police involvement. Importantly, this reporting can be anonymous.

CRC believes the use of SARO and other alternatives to reporting directly to police are key to improving accessibility and safety of reporting. However, to ensure the effectiveness of these tools, support must still be available for people to utilise the tools by well trained staff, including emotional support and literacy support. There must also be adequate funding and resourcing to the tools and they must feature appropriate terminology (Loney-Howes et al., 2022).

Expand and promote alternatives to justice responses for victim survivors

One common component in the lack of reporting among victim survivors is the belief that reporting will not lead to any positive justice outcomes for them or more broadly. There is some truth here, as legal cases often do not have an outcome in the victims favour and even when they do, the traumatising process of going through court can negate any feelings of justice for the victim/survivor. In NSW only 15% of sexual assaults proceed to a legal action and less than half of these result in conviction (Gilbert, 2024). As such, people must be made aware of other avenues to justice after reporting, and that reporting does not necessarily mean that they must undertake a case against the person. For example, victims of violent crime including sexual assault in NSW are eligible for free counselling and monetary compensation under the NSW victims support scheme. However, this scheme is not well promoted, can be difficult to access for some clients and could benefit from increases in compensation. Challenges formerly imprisoned people may face in accessing this scheme is literacy or understanding the application process, having access to photo identification and simply knowing that the scheme exists.

Improve first responder training to respond to sexual violence in a sensitive and culturally appropriate way

Whilst there needs to be alternative pathways to reporting other than police, police are still a commonly the first point of reporting of sexual violence. As per above discussion around the issues our clients might face when reporting to police, we maintain that police must improve their practices and processes when receiving reports from sexual violence victims/survivors. This means they must be trauma informed and culturally safe in a way that values, believes and centres the victim's experiences. Embedding specialist social workers and/or counsellors in police stations would also provide more support and safety for victim/ survivors at all stages of the reporting and investigation process.

Research has also shown that there is an information gap for police, and other frontline services on the reporting and investigation process in sexual violence cases. For example, there seems to be a lack of understanding on how medical forensic evidence can be captured and how it is important to cases

(McQueen & Kelty, 2021). To bridge the information gap, government or relevant justice agencies should create informational materials and training packages about how to respond to disclosures of sexual violence that are accessible to victim/survivors and first responder services, including police, health and other frontline services.

3.2 Investigation [Police and prosecution responses]

This section relates to questions 6, 7, 9 and 10 in the issues paper

Criminalised people face stigma which creates exclusion to accessing support and legal services

Formerly imprisoned people often experience stigma and discrimination on the basis that they have been to prison. This can range from negative attitudes of the general public to service providers making overt exclusions based on criminal records. People who have been to prison have already served their sentence and should not be perpetually punished.

Of relevance to this submission, stigma can come from people working in the justice system; in particular, police and lawyers may judge a client based on their past, their appearance, or the way they conduct themselves. In our work with women we have seen stigma from police led to clients being misidentified as the person who has caused harm in ongoing domestic violence situations.

Exclusion to accessing legal services for criminalised people can also be inadvertent, whereby clients may be offput by legal jargon or even the physical environment of a legal office. Further, most CRC clients due to their financial situation, cannot afford private legal representation and must access community legal centres, which are chronically underfunded and can have long wait times. As such, there must be investment in training and workforce capacity-building in the legal, women's services, alcohol and other drugs and mental health sectors to address discrimination and stigmatisation for people who have been incarcerated.

The implications of sexual violence cases for clients' broader lives can be complex

The lives of people who have recently exited prison can be complex. People may be juggling housing instability, family issues, social isolation, lack of transport, unemployment and more. This complexity extends to legal matters where many clients have ongoing matters including their own criminal, family or child protection proceedings. This can create further challenges to engage with other legal matters contributing to attrition rates of sexual violence cases.

This highlights the **need of coordinated and specialist legal and support services that can provide holistic, and wrap-around support to people with complex needs**. It may also point to the **need of more holistic case management processes by legal services and public prosecutors to understand the wants, needs and desires of victim/survivors** who should be the focus and decision makers in cases that concern them. Health Justice Partnerships which place lawyers in health settings are an excellent example of how clients legal and broader needs can be attended to holistically.

People need more support during the investigative processes.

Underpinning issues of stigma and misunderstanding of victim/survivors is the lack of appropriate support in general for victim/survivors who have experienced sexual violence. One place where support particularly lacks is in the investigative process which leads to high attrition rates of cases and can have a negative impact on victims/survivors and their cases if they do continue.

Take the simple example of attending a forensic medical unit after making an initial report. For someone who has previously been in prison, attending a healthcare appointment (especially on short notice) can be extremely difficult. This is due to practical barriers of lacking transport or finding

childcare or time off work to be able to go and attend an appointment. There are also further emotional barriers of having the courage to attend a medical appointment while carrying so much trauma.

This highlights the need to **increase wrap-around community supports for people released from prison also experiencing sexual violence** (ANROWS, 2020). The below case study from CRC's Miranda Project, a service that work exclusively with criminalised women who have experienced domestic violence, highlights how wrap around support is given leading to a better experience through a sexual violence experience and subsequent legal battles.

Case Study: Kirra

Kirra is a young First Nations woman living in Western Sydney. Kirra was referred to the Miranda Project through an external NSW Health service after experiencing a serious act of sexual violence. During this act of violence Kirra also used violence to physically protect herself. This resulted in Kirra also being charged and subject to AVO conditions, despite the fact she was trying to protect herself.

Kirra met with her case worker to begin building rapport and create a case-management plan. This case plan involved support to attend legal meetings and engage with the local Aboriginal Medical Service, support to understand how to comply with AVO conditions, opening a Work and Development Order to pay down debt with revenue NSW, engaging with local counselling supports and creating a safety plan. Part of safety planning included assisting Kirra to document breaches of the AVO protecting Kirra and how she could manage these breaches from both a legal and safety perspective.

Kirra was also assisted to create a list of local food services to ensure her immediate needs were met and that she could access these independently in the future.

Kirra's legal matters are ongoing and she continues to engage with her case worker via phone and face-to-face. Kirra has commented that the longer-term and ongoing support has helped her build trust with services.

The Miranda Project continues to support Kirra leading up to her court case. This involves practical support such as ensuring Kirra has access to appropriate clothing; court preparation, including strategies to manage difficult emotions throughout the day; face-to-face court support on the day and supporting documentation to provide to the magistrate for her matters.

3.3 Support in the courtroom

This section responds to questions 17 and 26 of the issues paper.

People require emotional support within the courtroom

CRC commonly gets calls from people involved in sexual violence cases seeking access to support while in the courtroom. We commend that some jurisdictions do offer social workers part of an intermediary scheme and the Justice Advocacy Service and Legal Aid in NSW does offer support to people within courtrooms who have a cognitive impairment or who have experienced domestic violence. However, this does not seem widespread or accessible enough for present levels of need. Ideally, **all victim survivors involved in a sexual violence case or at the very least those with complex needs, including those who have a history of criminal justice system involvement, should have the option of a well-trained and trauma informed intermediary as part of their proceedings.** Ideally, this would be built in as part of specialist wrap around support for people who require extra help.

Courtroom practices could be updated to better support people

CRC's Court Support Scheme volunteers witness the inaccessibility and challenges people face when attending local courts on a daily basis. Through this scheme (which is funded by LegalAid), CRC places volunteers in local courthouses across Sydney, the Central Coast and Newcastle. Volunteers help with navigation of the courthouses, provide referrals to other available services and importantly provide emotional support. This makes the experience of entering a courthouse, which often mimics a prison with security and justice signage, a less scary experience. However, this scheme is not available outside of local courts in metropolitan areas and cannot provide on-going support or support within proceedings. As such, **an extension of CRC's court support scheme, along with specialist training of courthouse staff to provide assistance in a trauma informed way would improve the court experience for victim survivors.** This would be complementary to any consideration on the creation of any specialist lists or courts specifically for sexual violence cases.

A prime example of this is the recently evaluated Women's Domestic Violence Court Advocacy Service's Hearing Support Pilot Program. This pilot program places specialised hearing support workers into local courts to provide non-legal support to people in domestic violence hearing. This may include sitting in hearings with women, organising transport or childcare and supporting people to feel safe in the courthouse. The recent evaluation found the program was viewed positively by all stakeholders and recommended expansion (Wangmann et al., 2024).

Courts could also explore embedding practices and processes to ensure the emotional wellbeing of people attending court. **There should be further training of all court staff including judicial officers, lawyers, sheriffs, registrars, around using trauma-informed language and be sensitive to the impact of their interactions with people who may be carrying trauma and mental health conditions from previous engagement with the CJS.** Further, courts could continue to trial and expand innovative ways to improve their appropriateness for vulnerable cohorts. For example, NSW prosecutors are encouraging the use of female judges for First Nations victim/survivors of any violent crime, increasing the cultural safety of courtroom processes (Middleton, 2024).

3.4 Understanding trauma

This section responds to questions 18, 19, 20 and 21 of the issues paper.

The link between memory and trauma for victim/survivors of repeated violence

Through CRC's work with clients who have survived lifetimes of abuse, including domestic and sexual violence, we recognise that trauma has impact on memory. While literature on this relationship is limited, the general understanding is that over a series of repeated events, memory accuracy diminishes, however, this does not diminish the memory over whether violence occurred or not. This creates challenges for models of litigation which focusses on accuracy of events (Dilevski et al., 2018)

All stages of the justice process, from police investigations, to prosecution, to judges and juries, fail to adequately understand or accommodate for how memory can be impacted by trauma. Laws, such as NSWs recently introduced coercive control legislation (while unfortunately also expanding the carceral net) encouragingly recognises that a pattern of behaviour as constituting an offence rather than just single instances. However, the current justice responses to sexual violence fail to recognise the impact of trauma on memory within legislation, court practices and training. As such, **more could be done within justice responses to better recognise what repeated sexual violence offending looks like and validate the stories of people where trauma has impacted on their memory.** This could include further academic research, updating legislation on evidence and sexual violence offences to better recognise patterns of behaviour or updating judicial practice notes or bench books to better explain the impact of trauma on memory.

Memory decay

Research has also shown that memory decay of traumatic events happens rapidly. People's attempts to fill gaps in their memory may lead to inaccuracies in their accounts which can severely impact cases (van Golde et al., 2018). Further, having to repeat stories can be traumatic especially if one is having to recall vivid memories each time.

To combat memory decay it is recommended that people create physical notes of their account immediately after the incident (van Golde et al., 2018). Not only will this create a more accurate record of events it also creates something that can be shared with consent reducing the need to retell stories. As such, **we would welcome the creation of a government app or data capture tool for people experiencing sexual violence that is trauma informed and culturally appropriate.**

Courts fail to understand the impact of trauma on how people present themselves

Trauma has a profound impact on people's lives, how they present, their language and histories. In CRC's experience of working with clients with trauma we find people with trauma can present as closed, dishonest or agitated. These presentations can reinforce pre-conceived biases around people who have been involved in the CJS and can be compounded by further biases for example if they are First Nations, are a drug user, are sex workers or fall into a range of other stigmatised groups that our clients are commonly apart of.

Issues with memory recall and societal ideas on how sexual violence victims 'should' act may influence how a judge or jury interprets someone sharing their story to a court. As such, **the creation of new justice responses to sexual violence must account for how trauma may impact how people present their stories to others, both in their ability to testify in person, and how they may present to police if pre-recorded interviews are given as evidence.** We understand the notion of trauma impacting on people's emotions is already expressed in section 292D of the *Criminal Procedure Act 198* (NSW), however, we feel the extent at which trauma can present is not conveyed in this piece of legislation and subsequent bench book, especially for the complexity of trauma that CRC clients generally carry.

3.5 Cross examination

This section responds to questions 23 and 24 of the issues paper.

CRC finds that the current cross-examination processes can retraumatise victim survivors and largely do not respect or take in account the trauma that people have faced. At the same time, cross-examination processes can disadvantage people with lower levels of education, cognitive impairments, and mental health conditions; further we consider that these populations may be more susceptible to harsh questioning.

Of particular concern to CRC in the cross-examination process is the **potential for exploitation of people's criminal histories which might blur boundaries between 'victim' and 'perpetrator'**. Not only do people who have been to prison more commonly fall into other disadvantaged cohorts (Australian Institute of Health and Welfare, 2023), there is also potential that criminal history and expression of trauma can be exploited to discount the credibility of witnesses.¹

We consider that **cross-examination processes are inherently designed to confuse people and create an image that victim survivors are lying.** A recent study in NSW found that 95% of trials attempted to

¹ While credibility evidence of people's criminal history and other factors is generally prohibited under s101A-108c of the *Evidence Act 1995* (Cth), cases such as *Tieu v R* [2016] NSWCCA 111 show that errors can still be made, and juries will unfairly discount the credibility of people with criminal histories and factors such as drug use without proper direction or safeguards.

implicate that the victim/survivor was lying, and 73% of cases tried to prescribe an ulterior motive of the victim/survivor (Quilter & McNamara, 2023). This is an inherent aspect to the adversarial courtroom approach. **These issues with cross examination highlight the need for responses to sexual violence that sit outside the traditional justice system.**

3.6 Trial delays

This section responds to question 35 of the issues paper.

Trial delays have an impact on other support victims might be receiving

CRC programs are funded to engage clients over a set time period, typically a 12 month period. CRC's clients' sexual violence matters commonly extend across these timeframes meaning they cannot have consistent support from, reporting to the trial and post-trial needs. Clients may lose their support, have to find new support workers and tell their story again, or CRC staff may continue ad hoc support even though we are not properly funded to do so. As such, **we advocate that trial delays be reduced, and take into consideration of the impact of delays on access to support services for victims.**

Trial delays cause trauma and stress for people and families

CRC, through our family counselling services, often hears about the impact on family members of people who are engaged with the CJS. Families and other support people are often forgotten about in the trial delay process and spend much of their time and energy supporting their loved ones. Families have shared stories of cases being adjourned for over four years creating issues financially, emotionally and practically. One client has shared they have had to delay their retirement plans and just wants to move on with their lives but can't until the case is finalised.

3.7 Sentencing

This section responds to questions 37, 38, 39, 41 and 42 of the issues paper.

Sexual offences are excluded from many diversionary approaches to sentencing

NSW has a range of diversionary sentencing procedures that work with criminalised people to address their needs and behaviours prior to sentencing. Examples of this include the Magistrates Early Referral into Treatment (MERIT) program and the NSW Drug Court. Both of these programs have shown some positive reduction in reoffending rates (Don Weatherburn et al., 2020) alongside improvements to wellbeing of people who have committed offences (NSW Health, 2007). However, those convicted of sex offences are ineligible for these programs. This further entrenches the cycle of disadvantage and recidivism for people who have committed sexual offences and provides little in the way of restitution to victim/survivors who may be seeking people to take accountability for their actions and steps taken to restore harm.

As such, **diversionary programs and practices that Courts can take to sentencing should be expanded to cover sex offences.** Section 11 of the *Crimes Sentencing Act* in NSW already allows any court to delay proceedings for people to work on or be assessed for rehabilitation which can then be factored into sentencing. As such, expansion of programs to engage in pre-sentencing rehabilitation for people should simply require policy changes rather than a legislative change in NSW. Expanding these programs could lead to:

- Addressing of factors such as drug and alcohol use or mental health diagnosis which may be related to the root causes of contact with the CJS (Don Weatherburn et al., 2020),

- Recognition of the wants of victim/survivors in the justice system including emphasising accountability of the person who has caused harm, hearing remorse and apologies for the crime and increasing the likelihood that others will not have to experience sexual violence (Richards et al., 2020, p. 10).

Excluding character references or mental health assessments dehumanises people convicted of sexual violence and reinforces ideas that they cannot be reintegrated into the community

It is understood that good character as a mitigating factor has been removed in some jurisdictions or may exclude certain groups of people in sexual violence cases. This is an understandable change that reflects community views of sexual violence cases, particularly in institutional settings or where there are great power imbalances. Further, it upholds victim rights who will not have to hear further defending of the person convicted of violence against them.

However, this **discounts the personhood and context around people who have committed sexual offences**. Further, it entrenches societal ideas that those who have caused harm have no capacity for good character and pushes us further away from reintegration, therapeutic or restorative approaches to justice.

As such, we recommend that **forensic psychology reports, and character references which pertain only to capacity or attitudes towards rehabilitation and restoration, be properly considered in sentencing or post-sentencing processes**. This would also assist in making decisions around whether diversionary programs would be suitable for the person. This however does not need to be made public to the victim, nor should it be considered as a mitigating factor in sentencing. We believe this would strike a balance between understanding and humanising people who have been convicted of crime and their propensity for rehabilitation with victims' rights.

3.7.1 Post sentencing considerations

Research by Richards et al (2020, p. 10) on the concerns of victims/survivors regarding the release from prison of a person who has caused harm, noted that their needs predominantly related to:

A sense of safety, physical distance from the perpetrator, information about the perpetrator's release, therapeutic support, monitoring of the perpetrator and help for the perpetrator to address offending-related needs.

Richards noted that while victim survivors had varied views on the process of reintegration, 'in general they argued in favour of therapeutic interventions and containment' of people who have caused harm (Richards et al., 2020, p. 10). Further, community intervention programs have been shown to reduce recidivism (Barros et al., 2022). However, current post-sentencing and reintegration programs are both at capacity and often exclusionary to people who have committed sexual offences. As such, **for a sentence to be just and uphold the rights of victim/survivors, post-sentencing support in the form of therapeutic reintegration programs must be in place for those found guilty of sexual violence**.

Lack of therapeutic programs for those convicted of sexual violence

While NSW Corrective Services does offer therapeutic programs for sexual and violent offenders both in custody and in community, these are not available to everyone convicted of a relevant offence. Figures from a 2019 factsheet show that 145 individuals participated in a sexual offending program while in custody (NSW Corrective Services, 2019), however, BOCSAR data from the same year shows 694 people were given a prison sentence for sexual assault and related offences (BOCSAR, 2024). This

suggests that **only 20% of those sentenced to prison for sexual violence offences are accessing a therapeutic program in custody.**

These types of **programs and supports are even less accessible in community, including any preventative support for men.** In CRC's experience, there are a lack of support programs within prison and community for men and those convicted of sexual violence. Services such as men's behaviour change, and psychological support or alcohol and other drug support is notoriously difficult to access. Even to access a residential rehab for drug or alcohol use or crisis accommodation as someone with previous convictions can be difficult as they are perceived as a risk to safety (NADA, 2022, p. 52). People convicted of child sexual offences are generally excluded from residential rehabilitation services, because clients of these services have high rates of experiences of child sexual abuse, and it may pose a risk to safety for the person seeking support. This begs the question of how harm can be reduced and ideally prevented when there are a lack of programs accessible to those who have committed sexual offences.

3.8 Restorative justice, alternative justice and therapeutic responses to sexual violence

This section responds to questions 46, 47, 48, 49, 53, 55 and 56 of the issues paper.

In response to sexual violence, victim/survivors want acknowledgement and community support over the harms done, their voice in the process in a way that is safe for them to share, assurance that the violence will stop, and accountability which may include an apology (Naylor, 2010). As Naylor (2010) stated, 'all of the current features of the trial militate against this.'

Further, increasing penalties for people convicted of sexual violence offences has not proven to be an effective deterrent and does nothing to address the root causes of violence. We also know that criminal justice responses are discriminatory and will disproportionately target marginalised and minority groups, including First Nations peoples, and people from lower socio-economic status (Ilea, 2018). As such, restorative justice is one way to respond to sexual violence that both upholds victims' rights, the principles of the justice system and reduce wellbeing and risk of reoffending for people who have been convicted of sexual violence offences.

Public support for restorative justice

Restorative justice, especially for those convicted of sexual offences, is not widely supported by the community. Societal views still label people convicted of sexual offences as 'sick individuals' that lack the ability to be rehabilitated or reintegrated into communities (Ilea, 2018). This permeates into societal ideas against restorative justice with fears and challenges that:

- Justice conferencing may retraumatise victims and reinforce unequal power dynamics.
- Punishment from restorative justice may not be proportional to the offence.
- People may not be willing to accept responsibility for their actions (Naylor, 2010).

However, with proper trauma-informed and victim/survivor centred practice and program design, these challenges can be mitigated. For example, First Nations women have expressed that if a restorative justice process is community led, then it is a preferred primary response to violence. This is as it allows them to retain power in the process and they see it as a more effective response than the western CJS (Heather Nancarrow, 2006). As such, any implementation of restorative justice in Australia must be done with consideration and collaboration with victim survivors to make sure their views are upheld.

We maintain that there needs to be more investment into restorative justice and broader public knowledge on what restorative justice processes look like to combat the ‘slap on the wrist’ stereotype of restorative justice. The positioning must show these processes as an important response which can achieve the aims of victim/survivors and deliver accountability for people who have committed crimes. Political and media messaging will be key to change this societal stigma against restorative justice and sexual offending.

3.8.1 Restorative justice in NSW

There is a very limited restorative justice response in NSW to sexual violence offending. The NSW Government does offer voluntary restorative justice processes however this is only available post-sentencing and generally excludes offences such as sexual assault from conferencing techniques (Corrective Services NSW, 2023). Restorative justice is also embedded in the *Youth Offenders Act 1997* (NSW) which allows for youth justice conferencing in NSW. The NGO, Transforming Justice Australia (TJA) also offers a restorative justice service in NSW for sexual abuse cases.

Victims Support Scheme in NSW

The victims support scheme in NSW does work to restore some harm to victims. Victims of violent crime including sexual assault in NSW are eligible for free counselling and monetary compensation including a recognition payment. This is based on the balance of probabilities and as such can be accessed without proceeding with a legal case or if a legal case fails. CRC advocates that this program increase the compensation amount, especially for clients who may still be trying to escape a violent situation, and that people with complex needs such as those leaving prison be given flexible support to apply. Common challenges seen among CRC clients when access this program is lack of literacy and a lack of photo identification.

Transforming Justice Australia

CRC auspices Transforming Justice Australia (TJA), which currently provides specialist restorative justice services to people who have experienced sexual abuse. At present this is a voluntary service that is not government funded, however is achieving positive outcomes and feedback for clients. This is highlighted by case studies on the TJA website which describes offenders taking ownership of the actions, victim survivors expressing that their feelings have been heard and finally having the confidence to access the help that they needed following their experiences. We recommend expansion of specialist services such as TJA who already hold expertise in the restorative justice space.

3.8.2 Ways to implement restorative justice and therapeutic programs for people who have committed sexual violence

Circles of Support and Accountability (CoSA)

As McNeill and Graham (2019, p. 11) note, unless we intend on permanently removing or exiling people who have offended, we must be concerned with their social reintegration following their release from prison. It is our experience as an organisation working with people who have been convicted of sex offences, that they are less likely to return to prison if they receive reintegration support in the community.

People convicted of sex offences are often the subject of intense media focus and public attention, sometimes ostracised from family and community and pushed to the margins of society (Ilea, 2018). Circles of Support and Accountability (CoSA) are a community-based initiative which assist people released from serving a prison sentence for sexual offences, providing an example of meaningful social reintegration. The CoSA model was developed in Canada in the mid-1990s and is now used throughout

Canada, parts of the US, the UK, Western Europe and first began operating in South Australia in 2015 (Richards, 2020). CoSA's are based on the concepts of 'radical inclusion' and involve a group of trained volunteers from the community forming a 'circle of care' around the 'core member', acting as a surrogate family and supporting that individual to find a place for themselves in the community (Ilea, 2018).

The emerging evidence on CoSA's is promising; randomised controlled trials and quasi-experimental research have found they have a statistically significant impact on reducing recidivism (Bates et al., 2014; Duwe, 2013, 2018; Wilson et al., 2009). In summarising the existing literature on CoSA's, Richards (2020, pp. 2-3) outlines the research which hypothesises that the relational dynamics between core members and volunteers leads to behaviour change through a number of interrelated ways as follows: by reducing social isolation; developing strong social bonds; modelling pro-social behaviour and providing expectations of behaviour; and through the provision of social and practical support through volunteers. As Richards et al (2020, p. 9) note:

CoSA volunteers work to address core members' justifications of, excuses for and minimisations of their offending. In doing so, they role-model appropriate behaviours and social interactions, by demonstrating socially acceptable language and mores. They actively reduce stressors in core members lives, including those stressors (e.g. family issues, isolation) that research shows can lead to reoffending.

In line with desistance theorising, CoSA's foster a process of identity transformation among core members. Research also indicates CoSA's may enhance outcomes across a range of social, emotional, economic and health outcomes relating to housing, employment, education, prosocial attitudes, and relationships (Richards, 2020, p. 2). We draw attention to the work of Richards, Death and McCartan (2020) which highlights the role of CoSAs and Cultural Mentoring Programs for people who are released from prison after serving sentences for sexual offences. Their research also outlines recommendations for how these programs could be improved.

Therapeutic programs for people convicted of sexual offences

There are varying types of therapeutic programs in community for people who have committed or are at risk of committing sexual violence offences. Men's behaviour change programs (MBCPs) are the most common of these programs however their approach and outcomes vary widely in Australia (ANROWS, 2021). The main access point for these programs in Australia is the Men's Referral Service which also offers a brief intervention service of specialised phone counselling. This sector however is underfunded and often overlooked in being able to create change and accountability of people who have committed offences. At present in NSW, the waitlist for MBCPs is on average 3 to 5 months (No to Violence, 2024).

Echoing calls from the peak bodies in this area (ANROWS, 2021; No to Violence, 2024), we advocate for:

- Higher and more flexible resourcing of MBCP to facilitate longer timeframes, higher participation and evaluation of effectiveness,
- Investment into community-based reintegration programs that are equipped to support people who have been convicted of sexual violence offences,
- Training across the service delivery sector to better support people convicted of sexual violence,
- Co-design of services and programs with affected communities including First Nations, LGBTQ+ and culturally and linguistically diverse communities.

These therapeutic approaches have the power to hold people accountable for offences they have committed. An evaluation of a restorative justice-based therapeutic program in Canada, Revive, found

they were effectively able to build empathy and accountability for people who had committed offences leading to a shift in their behaviour. This led to them taking actions to repair harm such as giving apologies to victim survivors (Rye et al., 2018).

CRC advocates for the expansion of any therapeutic programs that works with people convicted of sexual violence on the basis that they are effective at administering restorative justice.

Justice conferencing

The other major restorative justice technique that could be employed to respond to sexual violence is justice conferencing. Justice conferencing involves a meeting between those who have been convicted of sexual violence and those who have been impacted by the crime mediated by a third party. In conferences, victim/survivors get a chance to tell their story and have their feelings heard by the offender and third parties. Outcomes may include an apology, questions answered, and feeling heard overall. The key benefits of justice conferencing are that it gives a genuine voice to the victim survivor in a non-adversarial approach, emphasises accountability of offenders and has been found to also reduce re-offending (Centre for Innovative Justice, 2014, p. 6).

Considerations for the implementation of restorative justice

CRC supports existing research on pathways to implementing restorative justice which advocates for the introduction of a comprehensive and well-resourced restorative justice framework that is embedded in legislation (Centre for Innovative Justice, 2014) (KPMG, 2023).

CRC endorses the range of recommendations and principles already reported about the application of restorative justice including in the National Plan to end violence against women, the NSW sexual violence plan 2022-2027 and the 2021 Victorian Law Reform Commissions report into improving the justice system response to sexual offences.

Of particular importance for CRC's clients is the need to **make restorative justice processes accessible to all and explore options for them to be a true alternative to the CJS**. To be accessible to CRC clients, any professionals working in the restorative justice space should be well trained and understanding of potential stigma towards people involved in the CJS and should be aware of the victim/offender overlap. Further, creating physical spaces for restorative justice services that do not mimic institutions and considering issues that could exclude CRC clients such as access to childcare or accessibility of transport.

To be an alternative to the CJS, **restorative justice needs to be offered pre-sentencing and potentially pre-trial for victim/survivors of sexual violence**. This would circumvent issues of victim/survivors not wanting or being able to report to police, and the trauma caused by the reporting, investigation and trial process. Further, 85% of reported sexual assaults have no legal action taken, meaning that the majority of reports go without any recourse for the victim/survivor (Gilbert, 2024).

Project Restore in New Zealand is an example of an effective justice conferencing model that takes referrals directly from community or from police during the pre-trial phase and as such is available independent of CJS responses such as police reporting (Project Restore NZ, n.d.).

Increase education around prevention of sexual violence

Early intervention and prevention of sexual violence in Australia is lacking. We too often see men who are at risk of causing sexual harm needing to wait until the last minute, or until an offence has occurred, before they are able to access any help. As such, there should be further investigation and

funding of programs that contribute to early intervention and culture shifts such as programs in schools, therapeutic supports for people who have not yet committed offences.

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