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Australian Law Reform Commission

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## **JUSTICE RESPONSES TO SEXUAL VIOLENCE – ISSUES PAPER 49**

Thank you for the opportunity to make a submission in response to Issues Paper 49, *Justice Responses to Sexual Violence*.

### **The work of Relationships Australia**

Relationships Australia is an Australian federation of community-based, not-for-profit organisations with no religious affiliations. Our services are for all members of the community, regardless of religious belief, age, gender, sexual orientation, cultural background, lifestyle choices, or economic circumstances. Relationships Australia provides services for victims and perpetrators of sexual violence, as well as for domestic, family and other interpersonal violence. We aim to support all people in Australia to live with positive and respectful relationships, and believe that people have the capacity to change how they relate to others. Relationships Australia believes that violence, coercion, control and inequality are unacceptable. We respect the rights of all people, in all their diversity, to live life fully within their families and communities with dignity and safety, and to enjoy healthy relationships. Our services include:

- individual, couples, and family counselling
- family law counselling, mediation and dispute resolution
- Children's Contact Services (services which provide supervised contact and changeovers for high risk families)
- Specialised Family Violence Services
- therapeutic and case management services to applicants for Redress Support Services, Forgotten Australians, Forced Adoption Support Services, Intercountry Adoptee Family Support Service, and Post Adoption Support Services
- post-separation services for parents and children
- services designed for men, including programs to support parenting capacities and resources, Men's Behaviour Change Programs, and tailored programs such as the Respectful Relationships Program for Indigenous clients
- parenting capacity programs
- gambling help services
- alcohol and other drugs services
- employee assistance programs
- Headspace (youth mental health) services
- mental health (including suicide prevention) services and programs
- supporting Australians with disability through our counselling services connected with the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability
- Family Mental Health Support Services, and

- a range of tailored services for older Australians, including senior relationship services, elder mediation, elder abuse case management and mediation, social connection services and mental health services in residential aged care on behalf of Primary Health Networks in South Australia.

This submission is informed by the various submissions which Relationships Australia National Office has made in recent years, and which can be found at <https://relationships.org.au/research/#advocacy>.

These include our submissions responding to the:

- Australian Law Reform Commission Issues Paper 48
- ALRC Discussion Paper 85
- ALRC Final Report 135
- 2020 inquiry by the House of Representatives Standing Committee on Social Policy and Legal Affairs into family, domestic and sexual violence
- inquiry by the Joint Select Committee on Australia's Family Law System.

### Recommendations

**Recommendation 1** That the Commission explore models for case management and navigation support for victim survivors of sexual violence.

**Recommendation 2** That funding for services in these areas should include a 'loading' so practitioners can be paid more compared with their inner-city colleagues.

**Recommendation 3** That specialist reporting pathways should be available, also, for victim survivors who encounter specific barriers to reporting in safety and being treated with dignity, respect and humanity, including:

- children and young people,<sup>1</sup> noting Australia's obligations under the Convention on the Rights of the Child, which recognises the voice and agency of children as rights-bearers;<sup>2</sup> all police and prosecution agencies should be child safe organisations<sup>3</sup>
- older victim survivors
- victim survivors living in institutional settings
- victim survivors living with disabilities, noting Australia's obligations under the Convention on the Rights of Persons with Disabilities, and
- victim survivors who are otherwise dependent on others for activities such as providing accommodation, transport or assistance with communication.

**Recommendation 4** That the potential benefits of MOUs with police, prosecutors and victims' commissioners be explored.

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<sup>1</sup> For prevalence of child sexual abuse, see the Australian Child Maltreatment Study <https://www.acms.au/>; in particular, Matthews et al, 2024 (prevalence and trends); Hunt et al, 2024 (peer sexual harassment). For prevalence of sexual violence among young people attending tertiary institutions see Heywood et al, 2022; Nisbet et al, 2022.

<sup>2</sup> For example, Nixon & Fryar, 2024, report that children and young people experienced adults withdrawing reports of sexual assault on their behalf and against the wishes of the children and young people.

<sup>3</sup> See National Child Safe Principles, 2018.

**Recommendation 5** That:

- ODPPs embed practices that require independent reviews of sexual violence cases that are not progressed
- ODPPs develop, in consultation with Ombudsman offices in their jurisdictions, robust complaint mechanisms, and
- regular independent reviews (no less frequently than every three years) to identify patterns in decisions about prosecution, reporting to the relevant minister; these reports should be published within 15 sitting days.

**Recommendation 6** That the special measures identified in the Issues Paper, which focus on the legal processes, need to be complemented by ‘safety by design’ principles flowing through the physical and online environs and atmosphere of places with which victim survivors must interact through the criminal justice process.<sup>4</sup>

**Recommendation 7** That:

- all prosecution offices and courts be child safe organisations
- police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
- providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded at all courts hearing sexual violence matters; those providers should also be resourced, and have the capability, to ‘warm refer’ victim survivors to other support services, if needed,<sup>5</sup> and
- the Commission consider overseas practices aimed at supporting children who have experienced sexual and other forms of violence or abuse, such as Children’s Advocacy Centres in the United States of America, the Children and Family Court Advisory and Support Service (CAFCASS) in England, and Barnahus in Europe.<sup>6</sup>

**Recommendation 8** That Relationships Australia **recommends** that research be undertaken about the impact of recorded evidence on judges and juries.

**Recommendation 9** That the Commonwealth, State and Territory Governments collaborate to undertake nationally coordinated workforce planning traversing recruitment, retention, and initial and ongoing professional development.

**Recommendation 10** That intermediary schemes being made available for all victim survivors, supported by ‘ground rules’ hearings, as described at paragraph 56 of the Issues Paper.

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<sup>4</sup> See, eg, eSafety Commissioner, 2019; <https://www.esafety.gov.au/industry/safety-by-design>;

<sup>5</sup> In designing these services, governments should have regard to the principles set out in Mental Health Australia & National Mental Health Consumer & Carer Forum, 2024, p 8.

<sup>6</sup> See, eg, <https://ojdp.ojp.gov/programs/childrens-advocacy-centers>; <https://www.cafcass.gov.uk/>; <https://www.barnahus.eu/en/about-barnahus>

**Recommendation 11** That the Commission consider the impact of the *Jury Directions Act 2015* (Victoria), to inform recommendations which it might make about whether such legislation should be introduced across Australia.

**Recommendation 12** That the Commission explore measures that afford courts oversight of when, how and how often defendants seek this information.

**Recommendation 13** That that the Commission explore the possibility of developing a direction that, while evidence of distress may be adduced by the prosecution, no adverse inference can be drawn from such evidence not being adduced, and no complainant can be cross-examined on that.

**Recommendation 14** That the Commission engage with the Chief Justice of the Federal Circuit and Family Court to canvass in more detail the design and rollout of specialist lists.

**Recommendation 15** That specialist accreditation be established for lawyers who appear in sexual offence cases.

**Recommendation 16** That unless a victim survivor opts out, there be a presumption favouring ongoing communication with them about sentencing.

**Recommendation 17** That separate legal representation be made available during sentencing submissions, and that the legal representative for the victim survivor should be allowed to make submissions.

**Recommendation 18** That the Commission explore options for presenting victim impact statements, as described in paragraph 105 of the Issues Paper.

**Recommendation 19** That research be undertaken with judges about the impact of victim impact statements, and whether that impact is affected if a victim impact statement is not delivered in person.

**Recommendation 20** That applicants be supported to apply for Intervention Orders and that the Commonwealth build on existing mechanisms (eg through the social security or tax system) to provide an avenue by which orders to pay damages.

**Recommendation 21** That the Commission engage with Treasury to explore how *all* victim survivors of sexual violence could avail themselves of these mechanisms.

**Recommendation 22** That any victims' charter be backed by real, meaningful and enforceable remedies.

**Recommendation 23** That the Commission consider that victim survivors' rights to be heard and actively engaged extend to parole hearings.

**Recommendation 24** Universal screening of victim survivors, and alleged offenders, at the earliest possible engagement with the criminal justice system. (Recommendation 24)

## Framing principles of this submission

### Principle 1 - Commitment to human rights

Relationships Australia contextualises its services, research and advocacy within imperatives to strengthen connections between people, scaffolded by a robust commitment to human rights. Relationships Australia recognises the indivisibility and universality of human rights and the inherent and equal freedom and dignity of all. In our 2023 submission to the inquiry Parliamentary Joint Committee on Human Rights into Australia's human rights framework, we recommended that Government should introduce a Human Rights Act that provides a positive framework for recognition of human rights in Australia (Recommendation 2 of that submission).<sup>7</sup>

#### *Children and young people*

The submission offered specific and substantive recommendations to elevate recognition of children as rights bearers and improve Australia's compliance with the Convention on the Rights of the Child, particularly, but not only, in the family law system and as primary victim survivors of DFSV (Recommendation 8).<sup>8</sup> Reforms to Australian justice responses to sexual violence must not consist merely of retrofitting adult-centred systems, legal and administrative structures, physical premises and service delivery, as has periodically occurred in the family law system. Instead, child victim survivors of sexual violence<sup>9</sup> need and deserve bespoke systems, structures and services, to comply with our international public law obligations, as well as our domestic moral obligations. Design, implementation and evaluation should be informed not only by adult advocates, but also by genuine and meaningful engagement with child victim survivors. Commonwealth and state/territory government agencies who have for several years been working with children and young people to elevate their voices and agency will be well-positioned to assist in this work.

The critical importance of this is underlined by recent observations by Hill & Salter, 2024:

While child sexual abuse by adult perpetrators had decreased significantly over previous decades, abuse by known adolescents in non-romantic relationships has in the past few years increased, to become the most common perpetrator category for victimised young people now aged 16-24. This is a significant and recent change. Historically, adults were the most common perpetrators of child sexual abuse (and still are, for people aged over 25). Now, the most common sexual offender against children is another child. These statistics are alarming on their own, but they should also raise alarm bells about the potential for future perpetration, because sexual violence in childhood is a risk factor for other violence, including domestic and family violence in adult relationships (citing ALSWH, 2022)....

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<sup>7</sup> Available at [https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL\\_.pdf](https://www.relationships.org.au/wp-content/uploads/PJCHRhumanrightsframework.FINAL_.pdf)

<sup>8</sup> For discussion about prevalence of child sexual abuse in contested family law matters, see Webb et al, 2021; Moloney et al, 2023; Parkinson, 2021. For prevalence of child sexual abuse more broadly, see the Australian Child Maltreatment Study (<https://www.acms.au/>); in particular, Matthews et al, 2024 (prevalence and trends); Hunt et al, 2024 (peer sexual harassment). For prevalence of sexual violence among young people attending tertiary institutions see Heywood et al, 2022; Nisbet et al, 2022.

<sup>9</sup> For prevalence and trends of child sexual abuse, see Mathews et al, 2024.

Hill & Salter noted the

... strong evidence that children's exposure to pornography is resulting in more severely harmful sexual behaviour, as well as other sexual behaviours amongst boys and young men (like non-fatal strangulation and spitting during sex) that girls and young women often do not want or enjoy; certainly, most do not often appreciate the danger inherent to strangulation. (Hill & Salter, 2024)

### *Older people*

Relationships Australia also made specific and substantive recommendations to the PJCHR about the rights of older persons, and observations about structural and systemic ageism which pervades legal, bureaucratic and political systems. The lack of commitment by Australian governments to recognise the rights of older persons leads to egregious human rights violations against older persons, of the kinds documented by the Royal Commission into Aged Care. This includes sexual violence against older women. In its Final Report, the Royal Commission said that

The estimated number of alleged incidents of unlawful sexual contact in 2018–19 could be as high as 2520, or almost 50 per week. This is a disgrace and should be a source of national shame.<sup>10</sup>

Australia's first study into the nature and prevalence of abuse and neglect of older people estimated prevalence of sexual abuse of older persons at 1%, making it the least prevalent form.<sup>11</sup> However, this research (Qu et al, 2021) had significant limitations; in particular, it excluded older people living in institutional settings and those with cognitive impairment. The parameters of the AIFS research did not allow focused work on marginalised groups, including culturally and linguistically diverse older people, older First Nations people, and people belonging to LGBTIQ+ communities. Taken together with the Royal Commission's research, we can be dismally confident that actual prevalence is significantly higher. Indeed, Report 131 by this Commission noted that

Sexual abuse of older people may be uncommon compared to other types of elder abuse. Australian crime statistics also suggest that older people are significantly less likely to be the victims of sexual assault than younger people, particularly younger females. Sexual assault was also the smallest category of assault found in the US study. However, a 2014 research study stated that, while the 'idea of older women as victims of sexual assault is relatively recent and little understood ... it is becoming increasingly evident that, despite the silence that surrounds the topic, such assaults occur in many settings and circumstances'. (paragraph 2.60; references omitted)

The ALRC made several recommendations aimed at better identifying, preventing and responding to sexual abuse of older people.

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<sup>10</sup> See Final Report: Volume 1, p 140.

<sup>11</sup> Prevalence of all types of abuse and neglect among community dwelling people aged 65 years and older was reported by AIFS as 14.8%; the Royal Commission estimated that prevalence of all types of abuse and neglect among people living in residential aged care was 39.2% (Qu et al, 2021).



Yet social pressures, stigma and distaste for the topic suppress to the point of invisibility violence perpetrated against older women; especially sexual violence. There is a blank reluctance to recognise that older women are sexually abused in the community and in institutional settings. Rape myths used to shame and suppress allegations take different forms to those used against younger women. Among older women, the rape myths attribute allegations to confusion, dementia or urinary tract infections. Reforms to Australian justice responses to sexual violence must include bespoke systems, structures and services that are co-designed with older women, in design, implementation and evaluation.

### *Human rights and intersectionality*

Finally, the justice system must recognise and respond to the effects of stigma, marginalisation and exclusion arising from diverse circumstances and positionalities, including:

- 'postcode injustice' in accessing health, justice and other social services, as well as social, cultural, economic and political opportunities
- poverty and financial precarity
- status as users of care and support
- disability and longstanding health restrictions (including poor mental health)
- being an adult informal carer for a child or other adult
- being a young person caring for a child or an adult
- intimate partner violence, abuse or neglect as an older person, and/or child maltreatment
- family separation
- housing insecurity and instability
- employment precarity, unemployment and under-employment
- misuse of alcohol and other drugs
- experience of gambling harms
- having come from culturally and linguistically diverse backgrounds (including people who have chosen to migrate and people who have sought refuge)
- digital exclusion
- effects of complex grief and trauma, intergenerational trauma, intersecting disadvantage and polyvictimisation
- being survivors of institutional abuse
- experiencing homelessness or housing precarity, and
- identification as members of the LGBTIQ+ communities.

### **Principle 2 – Accessible and inclusive services: simplification, fragmentation, geographic equity, digital divide, cultural safety, transparency, cost**

Relationships Australia is committed to promoting accessible and inclusive services, and advocating for accessibility across the service sectors in which we operate, including by advocating for:

- reducing complexity of the law and its supporting processes
- reducing fragmentation and, where it is unavoidable, removing the burden of navigating systems from those whom they are intended to serve and support
- ensuring high quality and evidence-based service delivery, accompanied by robust accountability mechanisms, and

- reducing barriers to access arising from financial or economic disadvantage, as well as other positionalities and circumstances that create barriers to accessing services.

Inclusive and universally accessible services are an imperative of human rights because none of these circumstances, experiences and positionalities exists at the level of an individual or family. They become barriers to full enjoyment of human rights and full participation in economic, cultural, political, and social life through the operation of broader systemic and structural factors including:

- legal, political and bureaucratic frameworks
- beliefs and expectations that are reflected in decision-making structures (such as legislatures, courts and tribunals, and regulators)
- policy settings that inform programme administration, and
- biases or prejudices that persist across society and that are reflected in arts, culture, media and entertainment.

### *Fragmentation*

Our commitment to accessibility also underpins our advocacy for systems and processes that lift from the shoulders of those least equipped to bear them the burdens of fragmented, siloed, complex and duplicative laws, policies, programmes, and administering entities.

Victim survivors experiencing co-morbidities and intersectionalities could benefit from case management and navigation support, made available at first presentation. In this context, case management and navigation, leading to appropriate referrals, has been demonstrated to maximise the effectiveness of legal solutions (for example, in responding to abuse and neglect of older people and in supporting people engaging with Royal Commissions).

Effective case management requires more than communicating and planning with multiple service systems to ensure provision of appropriate services. Case management must work with victim survivors and their supporters throughout their engagement with the criminal justice system, to ensure services are tailored and sequenced to best address their strengths and needs, and to empower victim survivors in exercising their agency. Case management is a service delivery practice that depends on the quality of the service itself. Therefore, successful case management depends on its integration with proven interventions and available community services, operating as an organising structure alongside clinical services.

We **recommend** that the Commission explore models for case management and navigation support for victim survivors of sexual violence. (Recommendation 1)

### *Postcode injustice – towards geographic equity*

Relationships Australia works in regional, rural and remote areas, recognising that there are fewer resources available to people in these areas, and that they live with pressures, complexities and uncertainties not experienced by those living in cities and regional centres. Our member organisations also report significant difficulties in recruiting and retaining qualified and experienced practitioners in outer suburban and regional locations. We **recommend** that funding for services in these areas should



include a 'loading' so practitioners can be paid more compared with their inner-city colleagues. Recommendation 2)

We support geographic equity in establishing responses to sexual violence (and access to justice more broadly). One way to achieve geographic equity in legal systems is, as the Issues Paper canvasses, harmonisation. In our experience, however, striving for harmonisation has often proved to be an exercise for which the aphorism 'the perfect is the enemy of the good' was designed. While nine jurisdictions debate definitions and 'who does it best', victim survivors are harmed not only by perpetrators, but also by political and/or bureaucratic inertia. This is unacceptable. Society cannot rely on harmonisation of laws to deliver geographic equity as rapidly as it is required.

### *Digital exclusion*

Digital exclusion from safe, reliable, fast and private online services remains a genuine barrier for our most marginalised clients, including:

- those living in rural, regional and remote communities
- people experiencing coercive control
- older people
- First Nations people
- people living with disability
- people who are unhoused, or experiencing housing precarity, and
- people experiencing financial hardship.

Data tells us that factors driving digital exclusion include:

- physical location (including urban and suburban 'black spots')
- cost
- apprehensions around data security and the prevalence of scam activity, and
- technical expertise and/or the ability to access that.<sup>12</sup>

### *Cultural safety and responsiveness*

The criminal justice system must be culturally safe. While much more work needs to be done in the family relationships services sector, the Commission may be assisted by exploring mainstream services which have made progress in this area.<sup>13</sup>

Cost, literacy, language, bureaucratic hurdles and lack of confidence in cultural safety can all impede the access of Aboriginal and Torres Strait Islander people to 'White' systems. Further, policies made in the context of urbanised clients often do not translate well to the situation of First Nations people living in remote areas. Well-founded distrust of government agencies in matters relating to children is also a

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<sup>12</sup> See Thomas et al, 2023.

<sup>13</sup> See, eg, Ralfs et al, 2019, for an evaluation of cultural fitness and Decrea, 2019, for a consideration of Family Group Conferencing.

significant barrier. Additionally, many of our clients suffer from intergenerational and complex trauma. In some communities, violence has been normalised.

### Principle 3: Person-centred and relational services

Centring lived experience (including through co-design) in policy and service design supports the development of policy, legislation and services that uphold human rights – especially human rights of individuals and groups who have traditionally been marginalised and excluded from policy discourse, or been the ‘objects’ of such discourse. In addition, centring lived experience can enhance the transparency and public accountability in policy and programme development, and the efficiency of government services, by supporting the delivery of outcomes that are valued by service users, not just administrators.

## RESPONSES TO QUESTIONS FROM THE ISSUES PAPER

### REPORTING

Question 3 How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better? You might consider the kind of information given to victim survivors, the confidentiality of the process, and the requirements of particular groups in the community.

### AND

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

Relationships Australia’s National Policy Manager, Dr Susan Cochrane, is participating in the Alternative Reporting of Sexual Assault Project, commissioned by the Commonwealth Attorney-General’s Department. We expect that the Australian Law Reform Commission will engage with the researchers undertaking that Project (RMIT, University of Wollongong and La Trobe University) about their findings and observations as they evolve during this ALRC reference. Relationships Australia **supports** the establishment of alternative reporting mechanism as key to elevating the agency of victim survivors, by allowing them choice in how, where, when and to whom they disclose.

There are some overarching principles that should guide re-design of existing reporting mechanisms and the design of new and complementary reporting pathways. Reporting pathways should:

- recognise and validate the diverse aims that victim survivors have in reporting sexual violence
- be co-designed with victim survivors; where a pathway is intended for a particular community or cohort, that community or cohort must be given meaningful opportunities to provide substantive input on design, implementation and subsequent evaluation

- remove from people reporting sexual violence the burden of navigating fragmented and siloed systems (for example, case management: see Recommendation 1); this can be through co-locating services in safe locations,<sup>14</sup> but also through ‘virtual hubs’
- be accessible, culturally safe services that are trauma-informed and domestic and family violence informed; this includes not only having suitably skilled workers, but also appropriate location and physical design of premises. Not all reporting services need to have specialist expertise in serving clients of all possible cohorts. It is important to offer specialist reporting pathways (for example, ACCO-led and staffed services). This does not absolve more generalist pathways from the responsibility to have universal ‘core’ competencies
- respond appropriately to intersectionality among people reporting sexual violence; for example, recognising the impacts of intergenerational trauma, poverty, social determinants of health and institutional abuse
- be multi-modal, and offer supports to clients who experience digital exclusion
- offer multiple and visible ‘touchpoints’ which can be accessed safely by victim survivors in the ordinary course of their daily lives, for example, at schools, hospitals, GP surgeries and allied health care providers, pharmacies, churches, and recreational groups
- proactively de-stigmatise reporting sexual violence across communities
- give clear, upfront information about confidentiality and admissibility of information, and any mandatory reporting obligations imposed on workers

We **recommend** that specialist reporting pathways should be available, also, for victim survivors who encounter specific barriers to reporting in safety and being treated with dignity, respect and humanity, including:

- children and young people,<sup>15</sup> noting Australia’s obligations under the Convention on the Rights of the Child, which recognises the voice and agency of children as rights-bearers;<sup>16</sup> all police and prosecution agencies should be child safe organisations<sup>17</sup>
- older victim survivors
- victim survivors living in institutional settings
- victim survivors living with disabilities, noting Australia’s obligations under the Convention on the Rights of Persons with Disabilities, and
- victim survivors who are otherwise dependent on others for activities such as providing accommodation, transport or assistance with communication. (Recommendation 3)

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<sup>14</sup> For example, mobile breast screening services that collaborate with health justice partnerships to help women experiencing domestic and family violence, which women can visit without exciting suspicion and can be in a private space to safely disclose.

<sup>15</sup> For prevalence of child sexual abuse, see the Australian Child Maltreatment Study <https://www.acms.au/>; in particular, Matthews et al, 2024 (prevalence and trends); Hunt et al, 2024 (peer sexual harassment). For prevalence of sexual violence among young people attending tertiary institutions see Heywood et al, 2022; Nisbet et al, 2022.

<sup>16</sup> For example, Nixon & Fryar, 2024, report that children and young people experienced adults withdrawing reports of sexual assault on their behalf and against the wishes of the children and young people.

<sup>17</sup> See National Child Safe Principles, 2018; AFP, 2021.

## POLICE RESPONSES

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

### AND

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

Police responses to reports of sexual assaults have been the subject of recent reviews in the Australian Capital Territory, and we refer the Commission to Burgin & Tassone, 2024; Nixon & Fryar, 2024, and Leon, 2021. These reviews demonstrate current deficits in police responses to sexual assault in the ACT. In particular, Nixon & Fryar concluded that

... the reason why so few cases progress to the point of charge in the ACT is because there is limited investigation of sexual offences.<sup>18</sup>

We support the Nixon & Fryar report recommendations, subject to the following observations:

- Recommendation 1 – two preconditions of successful implementation of this recommendation are:
  - resetting the relationship between ACT Police, the ACT Victims of Crime Commissioner and the Office of the Director of Public Prosecutions; the lack of mutual respect and regard that is necessary to the optimal functioning of a criminal justice system, while not unique to the ACT,<sup>19</sup> is now a matter of public record (see, eg, Sofronoff, 2023; *Drumgold v Board of Inquiry and Ors* [2024] ACTSC 58), and
  - mitigating siloes between these offices
- Recommendation 10 – noting the distinction between risk screening and risk assessment, this Recommendation should be supplemented by universal risk screening among all relevant government agencies and service providers, and
- adequate, sustained resourcing is a precondition of successful implementation of all of the Nixon & Fryar recommendations.

It may seem trite to observe that police are recruited from society. However, it is critical to confront this reality, given the (to date) glacial progress in shifting community attitudes towards sexual violence, including through dispelling rape myths, despite decades of effort to do this.<sup>20</sup> We agree with Hill & Salter<sup>21</sup> that, while this work is necessary, it has proven insufficient to prevent sexual violence or even to improve responses to it.

Relationships Australia **supports** the following elements canvassed in paragraph 33 of the Issues Paper:

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<sup>18</sup> Nixon & Fryar, 2024, p 8.

<sup>19</sup> See recent publicised criticisms of handling of sexual assault matters: by judges about practices of the New South Wales Director of Public Prosecutions and the Victorian DPP.

<sup>20</sup> See, eg, the data reported in the Sexual Violence Scale of the National Community Attitudes Survey (Coumarelous et al, 2023).

<sup>21</sup> Hill & Salter, 2024.

- training of all police (including police prosecutors) about trauma responses, trauma-informed practices and cultural safety – a standard training package would benefit all police, regardless of any specialty they pursue; more specialised and tailored programs should be delivered to police prosecutors and police working in specialist units, as suggested in the Issues Paper
- victim-centred and trauma-informed approaches, policies and procedures, developed through co-design (consultation without co-design is inadequate)
- in relation to specialist units, care will need to be taken that this does not entrench othering or stigma of victim survivors and those who work with them, with attention paid to dismantling, where necessary, internal and informal hierarchies
- training of specialist police to interview complainants, engage with intermediaries where relevant, and recording interviews
- reviewing recruitment policies
- reviewing – and investing in – translation and interpreter services, and
- regularly auditing approaches, policies and procedures, and evaluating and publishing information about outcomes.

## PROSECUTION RESPONSES

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

As observed above, there appears to be significant work to be done in various Australian jurisdictions to improve the working relationships between police, prosecution offices and judiciaries. Criminal justice systems are unable to perform their functions fairly and effectively for victim survivors, accused persons, other witnesses and the broader community as long as dysfunctional relationships exist between key elements. Relationships Australia often expresses concern about the effects of siloing and fragmentation on the delivery of policies and services; public conflict within justice agencies has exponentially greater adverse effects on community members relying on the criminal justice system to be safe and effective. We **support** proposals to develop memoranda of understanding between police and ODPPs relating to investigation and prosecution of sexual violence cases (see paragraph 37), subject to resolution of inter-agency conflicts. We further **recommend** that the potential benefits of MOUs with police, prosecutors and victims' commissioners be explored. (Recommendation 4)

#### Relationships Australia **supports**:

- training for prosecutors in the effects of trauma on victim survivors and witnesses, and trauma-informed practice, to be supported by policies and procedures aimed at ensuring:
  - high quality and trauma-informed decision making about prosecution responses
  - regular communication with complainants (subject to complainants opting out), including by providing reasons for prosecution decisions, and
  - that complaints about decision making are dealt with in a timely and trauma-informed manner
- subject to the comments above, in relation to internal hierarchies, specialist sexual offence prosecutors
- cultural capability plans, and
- properly resourced witness support services (including for child witnesses and adults experiencing circumstances of vulnerability).

Finally, while literature over the past two decades has identified that police decisions not to proceed are the most substantial driver of attrition, exercise of prosecutorial discretion not to proceed has also been documented as having significant influence.<sup>22</sup> In addition, while there is increasing public concern about under-reporting, under-investigation and under-prosecution of sexual violence matters, some judicial officers have publicly criticised prosecution officers for bringing cases that have no reasonable prospect of conviction. All of these concerns need attention for victim survivors and the public to repose confidence in the integrity of the criminal justice system, and the professional commitment for agencies within that system. They are complex, and will take time to remedy. An important first step, however, would be improving the transparency and accountability around the exercise of prosecutorial discretions. Accordingly, Relationships Australia **recommends** that:

- ODPPs embed practices that require independent reviews of sexual violence cases that are not progressed
- ODPPs develop, in consultation with Ombudsman offices in their jurisdictions, robust complaint mechanisms, and
- regular independent reviews (no less frequently than every three years) to identify patterns in decisions about prosecution, reporting to the relevant minister; these reports should be published within 15 sitting days. (Recommendation 5)

Relationships Australia also **supports** prosecutorial independence from the executive and judicial branches of government.

## TRIAL PROCESS; SPECIAL MEASURES

Question 12 Do you have views about the measures listed above? Have the measures reduced the trauma of giving evidence? Could they be improved? Have things changed? What is working well? What is not working well? Are there other measures which have been implemented and are not listed above?

### AND

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

Relationships Australia **supports** the special measures introduced across Australian criminal justice jurisdictions in recent years, and described at paragraph 45 of the Issues Paper, which are similar to those introduced into the Family Court in recent years, in response to increasing family violence presentations in that jurisdiction.<sup>23</sup> There have been important steps towards centering victim survivors and acknowledging the impact not only of the trauma from the events subject to prosecution, but also the trauma of engaging in the criminal justice process. This can significantly compound harm and impair recovery.

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<sup>22</sup> See, eg, ALRC Report 114, paragraphs 26.11ff.

<sup>23</sup> See, eg, Family Court website, Safety at court, <https://www.fcfcoa.gov.au/attending-court/safety-court>; Federal Circuit and Family Court of Australia media release, 27 February 2024.



We have supported similar reforms in the family law system, including the ban on direct cross-examination pursuant to sections 102NA and 102NB of the *Family Law Act 1975* (Cth). These provisions were intended

... to prevent the re-traumatisation of victims of family violence, maintain procedural fairness for all parties and ensure that victims do not settle their matter and enter into unsafe arrangements because of a fear of direct cross-examination.<sup>24</sup>

These risks are not dissimilar to those experienced by victim survivors engaging in the criminal justice system, who, as observed by the Commission in 2010, withdraw at various stages of the process.<sup>25</sup> Powers to identify, and measures to respond to, abuse of systems and processes need to recognise the multiplicity of systems and processes that can be used, in concert or in succession, to perpetuate abuse, control, intimidation and coercion. The criminal justice system (like the family law system)<sup>26</sup> allows significant scope to someone who wishes to engage in this form of behaviour, offering multiple avenues by which to maintain contact and sustain violence and abuse. Responses to misuse of systems and processes cannot be confined to consideration of what happens in legal proceedings before the court and in the court room, but must also encompass conduct outside the court, that is connected to the matter. This includes creating a climate of fear not only around the prospect of direct cross-examination, but around all aspects of the legal system.

It is not sufficient to afford safety to victim/survivors of sexual violence whose perpetrators, like those of DFV, enjoy a wide choice of weapons to perpetuate their abuse not only at the Bar Table and in the court room, but in the carparks, corridors and waiting rooms of courts and other agencies of government. Many are undeterred by personal protection orders. We **recommend** that the special measures identified in the Issues Paper, which focus on the legal processes, need to be complemented by 'safety by design' principles flowing through the physical and online environs and atmosphere of places with which victim survivors must interact through the criminal justice process.<sup>27</sup> (Recommendation 6)

We further **recommend** that:

- all prosecution offices and courts be child safe organisations
- police, prosecutors and court staff be equipped and empowered to provide victim survivors with warm referrals to case management and psychosocial supports
- providers of psychosocial support services, with expertise in working with victim survivors of sexual violence, be embedded at all courts hearing sexual violence matters; those providers should also be resourced, and have the capability, to 'warm refer' victim survivors to other support services, if needed,<sup>28</sup> and

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<sup>24</sup> Cornall & Luscombe, 2021, p 4. For more information about the context of the ban, see Carson et al, 2018. For commentary on implementation, see eg Wangmann et al, 2020, and Wangmann et al, 2022.

<sup>25</sup> See, eg, ALRC Report 114, 2010, paragraphs 26.11ff; Bouhours & Daly, 2010; Crime Statistics Agency, 2021; Murphy-Oikonen, et al, 2022.

<sup>26</sup> As recognised by this Commission in Report 135.

<sup>27</sup> See, eg, eSafety Commissioner, 2019; <https://www.esafety.gov.au/industry/safety-by-design>;

<sup>28</sup> In designing these services, governments should have regard to the principles set out in Mental Health Australia & National Mental Health Consumer & Carer Forum, 2024, p 8.

- the Commission consider overseas practices aimed at supporting children who have experienced sexual and other forms of violence or abuse, such as Children's Advocacy Centres in the United States of America, the Children and Family Court Advisory and Support Service (CAFCASS) in England, and Barnahus in Europe.<sup>29</sup> (Recommendation 7)

Question 15 Has the use of recorded evidence been implemented in your jurisdiction? If so, to what extent? How is this working in practice? What is working well? What is not working well? What could be improved? Do any of the matters discussed when the recommendations were made (some of which are outlined above) need further discussion in the context of the reforms having been implemented? Are there any other issues? What do you see as the advantages and disadvantages of using recordings of the complainant's evidence at trial?

Relationships Australia **recommends** that research be undertaken about the impact of recorded evidence on judges and juries. (Recommendation 8)

Question 17 Has an intermediary scheme been implemented in your state or territory? How is it working in practice? What is working well? What is not working well? How could it be improved? Have any of the issues described above arisen? If an intermediary scheme has not been implemented in your state or territory, do you know why? Do you think such a scheme would be helpful? If so, what do you think the scheme should involve? Do you have any ideas generally about the use of intermediaries in the criminal justice system?

See response to Question 13. Cornall & Luscombe found 'virtually universal support' for the Family Court scheme. However, a key issue was – not unexpectedly – resourcing. Until relatively recently,<sup>30</sup> there was patchy recognition that an increasing proportion of the families who needed judicial determination in their family law matters were affected by domestic and family violence, and this may have contributed to substantially under-estimating the level of demand experienced by legal aid commissions, which were supporting the intermediary scheme in the Family Court.

It is foreseeable that intermediary schemes for sexual violence prosecutions (as in those in the family law courts) will come under similar resourcing pressures, especially if other reforms deliver an increasing number of cases to the courts. It is critical to the confidence of victim survivors and the public that, once started, intermediary schemes are sustained and provided on the basis of geographic equity, cultural safety and overall accessibility.

Relationships Australia is also mindful of workforce issues that are touched on at paragraph 57 of the Issues Paper. We **recommend** that the Commonwealth, State and Territory Governments collaborate to undertake nationally coordinated workforce planning traversing recruitment, retention, and initial and ongoing professional development. (Recommendation 9)

Nevertheless, given the overall effectiveness of the scheme in the Family Court and noting the recommendations made by Cornall & Luscombe, as well as Wangmann et al, we **recommend**

<sup>29</sup> See, eg, <https://ojjdp.ojp.gov/programs/childrens-advocacy-centers>; <https://www.cafcass.gov.uk/>; <https://www.barnahus.eu/en/about-barnahus>

<sup>30</sup> See Family Law Council, 2015-2016; Kaspiew et al, 2015, Kaspiew et al, 2017.

intermediary schemes being made available for all victim survivors. This should be supported by 'ground rules' hearings, as described at paragraph 56 of the Issues Paper. (Recommendation 10)

Question 18 Are you aware of the research about memory and responsive behaviour in the context of sexual violence trauma? Do you have views about that research? Do you have views about whether prosecutors should call expert evidence about that research (that is, about how people recall traumatic events and/or about how victim survivors of sexual violence typically respond)? Is that expert evidence being called in your jurisdiction? If so, how is it working? If it is not being called, do you know why not?

AND

Question 19 What is your view about the usefulness of jury directions in countering myths and misconceptions described by the research discussed above? Do you have a view on whether the jury directions in your jurisdiction are sufficient? Could they be more extensive? How are the directions in Victoria under the Jury Directions Act 2015 (Vic) working in practice? Can they be improved?

AND

Question 20 Do you have a view about the other recommendations that have been made (educative videos, mixed juries, judge-alone trials, and education and training)? Do you have other ideas for reform based on research which suggests the evidence of complainants is assessed according to myths and misconceptions about memory and responsive behaviour?

'Rape myths' are prevalent and persistent. They include false assumptions about a complainant's motives for making allegations, how a victim survivor might be expected to react, at the time of an assault, and in the short, medium and long-term beyond it. They also include tropes that are deployed to undermine complainants' credibility or minimise an offender's culpability. Rape myths interact with misogynistic views and behaviour that circulate widely online, as well as in the offline world. Relationships Australia acknowledges the efforts being undertaken by states, territories and the Commonwealth to combat these harmful messages. As noted by Hill & Salter (2024):

The data [from the National Community Attitudes Survey 2021] improves somewhat when you look at the attitudes of young people (aged 16-24) towards sexual violence, which improved by three points (from 66 to 69) between 2017 and 2021. (Salter & Hill, 2024, citing Coumarelos et al., 2023, p.47)

Relationships Australia **supports:**

- the use of judge-only trials in appropriate matters, and
- the production, circulation and use of educational videos as offering a relatively low cost way of putting research about trauma and trauma responses before juries, and in a way that could be standardised nationally.

In some matters, it may also be useful for prosecutors to call expert evidence about sexual violence trauma, to ensure that jurors can form verdicts on the basis of the best available evidence and counteract the effects on jurors of consumption of rape myths and other misogynistic commentary that, among other things, incites, normalises, validates and rewards violence against women and children.

Relationships Australia **recommends** the Commission consider the impact of the *Jury Directions Act 2015* (Victoria), to inform recommendations which it might make about whether such legislation should be introduced across Australia. In particular, the Commission should consult with the National Judicial College of Australia, as well as the Victorian judiciary, about whether that Act has been of practical assistance to counsel in seeking directions, and judges in making them. (Recommendation 11)

Relationships Australia does **not support** mixed juries which include lay people and experts on memory and responsive behaviour research, as mentioned at p 14 of the Issues Paper. This would be a disproportionate and unjustified distortion of the role and use of juries to address an issue that would be more properly dealt with by the proposals considered above.

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

The weight of arguments for and against judge only trials varies from case to case. Relationships Australia **supports** allowing both the defence and the Crown to seek a judge only trial.

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

Relationships Australia is committed to geographic equity in service delivery; this includes the delivery of criminal justice services. One way to achieve geographic equity in legal systems is, as the Issues Paper canvasses, harmonisation. In our experience, however, striving for harmonisation is an exercise for which the aphorism ‘the perfect is the enemy of the good’ might have been designed. While nine jurisdictions debate definitions and ‘who does it best’, victim survivors are harmed not only by perpetrators, but also by political and/or inertia. This is unacceptable. Society cannot rely on harmonisation of laws to deliver geographic equity as rapidly as is needed.

Certainly, no complainant, anywhere in Australia, should be subjected to cross-examination that relies on stereotypes, generalisations or other tropes. If addressing this in a timely way means divergent approaches for the short term, then so be it.

We further note that the effectiveness of any legislative provision in this space is reliant on a legal profession and judiciary which have access to, and apply, trauma-informed and, where appropriate, DFV-informed, principles and practice. In our experience, too, initial and ongoing professional training is not costed in preparing to implement legislative reforms.

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

Yes. Trials should be about what happened, or is alleged to have happened, to a particular person as an individual, not as a member of a category; just as sentencing should be about a particular perpetrator as individuals, not as members of a category of perpetrators.

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

regional areas? Are the available interpreters culturally and linguistically appropriate and diverse, particularly for complainants who are Aboriginal and Torres Strait Islander people? Is the unavailability of interpreting causing difficulties and challenges for courts to ensure pre-trial recordings and trials commence as listed?

Access to culturally acceptable and appropriately qualified interpreters are fundamental to access to justice for many members of our community, including those who are disproportionately affected by sexual, and other forms, of violence.<sup>31</sup> Our response to Question 7 indicates our concern about interpreter and translation services at all stages of the criminal justice process; in family law, access to suitable interpreters and translators is patchy, and there are particular challenges in sourcing independent and qualified interpreters for small language communities.

Question 28 Are the legislative provisions adequate to protect the disclosure and use of a complainant's personal information obtained during counselling or other therapeutic intervention? How are they working in practice? Should they be harmonised? Is there a need for complainants to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions?

#### *Preventing systems abuse*

In the family law system, perpetrators of DFSV will often use subpoenae and other devices to seek access to notes or records from counselling and other therapeutic interventions as part of ongoing patterns of systems abuse and coercive control. Fear of this occurring may deter help-seeking, contrary to broader public policy. Relationships Australia **recommends** that the Commission explore measures that afford courts oversight of when, how and how often defendants seek this information. (Recommendation 12)

#### *Harmonisation*

See our response to Question 23.

#### *Separate representation*

Relationships Australia has participated in the development by the Commonwealth Attorney-General's Department of a Legal Services Pilot to support complainants in sexual violence matters. We **support** this pilot, given the range of legal matters that complainants can encounter, including systems abuse through seeking access (even unsuccessfully) to personal information of various kinds or through other collateral litigation that an accused may seek to pursue, as well as development of a victim impact statement and other legal matters involving employment, housing, social security or visa status.

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

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<sup>31</sup> See, eg, Law Council of Australia, 2018; Disability Royal Commission Final Report, 2023.

admissible? Should complaint evidence be admissible as evidence of what is asserted by the complainant and/ or to assess credibility? Should complaint evidence be admissible at all? Does it perpetuate myths about responsive behaviour to sexual violence trauma (by expecting complainants of sexual violence to complain at some stage and placing weight on what was said)?

AND

Question 30 Should there be legislative reform to the admissibility and use of distress evidence? Is this an area which calls for legislative intervention and harmonisation? If so, how should they be harmonised? Should distress evidence be admissible at all?

AND

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

#### *Harmonisation of rules of evidence*

See our response to Question 23.

#### *Distress evidence and rape myths*

See our response to Questions 18-20.

The doctrine of fresh complaint and reliance on corroboration to support a conviction were pernicious means by which rape myths were entrenched in the legal system. They express gendered, heteronormative and Western epistemologies which have been used to punish, shame, stigmatise and erase from public life and concern women who do not conduct themselves in accordance with those epistemologies. These approaches have been largely removed from the statute book and were publicly debunked by the Royal Commission into Institutional Responses to Child Sexual Abuse, they still taint much so-called 'common sense'. They may be expressed as follows:

If you were assaulted, you would be distressed. Distress makes you an unreliable witness.

If you're not distressed, you must be lying about being assaulted. Absence of distress makes you an unreliable witness.

It is a modern version of methods to identify 'witches'. That is no coincidence. Common law jurisdictions have shameful histories of miscarrying justice through reliance on misconceptions about how girls and women should, and do, behave.

Relationships Australia **recommends** that the Commission explore the possibility of developing a direction that, while evidence of distress may be adduced by the prosecution, no adverse inference can be drawn from such evidence not being adduced, and no complainant can be cross-examined on that. (Recommendation 13)



Question 33 Do you have views about the creation of specialist courts, sections, or lists? Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address? Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?

See also responses to Questions 7 and 23.

Specialist lists have proved effective in the family law system, and produced both a concentration of expertise and experience, as well as efficiencies. They have included:

- Indigenous lists
- the Evatt List, and
- the National COVID-19 list.

Relationships Australia **recommends** that the Commission engage with the Chief Justice of the Federal Circuit and Family Court to canvass in more detail the design and rollout of specialist lists.

(Recommendation 14) Relationships Australia further **recommends** that specialist accreditation be established for lawyers who appear in sexual offence cases. (Recommendation 15) However, such accreditation should not be a prerequisite of appearing in such a matter, to mitigate workforce availability risks.

#### *Harmonisation*

See our response to Question 23.

#### *Victim survivor engagement*

The wishes of the victim survivor as to the level and frequency of engagement should be central. Unless a victim survivor opts out, Relationships Australia **recommends** that there be a presumption favouring ongoing communication with them about sentencing. (Recommendation 16) This should be built into the practices and processes of police and prosecution offices.

#### *Victim impact statements*

See our response to Question 28 supporting separate legal representation for complainants in developing victim impact statements, and for other purposes. We also **recommend** that separate legal representation be made available during sentencing submissions, and that the legal representative for the victim survivor should be allowed to make submissions. (Recommendation 17)

We do **not support** cross-examination as of right on victim impact statements, but it may be appropriate for a judge to give the offender's advocate leave to cross-examine, provided that the victim survivor is legally represented.

To support equitable and inclusive access to justice, Relationships Australia **recommends** that the Commission explore options for presenting victim impact statements, as described in paragraph 105 of the Issues Paper. (Recommendation 18) We further **recommend** that research be undertaken with judges about the impact of victim impact statements, and whether that impact is affected if a victim

impact statement is not delivered in person. (Recommendation 19) (See also our response to Question 15 about exploring the impact of recorded evidence on judges and juries.)

Question 41 Have there been recent changes to the role of victims of sexual violence in the sentencing process in your jurisdiction? Are Victim Impact Statements given appropriate consideration by the sentencing judge? Are there further improvements to be made? Should victims have independent legal representation during sentencing submissions?

See our response to Question 39.

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

Relationships Australia **supports** the proposals at paragraph 111 of the Issues Paper.

## RESTORATIVE JUSTICE

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

Since 2018, victim survivors of sexual violence in the Australian Capital Territory have been eligible to access the ACT's Restorative Justice Scheme.<sup>32</sup> This extension of the scheme has been evaluated favourably (Lawler et al, 2023).

## CIVIL LITIGATION

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

In its final report on the family law system, the Commission recommended that

The *Family Law Act 1975* (Cth) should be amended to include a statutory tort of family violence that would provide remedies consistent with existing common law remedies.  
(Recommendation 19)

Relationships Australia strongly opposed implementation of this recommendation, which had not been included in any previous consultation in the Commission's inquiry. We opposed it because requiring victim survivors of DFV to initiate civil proceedings would subject them to further expense, trauma and delay, as well as providing perpetrators with even more opportunities for systems abuse and coercive

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<sup>32</sup> See <https://www.justice.act.gov.au/restorative-justice>

control.<sup>33</sup> Further, it would have prolonged parental conflict and undermined children's best interests, contrary to the purpose of Part VII of the Act.

We are therefore pleased that the Commission is on this occasion seeking views about the possibilities of civil litigation providing recourse for victim survivors of sexual violence. Relationships Australia **recommends** that applicants be supported to apply for Intervention Orders and that the Commonwealth build on existing mechanisms (eg through the social security or tax system) to provide an avenue by which orders to pay damages can be met with as little imposition on victim survivors as possible. (Recommendation 20)

Relationships Australia cautiously **supports** the Commission exploring with victim survivors and other stakeholders the potential for government funding for some applicants in civil proceedings. This must, however, be **subject to** equipping the civil courts that would exercise such jurisdiction with infrastructure, processes, expertise and skills in trauma-informed practice, as described in paragraph 124 of the Issues Paper. Without such supports in place, encouragement of victim survivors to engage in civil litigation risks inflicting grave new harms.

There is an additional consideration to which we draw the Commission's attention. Reforms to make the criminal justice system more accessible, and to incorporate contemporary understanding of trauma and sexual violence are critically important. That system is the fundamental mechanism by which society expresses its opprobrium of violence and levies sanctions against those who commit it. There is a profound public interest in having a public, transparent system that performs these functions. To 'outsource' these functions to private litigation, with outcomes negotiated or ordered privately would be a transformative, and dangerous, shift in our justice system. While it is unlikely that victim survivors of sexual violence will, as a group, ever have the means to litigate privately in such numbers as to leave the criminal justice system with nothing to do, there is a real risk of inadvertently establishing a 'two tier' system, where victim survivors with means can litigate privately (carrying the risk that offenders are not brought within the line of sight of the public criminal justice system) and victim survivors without means are left to languish in an under-resourced public system. As happens with the health system.

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

Treasury has previously consulted on proposals to allow access, by victim survivors of child sexual abuse and DFV, to perpetrators' 'additional' superannuation contributions, for the purposes of satisfying unpaid compensation orders (Treasury 2017, 2018, 2023). Its second Discussion Paper narrowed the original proposals to exclude DFV victim survivors from the proposals; it is unclear why. In any event, Relationships Australia made the following recommendations in response to the 2018 Discussion Paper:

**Recommendation 1** That Government implement proposals one and two in the 2023 paper, subject to the following recommendations.

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<sup>33</sup> Instead, Relationships Australia urged Government to amend the Family Law Act to allow DFV to be taken into account in finance and property matters. Amendments to achieve this were included in an exposure draft of the Family Law (Amendment) Bill 2023 (No. 2.)

**Recommendation 2** That Government publish principles or guidelines identifying how it will determine categories of wrongdoing in respect of which early release [of superannuation] is available. This is in accordance with the principle that rules relating to early release should be ‘fair and effective’.

**Recommendation 3** In accordance with the Government’s recognition, in the National Plan,<sup>34</sup> of the long-term financial effects of domestic and family violence, the Government should allow victim survivors of domestic and family violence offences to:

- a. be awarded an amount from their perpetrator’s ‘additional’ contributions for the purposes of satisfying unpaid compensation orders, as proposed in relation to victim survivors of child sexual abuse in Treasury’s 2023 paper, and
- b. submit a superannuation information request to the appropriate court which could then request that the ATO discloses specific information regarding the offender’s or their spouse’s superannuation accounts

**Recommendation 4** That Government broaden the first proposal to encompass all offences envisaged by the draft proposals put forward in Treasury’s May 2018 paper.

**Recommendation 5** That Government broaden the first proposal to also include victim survivors who have proven their case in a civil court, and been awarded compensation in consequence.<sup>35</sup>

We **recommend** that the Commission engage with Treasury to explore how *all* victim survivors of sexual violence could avail themselves of these mechanisms. (Recommendation 21)

## WORKPLACE LAWS

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

Relationships Australia **supports** the proposals described at paragraph 125 of the Issues Paper.<sup>36</sup>

## COMPENSATION SCHEMES

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

Relationships Australia agrees that ‘ensuring compensation schemes are accessible, equitable and trauma-informed is necessary to provide adequate compensation to victim survivors of sexual violence’ (paragraph 126 of the Issues Paper). In various other contexts, compensation schemes have offered a (relatively) inexpensive and quick avenue by which to seek remedies; often, the processes and practices

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<sup>34</sup> National Plan to End Violence Against Women and Children, 2022-2032.

<sup>35</sup> The complete submission is available at <https://www.relationships.org.au/wp-content/uploads/CSA-survivors-and-access-to-super-070223FINAL-Relationships-Australia-National.pdf>

<sup>36</sup> See AHRC, 2021, on sexual harassment in the workplace.

of relevant tribunals are less legalistic, and perhaps offer greater scope for embedding trauma-informed practices.

However, this is not always the case, as can be seen in the limitations of the National Redress Scheme which emerged from the Royal Commission into Institutional Responses to Child Sexual Abuse. The intentions underpinning establishment of the Scheme were good: to offer a trauma-informed, victim-centric mechanism by which victim survivors could access meaningful remedies, in a timely way, backed by the authority of the Commonwealth Government. However, the Scheme has regrettably fallen short of achieving its aims. Relationships Australia has made submissions to statutory reviews of the Scheme, identifying areas for improvement.<sup>37</sup>

Relationships Australia **supports** the Commission exploring the possibilities of compensation schemes, informed by insights from implementation of the NRS, as well as other similar schemes.

## VICTIMS' CHARTERS

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

## AND

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

In our submission to the PJCHR, Relationships Australia argued for meaningful, effective, accessible and proportionate remedies for breaches of human rights, including the establishment, through a Human Rights Act, of a standalone cause of action that can be invoked (including against the Crown) in respect of alleged breaches of human rights, proof of which can afford access to a range of remedies, including damages and restitution, as well as injunctive and declaratory relief.

Relationships Australia **supports** victims' charters being enacted in primary legislation. However, unless they create real, substantive rights with provision for meaningful enforcement, such charters are empty rhetoric. This is a critical deficiency in the exposure draft of the Aged Care Act, circulated in 2023, which we identified in our submission commenting on that draft.<sup>38</sup> We **recommend** that any victims' charter be backed by real, meaningful and enforceable remedies. (Recommendation 22)

We further **recommend** that the Commission consider that victim survivors' rights to be heard and actively engaged extend to parole hearings. (Recommendation 23)

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<sup>37</sup> See, eg, our 2023 submission, available at: <https://www.relationships.org.au/wp-content/uploads/Relationships-Australias-submission-to-the-Joint-Select-Committee-on-Implementation-of-the-National-Redress-Scheme.pdf>

<sup>38</sup> See [https://www.relationships.org.au/wp-content/uploads/AgedCareActED.RAsub\\_FINALdocx.pdf](https://www.relationships.org.au/wp-content/uploads/AgedCareActED.RAsub_FINALdocx.pdf)

### Post-conviction considerations

Relationships Australia **recommends** that there be a presumption favouring ongoing communication with victim survivors about post-conviction matters, especially decisions to grant an offender parole. This should be built into the practices and processes of police and prosecution offices, as well as into case management facilities, as discussed earlier in this submission (framing principle 2).

### THEMES

Several key themes are reflected in our responses to the questions put in the Issues Paper, and relate to multiple stages of the criminal justice process. For convenient reference, they are:

- social attitudes – Relationships Australia welcomes political leadership in countering misogyny, gendered, ageist, ableist and racist beliefs, messages and radicalisation, including measures announced following the National Cabinet meeting of 1 May 2024
- workforce composition – successful implementation of options traversed in the Issues Paper, and our recommendations, will require transformative changes to the size and skills of not only the criminal justice system, but in other systems with which it interacts
- opportunities for systems abuse by perpetrators – reforms of the criminal justice system response to sexual violence must, like ongoing reforms to the family law and DFV systems, be alive to the multifarious opportunities for systems abuse and the alacrity with which offenders identify and exploit them; where opportunities cannot be removed, reforms must seek to harden the criminal justice system against exploitation and abuse
- holistic and person-centred services – the criminal justice system, like other systems engaging with people experiencing trauma and other circumstances of vulnerability, needs to design, implement and evaluation services in ways that centre the users; this requires, *inter alia*:
  - meaningful co-design
  - trauma-informed principles, practices and processes
  - safety by design, and
  - acknowledgement of and access to suitable, integrated service responses to the needs of victim survivors; universal screening with validated and bespoke tools<sup>39</sup> for risk factors may assist.

To accurately identify risks, and to enable implementation of strategies to link services and ameliorate fragmentation, we **recommend** universal screening of victim survivors, and alleged offenders, at the earliest possible engagement with the criminal justice system. (Recommendation 24) We would be happy to explore with the Commission how use of DOORS can assist in providing victim survivors with wraparound services and support them in their engagement with the criminal justice system.

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<sup>39</sup> As has been adopted by the Federal Circuit and Family Court of Australia's Lighthouse (<https://www.fcfcfa.gov.au/fl/fv/lighthouse>), which uses a tailored version of the Detection of Overall Risk Screen (DOORS) tool: see, Wells et al, 2018; Lee et al, 2021; McIntosh et al, 2021.



**CONCLUSION**

Thank you again for the opportunity to provide a submission at this point in the inquiry. We look forward to continuing to engage with the Commission as it progresses this critical work. Should you wish to discuss any aspect of this submission, please do not hesitate to contact me

[REDACTED] or our National Policy Manager, Dr Susan F Cochrane

[REDACTED].

Kind regards

[REDACTED]

Nick Tebbey  
National Executive Officer

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