

### Informed juries and judges

The adversarial justice system is ill-equipped to deal with the complicated issues associated with sexual violence between people known to each other. An inquisitorial system, presided over by a highly trained judge, ideally female, would be a better mechanism, as has been recommended in the past.

However, the judge MUST be able to demonstrate understanding of the issues, for example from experiencing thorough on-the-job training. In the 1990s, judges were offered training in feminist jurisprudence. If this no longer happens, I recommend that this on-the-job training should be re-introduced.

I support similar training for lawyers who both defend and prosecute sexual assault, and family violence cases; and probably custody cases also.

I believe there is merit in considering specialist courts for matters where gender stereotypes are likely to inhibit a fair hearing, staffed by trained judges and lawyers.

(This recommendation relates to question 21 and question 33)

Some jurisdictions provide for expert witnesses or judges giving directions to juries about the different ways memories of trauma are revealed. The need for education of juries extends beyond this issue to information on the percentages of false complaints made (virtually zero), of when and how victim-survivors disclose their experiences, of the percentage of convicted rapists serving their sentences who continue to believe they have done nothing wrong

Videos and other training materials on myths and misconceptions surrounding sexual assault would be useful, although unlikely to change deeply-held stereotypes in a short space of time.

I also support mixed juries in cases of sexual assault by a different gender from that of the complainant.

(This recommendation relates to question 20)

To minimise the trauma for complainants, they should be able to pre-record their testimony, and ideally as soon as possible after their experience, although when they feel comfortable to do so. Very few people would feel comfortable describing intimate encounters in front of strangers in the formal setting of a court room, let alone someone who is relating a painful experience and probably feels they are being judged, particularly given the intense scrutiny, scepticism, and invasive questioning aimed at undermining their credibility and integrity.

I also support the other recommendations in the Issues Paper, concerning one way mirrors, support persons and other ways to minimise the complainant's discomfort and, thereby, increase the chance of a full and truthful testimony.

(This recommendation relates to question 15).

Expanding access to forensic medical examinations, eliminating barriers that hinder victim-survivors from gathering evidence and receiving timely care after they have been sexually assaulted.

If a victim-survivor seeks help immediately after a sexual assault, often the first service they will seek is a forensic medical exam, which are comprehensive medical assessments

conducted by specially trained professionals. These examinations are crucial for victim-survivors as they provide thorough documentation of injuries, collect forensic evidence, and offer essential medical care.

I recommend that state, territory and federal governments improve the accessibility and availability of forensic medical examinations across the country. This includes ensuring there are more trained staff available, gender appropriate staff, more locations to access forensic medical examinations (particularly for rural and regional areas) as well as removing any need to report to the police before being able to access an exam.

(This recommendation relates to Question 4)

Proper funding for specialist sexual assault and trauma counselling services, recognising the pivotal role these services play in the recovery of victim-survivors and ensuring their accessibility to all in need.

From the point of disclosures, to navigating legal systems, and recovery - service support can be an important resource for many victim-survivors. Most of the services that are crucial for sexual assault survivors are underfunded and unavailable in many areas, including

- specialist sexual assault services, including, advice before a complainant begins the legal process, trauma counselling work to support healing and recovery,
- independent sexual violence advisors to provide wrap around support, including emotional and practical support; accurate and impartial information; and to provide support before, during and after court).
- Legal representation throughout or at different stages of the legal process.

I call upon the ALRC to make recommendations that ensure sustained and sufficient funding for specialist service support at all stages of the process, thereby ensuring that all survivors no matter where they live can get the trauma-informed, culturally safe and accessible support they need.

(This recommendation relates to questions 1, 3 and 4)

Removal of evidence concerning ‘fresh complaint’ and ‘distress’ and, as far as possible, ‘discreditable conduct evidence’ as tests of the complainant’s credibility.

These ‘doctrines’ or ‘presumptions’ are based on misunderstanding concerning how all victim-survivors should react. The hearsay rule should be relaxed to allow evidence of sharing the experience with others, but there should be no requirement of either ‘fresh’ or any complaint to add credibility. Similarly, the complainant should not have to demonstrate distress visible to others and ‘discreditable conduct evidence’ which relies on misconceptions about sexual behaviour should be disallowed.

Consideration should be given to allowing evidence of prior convictions for sexual assault by the accused, as well as multiple complaints, even those not taken to court.

(This recommendation relates to question 29-32)

Restorative Justice

The best outcome of a legal process is that the offender does not re-offend, having become aware of the impact of their offence. Along with that, the complainant feels that the offender has understood the harm and hurt they have caused.

Restorative justice programs might include courses in which the convicted person develops understanding and tools to avoid re-offending and enjoying richer fuller experiences with intimate partners.

There is clearly a danger here, given how unsuccessful these programs generally are. However, programs for behaviour change should be refined and pursued, probably alongside custodial sentences at first.

Defendants who are not convicted could also be offered training in more rewarding interpersonal sexual relations.

(This recommendation relates to question 47)

