

Justice Responses to Sexual Violence

Questions in the ALRC's Issues Paper

Reporting the experience of sexual violence safely

Over the course of my career, I have supported and advocated for many victim/survivors of rape and sexual assault who have had varying experiences with the criminal justice system. Many myths and stereotypes about 'real rape' continue to pervade at all levels across the criminal justice system, and the resulting institutional betrayal victim/survivors of sexual offences experience has not been adequately acknowledged, addressed, or remediated in meaningful ways to date. The criminal justice system frequently and repeatedly perpetrates institutional betrayal in a variety of ways to victim/survivors of sexual offences. The Royal Commission into Institutional Responses to Child Sexual Abuse may have exposed this if adult sexual assault was included within the terms of reference. As an 'Institution' the criminal justice system's key organisations (police, ODPP) have displayed poor and at times hostile responses to victim/survivors of adult sexual assault. Culture change for institutions was named by the Royal Commission as an important aspect of improving institutional responses to victim/survivors of child sexual abuse, and the same can be recommended in relation to the criminal justice system's responses to adult victim/survivors of sexual assault. Without this the efficacy of any new policies/practices/programs implemented as a result of the ALRC's Justice Responses to Sexual Violence inquiry will be undermined.

In South Australia there are inconsistent practices, with some police deciding not to obtain a detailed statement from the victim/survivor, arbitrarily deciding that they don't consider that a serious enough crime has occurred to warrant taking a statement. I have had to advocate on several occasions for police to take a rape or sexual assault allegation seriously, as well as to seek advice or adjudication from the Office of the Director of Public Prosecutions (ODPP). Police routinely seek adjudications from the ODPP for a range of serious criminal offences but not often enough in relation to sexual offences in my experience. When I have questioned the decisions made by police I have been told that police have the discretion to decide how they will respond to information provided to them by victim/survivors of sexual offences. One such example from my experience is a matter involving a victim/survivor wanting to report a historical rape in marriage by her now ex-husband. Police declined to investigate or seek an opinion from the ODPP in relation to what legislation was in effect at the time of the offending. There are complexities involved in relation to prosecuting historical sex offences, particularly rape in marriage offences (see [PGA vs the Queen](#)) When I spoke with police to advocate on behalf of the victim/survivor I was told "she has made an allegation of anal rape by her husband. Anal sex was not legal at the time – should I also charge her with an offence for engaging in anal sex?"

In 2022 whilst employed at UniSA I supported an international student who wanted to report a recent sexual assault to police. She disclosed to me that she had been sexually assaulted by her housemate. She had attempted to report this to the police herself by attending her local police station in person. As she was not able to adequately describe the nature of the sexual assault to the police officer at the front counter she was sent away and told to return with someone from the university to assist her. SAPOL did not

offer her an interpreter, nor did they refer her to a specialised sexual assault service for support or information about her choices and options. International students will have varying degrees of sexual health literacy and vocabulary and may experience difficulties in describing or feel uncomfortable describing things of a sexual nature.

The student contacted me within a week of the sexual assault occurring, and the nature of the sexual assault was such that she did not require a forensic medical examination, but she did want support to report it to police. When I contacted police about this they said they would only arrange an interpreter when they have established that a crime has occurred – which of course begs the question - how can you establish that a crime has occurred unless you use an interpreter to speak with the victim/survivor? I asked police if I could arrange a time to come in with the student and an interpreter, paid for by the university. I was told that it was not possible to arrange an appointment to report the sexual assault, and that we would have to present to the front counter of a police station and explain to the police officer on duty that we were there to report a sexual assault. We did this, attending a police station in the Adelaide CBD and in front of the people waiting in line at the front counter I explained that we were there to report a sexual assault. I was asked details about the nature of the sexual assault, including whether it involved penetration. It should not be this difficult, or this exposing or embarrassing for a person to report a sexual assault to police.

Recommendations:

- Police across each Australian state and territory consistently conduct trauma-informed evidence based sexual assault investigations.
- Police across each Australian state and territory be trained in the most effective methods of investigating sexual offences utilising models such as the [Forensic Experiential Trauma Interview](#) or [The Whole Story](#) approach.
- Police across each Australian state and territory consistently ensure that they seek advice/adjudications from the relevant ODPP in each jurisdiction regarding sexual offences reported to police.

Question 2 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?

Response:

In South Australia there has been a reduction in specialised responses within police for managing sex crimes, with training and resourcing SA Police to respond appropriately to sex crimes diminishing considerably over the years. Previously there existed a Paedophile Task Force and a Sex Crimes Investigations Branch. Currently there is only a Special Crimes Investigation Section within the Public Protection Branch, which has a diminished role in relation to responding to historical and recent sexual offences compared with past SAPOL sex offence service models.

In South Australia there is no current statewide specific sexual violence prevention or response plan such as the Sexual Violence Prevention Action Plan in [Queensland](#), the Sexual Violence Prevention and Response Strategy in [Western Australia](#), The [New South Wales](#) Sexual Violence Plan, [Tasmania's](#) Family and Sexual Violence Action Plan, the [ACT's](#) Domestic, Family and Sexual Violence Strategy or [Victoria's](#) Free from Violence Plan, the [Northern Territory's](#) Sexual Violence Prevention and Response Framework. In [South Australia](#) we have the Committed to Safety Framework 2021, which lacks a specific focus on preventing and responding to sexual violence.

Recommendations:

- Police across all jurisdictions in Australia are resourced to provide specialised sex offence investigation units to enable more effective sex offence investigations given the complex nature of such offending.
- Police from these Specialised Sex Crime Investigation units across all Australian jurisdictions are trained in the most effective methods of investigating sexual offences utilising models such as the Forensic Experiential Trauma Interview or The Whole Story approach mentioned previously.
- Each Australian state and territory develop its own Sexual Violence Prevention and Response Action Plan, aligned with the National Plan to Reduce Violence against Women and Children, to better enhance and coordinate sexual violence prevention and response efforts.

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.

Response:

Inconsistencies exist from state to state across Australia in relation to the amount and type of information on police websites about reporting sexual offences, as well as on the websites of the Office of the Director of Public Prosecution in each jurisdiction. National guidelines on this could be created to ensure a consistent level of information is provided to the public about recent and historical sexual offences, how these are defined, how to report, what supports are available for complainants, and prosecution processes. Some good examples of Australian police websites include the Victoria Police website and the Western Australian Police website, which also offers people the option of reporting sexual offences anonymously. Ensuring information is available, and in multiple languages and simple English/easy read versions is essential to educate victim/survivors about how the justice system might respond to their report of sexual assault, enabling their informed participation.

In South Australia there is no information on the SA Police (SAPOL) website <https://www.police.sa.gov.au/> to inform victims of sexual assault about how to report a sexual assault to police. Sexual assault does not appear as an option under the “Your Safety” section of the SAPOL website, however child protection and domestic violence are listed, with information provided about how to report these to police and how SA Police can help. The absence of any information about reporting sexual offences to SA Police does not encourage victim/survivors to report to SA police. The website for the South Australian Office of the Director of Public Prosecutions <https://www.dpp.sa.gov.au/> has no information about how sexual offences are prosecuted. Ensuring this information is available, and in multiple languages and simple English/easy read versions is essential to engage victim/survivors to report their experiences of sexual assault. The Redfern Legal Centre has developed an excellent resource called “Your Body Your Choice” Sexual Assault Factsheets, available in 11 different languages. This resource defines consent, sexual offences, and services available in NSW for support, medical assistance, and legal advice.

In 2019 I wrote to SAPOL and to the then Victims of Crime Commissioner to highlight the lack of information on the SAPOL website about reporting sexual offences, and I provided examples from other police websites such as the Victoria Police. I was informed that a working Group was established by SAPOL, and I was assured that this would be rectified. When I made enquiries regarding the progress of this project over a year later I was informed that this project was put on hold whilst police resources were redirected to efforts addressing the Covid-19 pandemic. To date there remains no information on the SAPOL website about reporting sexual offences to SA Police. There is currently more information on the University of South Australia's (UniSA) [website](#) about reporting sexual assault to SA Police, as I wrote this when I worked at the university as Counsellor and Training Coordinator (Sexual Assault and Sexual Harassment). The UniSA student facing Sexual Assault and Sexual Harassment [website](#) also has versions of the "Your Body Your Choice" Sexual Assault Factsheets from Redfern Legal Centre, customised for use in South Australia defining consent, sexual offences, and providing information about services available in South Australia for support, medical assistance, and legal advice, and translated into simple Chinese, Malay and Vietnamese.

Police can also be proactive in leading sexual violence prevention efforts. An excellent example of police leading prevention efforts is a website called [That Guy](#) from Police Scotland that aims to reduce rape, serious sexual assault, and harassment by having frank conversations with men about male sexual entitlement. The Crown Prosecution Service in the United Kingdom has an excellent [website](#) providing information to the public regarding sexual offences and how these are defined and prosecuted in the United Kingdom.

Recommendations:

- National guidelines be developed for consistent information about reporting and prosecution processes for sexual offences on the Police and the Office of the Director of Public Prosecution websites across each Australian state and territory.
- This information should be made available in multiple languages and simple English/easy read versions.
- If there are additional supports available (such as SAPOL's [Gay Lesbian Liaison Officers](#)) these services should be promoted on the website.

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?

Response:

In the United Kingdom [Independent Sexual Violence Advisers](#) (ISVAs) play an important role in providing specialist tailored support to victims and survivors of sexual violence, irrespective of whether they have reported to the police, and acts as a single point of contact to provide ongoing continuity, advocacy and impartial advice and information to a victim/survivor of sexual violence.

Recommendation:

- Each Australian state and territory establish Independent Sexual Violence Adviser programs.

2. Prosecution responses

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

Response:

Specialised responses to prosecuting sexual offences should be created in each Australian state or territory. Rape and sexual assault are crimes that are amongst the most serious and most complex to prosecute. Much can be learnt from international contexts and efforts to improve prosecution practices for adult rape and sexual assault matters, such as the Crown Prosecution Service in the United Kingdom's [Operation Soteria](#)

Recommendation:

- Further investigation into existing specialised sexual assault courts models and their applicability in Australia be investigated.

6. Assessment of the credibility and reliability of complainants

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?

Response:

Expectations of sexual assault victim/survivors when participating in the criminal justice system are inconsistent with what the existing research and scientific evidence base tells us about memory and sexual assault trauma, due to prevailing myths and stereotypes and victim blaming attitudes. Dr. Jim Hopper is an expert in the neurobiology of sexual assault trauma. His Sexual Assault and the Brain [website](#) contains excellent information to educate anyone working in the criminal justice system with sexual assault victim/survivors, about memory and typical reflexes and habits exhibited by people when being subjected to sexual assault. His website also contains an excellent resource for Sex Crime Investigators, Prosecutors, and Judges, on [Sexual Assault and the Brain: Key Information](#)

There is ample evidence to show that myths and misconceptions about sexual assault are pervasive in Australian society. Counterintuitive evidence may be one way to challenge these misconceptions in the courtroom. Since 2008, New Zealand courts have allowed psychologists to give 'counter-intuitive' expert evidence (CIE) in child sexual assault trials to educate jurors and to challenge 'commonly held misconceptions' about child abuse (Seymour et al. 2013, p. 1). CIE testimony is 'mainstream psychological evidence based on clinical experience and research literature' (Seymour et al 2013, p. 10). The NZ Law Commission (1999) explained that purpose of CIE evidence is:

“to impart specialized knowledge the jury may not otherwise have, in order to help the jury to understand the evidence of and about the complainant, and therefore be better

able to evaluate it. Part of that purpose is to correct erroneous beliefs that juries otherwise hold intuitively. That is why such evidence is sometimes called ‘counter-intuitive’ evidence: it is offered to show that behaviour a jury may think is inconsistent with claims of sexual abuse is not or may not be so; that children who have been sexually abused have behaved in ways similar to that described of the complainant; and that therefore the complainant’s behaviour neither proves or disproves that he or she has been sexually abused.”

CIE testimony is general in nature. Psychologists giving CIE do not interview or have any contact with either the complainant or the defendant. CIE testimony does not involve ‘estimat[ing] the accuracy of the child’s testimony’ or giving an opinion on whether or not the child has been abused (Seymour et al. 2013, p. 9).

While the CIE expert witness may demonstrate that certain behaviours or circumstances are possible in child sexual assault cases (such as a child not telling a parent about abuse), it is the role of the prosecution to prove that such behaviours or circumstances were probable on the facts of the case.

This model of CIE testimony from New Zealand could be drawn from to introduce CIE testimony in adult sexual assault trials. A psychologist or social worker testifying in court about the common dynamics of sexual assault and behaviour and experiences of victims may help to give the jury context to understand the facts of the case. CIE testimony has been found to decrease jurors’ reliance upon myths and misconceptions in mock jury studies.

Recommendation:

- Each Australian state and territory’s police and ODPP staff investigating and prosecuting sexual offences receive training and education on the neurobiology of sexual assault trauma to enable authentic, meaningful and scientifically evidence-based trauma informed and survivor centric approaches to the investigation and prosecution of sexual offences.
- Each Australian state and territory investigate the applicability of Counter Intuitive Expert Testimony in adult sexual assault trials in each jurisdiction, drawing upon the New Zealand model currently in use for child sexual offence trials.

Civil proceedings and other justice responses

1. Restorative justice, civil litigation and compensation schemes

Response:

In relation to civil litigation for adult sexual assault there are ways in which adult sexual assault victim/survivors experience disadvantages that adult survivors of child sexual abuse don’t, such as time limits for initiating proceedings, and the availability of redress schemes and free legal advice. There are many victim/survivors of adult sexual within institutional settings, with some research suggesting that clergy sexual misconduct is perpetrated primarily against adults and not against children, with some studies quoting prevalence rates as high as four times as many priests involving themselves sexually with adult women, and twice the number with adult men, as priests who involve themselves sexually with children (Sipe, (1994, p. 134). In her book Vocation and Violence – The Church and #MeToo Miryam Clough discusses prevalence

rates of sexual harassment and sexual assault perpetrated by clergy (pages 8 & 9). Some of these victim/survivors may have been groomed in adolescence, with the sexual assaults commencing once they turned 18 years of age. The Royal Commission into Institutional Responses to Child Sexual Abuse may have revealed this if adult sexual assault was included within the terms of reference, and this would have afforded adult sexual assault victim/survivors a redress option via the National Redress Scheme. [Knowmore](#) legal service is funded to provide free and independent legal advice for survivors of child sexual abuse but does not offer legal advice to adult sexual assault victim/survivors, and there is no comparable legal service for adult sexual assault victim/survivors.

There is a need for privacy and vulnerable witness provisions currently available for sexual assault victim/survivors in the criminal jurisdiction to be extended to the civil jurisdiction. A great case example of the need for this is a case in South Australia, where a matter being heard before the South Australian Civil and Administrative Tribunal received [media coverage](#). This case involves an allegation of rape not being prosecuted through the criminal courts, which sadly is the case for the majority of rape allegations made to police. There was extensive daily media coverage of this matter in Adelaide, with the victim/survivor being photographed and filmed walking in and out of the hearing, and her testimony received broad and detailed media coverage. This would serve to be such a deterrent to other victim/survivors of sexual assault and sexual harassment taking civil action – or criminal action for that matter as many would not know that there is a difference between these provisions being available in the criminal jurisdiction. In South Australia it is an offence for the media to name a person who is the victim of a sexual offence under the Evidence Act {Division 3, section 71 A (4)} and we also have vulnerable witness provisions, as is the case in other criminal jurisdictions around the country.

The availability of redress schemes for survivors of sexual misconduct offers a restorative justice pathway for survivors and demonstrates an organisation's commitment to the practice of institutional courage. In my role as Survivor Advocate with the Anglican Diocese of Adelaide I assist many adults who were sexually assaulted as adults and are unable to access any of the restorative justice measures via the National Redress Scheme. Many Church-based institutions offer their own 'in-house' redress schemes, some only creating these after the National Redress Scheme was established. Redress processes have evolved significantly over time and many examples exist across Australia, and internationally. The Church of England in the United Kingdom for example is currently developing its own Redress Scheme and survivors of sexual, physical, psychological, and emotional abuse (including spiritual abuse) relating to the Church will be eligible to apply for redress via this scheme.

In Australia all 23 Anglican Diocese have joined the National Redress Scheme and the Adelaide Diocese is one of 14 Anglican Diocese in Australia to also offer its own alternative redress scheme, for survivors of both child sexual abuse and adult sexual assault. These redress schemes are comparable to the National Redress Scheme in that they offer an apology, funding for counselling and monetary compensation.

There is currently a 3-year statute of limitations for civil proceedings, which can vary across jurisdictions. However, if the victim/survivor was underage when the sexual assault occurred, there is no statute of limitations for a compensation claim to be made. This can undermine the bargaining position of adult sexual assault victim/survivors in institutional redress schemes, as it can often be the case that institutions are keen to

reach a negotiated outcome. Victim/survivors who are dissatisfied with the offer through the institution's redress scheme can opt out and seek a remedy through the civil court. If there is no option for adult sexual assault victim/survivors to seek a remedy through the civil court due to the statute of limitations, they can be forced to accept a lower redress amount.

Recommendation:

- Each Australian state and territory repeal the statute of limitations to enable adult sexual assault victim/survivors and child sexual abuse survivors the same rights in civil litigation processes.
- Each Australian state and territory to extend the same vulnerable witness provisions and privacy provisions to protect the anonymity of adult sexual assault victim/survivors to civil litigation.
- Extend the funding of knowmore to provide free and independent legal advice for adult sexual assault victim/survivors.