

Australian Law Reform Commission

Justice Responses to Sexual Violence

3 June 2024

Acknowledgment of Country

*We acknowledge the Traditional Owners,
Custodians and Elders of the Gadigal People of
the Eora Nation, past and present, on whose
land we work.*

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Introduction

The Refugee Advice and Casework Service (**RACS**) provides critical free legal advice, assistance and representation to financially disadvantaged and vulnerable people seeking asylum in Australia. We advocate for systemic law reform and policy that treats refugees with justice, dignity and respect, and we make complaints about serious human rights violations to Australian and United Nations bodies.

RACS acts for and assists refugees, people seeking asylum, people that are stateless or displaced, in the community, in immigration detention centres, alternative places of detention and community detention. Our services include supporting people to apply for protection visas, re-apply for temporary visas, apply for work rights and permission to travel, apply for family reunion, lodge appeals and complaints, assist with access to citizenship and challenging government decisions to detain a person.

RACS welcomes this opportunity to contribute to the Australian Law Reform Commission Inquiry (**Inquiry**) regarding Justice Responses to Sexual Violence and was grateful to contribute at a closed Roundtable before the Commission on 21 May 2024.

Women seeking asylum are known to form a particularly vulnerable group, highly susceptible to violence or sexual assault at every step of their journey towards protection. Even after refugees and people seeking asylum arrive in a recipient country, the added stresses of resettlement or visa instability to already existing psychological trauma make people particularly vulnerable to exploitation and sexual violence. In recognition of the needs of women seeking protection in Australia, in 2019 RACS established our [Women at Risk program](#), which provides specialised assistance to women and their children fearing gender-based harm both in Australia or offshore.

Culturally and linguistically diverse women, in particular refugee women and those seeking asylum, are less likely to report sexual violence and there are significant barriers to seeking justice via the criminal justice process. They also experience more barriers in accessing support services, including financial support, housing, mental and physical healthcare and legal services; and are less likely to leave a domestic or family violence situation than other women.¹

In light of the above, this submission seeks to bring attention to the refugee and asylum seeker experience in the context of sexual violence, who are often battling layers of intersecting vulnerabilities and are confronted by multiple challenges when seeking justice.

¹ Australian Government (July 2015) *Hearing her voice: Report from the kitchen table conversations with culturally and linguistically diverse women on violence against women and their children*.

We acknowledge that sexual violence can be experienced by any person. This submission often refers to women, as that is the cohort that, in both research and in our experience in our legal practice, are most often victim-survivors of domestic and sexual violence. We want to also acknowledge that members of the LGBTQIA+ community are also more at risk of these practices. RACS has a specialist program to assist people seeking protection on the basis of their [sexual orientation, gender identity, gender expression and/or sex characteristics](#). This program has developed a toolkit for front-line workers that seeks to inform best practice.

RACS is grateful to have the expertise of our Advisory Panel that informs our legal practice and law reform work. The Advisory Panel is constituted by people with lived experience and we are grateful for their guidance, particularly most recently their contributions to inform a new toolkit resource that we are currently developing to guide the way that services work with women who fear gender-based harm in the immigration context. The toolkit will include links to factsheets and videos in various community languages. We are hopeful that this resource will help to empower women who are navigating the protection visa landscape. RACS' Advisory Panel's input in this space has also informed this submission.

RACS submits that the experiences of people with lived experience must inform the Commission's resulting report from this Inquiry, and a model of co-design and consultation with communities is critical in establishing policies and legislation to address this issue.

We would like to extend our gratitude to the following contributors to this submission:

Ms Nabilah Reza, Senior Solicitor Team Lead of the Women at Risk Program

Ms Isobel McGarity, Supervising Senior Solicitor

Barriers to reporting sexual violence

RACS observes many intersectional challenges and barriers to justice that confront refugee communities upon arriving in Australia for resettlement. There are additional barriers faced by those seeking asylum in Australia as a result of visa insecurity and procedural challenges in the visa processing space. As a service providing immigration legal assistance, it is our observation that issues that confront our clients in seeking justice through immigration outcomes are equally experienced in reporting and seeking remedy for experiences of sexual violence.

Our clients report that the reason they do not contact police when experiencing violence is due to their fear or distrust of authority figures, language barriers, overwhelming feelings of anxiety and fear of repercussion to their visa or their perpetrator's visa. Further, a lack of financial resources often means this cohort will be heavily reliant on already over-stretched free services to provide them with the support needed to seek safety. Later in this submission, we note that these services are inadequately resourced, meaning that women often face the impossible choice of leaving and reporting violence and becoming destitute.

RACS urges the Inquiry to consider the following challenges which comprise added layers of vulnerability and persistently act as barriers for refugees and asylum seekers when reporting violence:

- a) Fear and distrust of authority
- b) Language and literacy levels
- c) Cultural and societal differences
- d) Trauma related mental health
- e) Physical health and disability status
- f) Lack of access to resources or accessible legal advice
- g) Lack of access to supports
- h) Immigration legal framework and vulnerability relating to visa status

Our submission addresses each of these areas.

It is important to note that refugees and people seeking asylum in Australia are granted protection not only because of a fear of persecution, including, for example, a fear of gender-based harm; but also due to the lack of adequate State protection afforded in their home country. RACS' client often share stories of their attempts to report violence to authority figures in their home countries, only for their evidence to be disregarded, or for the report to expose them to a further risk of harm. In many cases, due to a lack of understanding of or trust in the Australian justice system or police, refugees and asylum seekers must first set aside their fear and distrust of authority figures in order to report a

sensitive and traumatic experience of sexual violence. In our experience, RACS is often the first place that a person may feel safe enough to make disclosures of sexual assault.

Many of the clients we work with arrive in Australia with little to no English language skills. Many also arrive having been denied a formal education and are unable to read or write. The barriers this presents immediately places women at a disadvantage as it increases their likelihood to be isolated, exacerbates difficulties in accessing supports and inhibits their ability to navigate access to justice in a new society.

With many refugee and asylum seeker women arriving from more patriarchal societies, a lack of freedom of movement, independent financial resources and sense of autonomy is common and results in women being heavily reliant on male family members, who may also be perpetrators of violence.

In some cases, our clients report that domestic or sexual violence within the home are considered private family affairs in their home country. Some report that rape within a marriage is not considered a crime, and nor is forced marriage. Others note that sexual assault is routinely ignored by police as a crime worth investigating in their home countries, or that police will not act without financial incentives provided by the survivor. In this context, being a victim-survivor of domestic violence or sexual assault is not seen by many people seeking asylum as grounds to apply for protection in Australia, or grounds to seek support through the criminal justice framework here.

Case study: Tabitha

Tabitha arrived to Australia as a dependent to her husband's skilled visa. Tabitha's husband repeatedly subjected her to domestic and sexual violence. However, where Tabitha was from, these issues were generally considered an 'internal family affair'; one that was not discussed within the community and where police authorities could commonly claim no jurisdiction over. Tabitha was not aware that domestic and sexual violence could be considered a valid claim for permanent protection in Australia and that supports could be made available to her. Tabitha chose to discretely approach RACS just before their visa was to expire. While RACS was able to assist Tabitha with a protection visa application, not knowing her options sooner resulted in a delay which is often subject to further scrutiny by the Department of Home Affairs.

RACS has also worked with migrant sex workers, some of whom are also victim-survivors of trafficking or modern slavery, who report feeling unheard, misunderstood or discriminated against, particularly when reporting crimes or recounting their experiences within the visa assessment framework.

The cultural and societal differences in Australia can be jarring, and our clients report experiences of racism and discrimination both in the community and at an institutional level.

Australian Government's National Plan to End Violence against Women and Children 2022-2032 acknowledges:

Refugees and migrants, including those on temporary visas and in particular those of colour, experience racism, sexism and other specific forms of discrimination that intersect to drive increased levels of violence against women from these groups – violence that is both gendered and racialised. Women from migrant and refugee backgrounds are less likely to report violence against them due to language barriers, cultural stigma, concerns about visa and residency status, and financial insecurity. Migrant women, including those on temporary visas, also face structural barriers other women do not, such as the impact ending a relationship has on their visa status and eligibility for social security.

In many circumstances, our clients do not have access to basic services including Medicare, work rights, housing or financial aid. This is a significant barrier to both reporting sexual assault, as well engaging with and throughout the criminal justice process, and also inhibits a survivor's ability to rebuild her life with dignity after violence.

It is critical to acknowledge the trauma and suffering a refugee or asylum seeker has likely experienced and the toll this may have already taken on the individual's physical and mental health. The Blue Knot Foundation reports:

Trauma stems from the overwhelming of coping mechanisms in response to perception or experience of extreme threat. Unlike 'normal life stress' (which is constant and experienced by everybody) the perception of extreme threat activates innate 'fight', 'flight' and/or 'freeze' responses which are protective at the time of the precipitating event/s but which corrode health over time if the underlying trauma is not resolved. For those who live with the effects of unresolved trauma, 'normal life stress' can be profoundly destabilising, trapping them in a cycle of physical and psychological reactivity which is devastating to well-being and to a wide spectrum of functioning.²

² Dr. Cathy Kezelman AM and Dr. Pam Stavropoulos (2016) Blue Knot Foundation 'Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts', 3.

Case study: Julia

Julia fled to Australia with her 15-year-old son having witnessed her mother's death in her home country and subsequently being targeted and raped by paramilitary groups. Julia arrived to Australia on a visitor visa knowing no English and unable to communicate with anyone without the help of an interpreter. She didn't know how to find a place to live or how to navigate public transport let alone what the first steps to apply for protection were. With a son to support and time on her visitor visa quickly running out, Julia became increasingly distressed while also needing to manage her own waves of post-traumatic stress. While Julia found someone who could refer her to RACS, the language barriers and immediate societal challenges she experienced as an asylum seeker are shared by many.

As well as living with complex trauma, many of our clients have other health issues and may live with disability. The NDIS is available only to those with permanent residency, and people seeking asylum on temporary visas do not qualify for assistance.

This submission also calls for better funding and service provision. This is critical in two ways: firstly, inadequate supports prevent victim-survivors from reporting in the first place. Secondly, the lack of supports that women who do speak out are able to access, prevents others from coming forward, and makes it more difficult for victim-survivors to be able to engage in the criminal justice process. In our experience, people seeking asylum and refugees face a lack of support financially due to the steady erosion of social security for the cohort, in relation to safe and secure housing, access to specialised counselling and other health interventions, and inadequate funding of free legal services including generalist and specialist community legal centres. To address under-reporting of sexual assault, this must change.

Finally, many of our clients face significant consequences for reporting assault in the immigration framework. This submission highlights the consequences of reporting violence in relation to Australia's visa cancellation framework, and gaps within the immigration framework that mean women who experience sexual assault are often left without a visa pathway to remain in Australia, despite their compelling personal circumstances.

Trauma-informed practice

The above-listed barriers to justice illustrate that, firstly, refugees and asylum seekers must be considered a distinct group with added vulnerabilities. As a distinct group, specific measures must be taken to increase access to justice and consider how to minimise the risk of re-traumatisation.

In addition to this, trauma-informed practice requires that, while certain barriers to justice may be experienced by an identifiable group, each individual's needs must also be taken into account.

The Australian Institute of Criminology has noted that:

*Sexual assault cases involving adult victims often come down to the word of the victim against that of the defendant, with little or no corroborating evidence. As the probability of conviction relies on the victim's ability to articulate the events and convince a jury beyond reasonable doubt that a crime occurred, her credibility is integral to prosecutorial decisions.*³

Training of and cooperation between first responders and front-line workers

Given the importance of victim-survivor led evidence in sexual assault matters, responding effectively from the beginning and obtaining a comprehensive report from victims-survivors is crucial to the process. In order to achieve this for refugee and asylum seeker victims-survivors, building rapport and establishing a supportive environment from the start of the process is crucial. In our experience, this does not always occur in the context of providing a statement to police.

The Blue Knot Foundation highlights that:

*Disturbingly, research also shows that many people who experience complex trauma-related problems have been re-traumatised by the very services they have accessed for assistance. Such re-traumatisation occurs across the full spectrum of sectors, practices and services, including within and across the legal and justice sectors.*⁴

In their 2021 inquiry, the Victorian Law Reform Commission noted the longstanding issue of delay within the criminal court process resulting in prolonged trauma for victims-survivors, discouraging victims-survivors to withdraw reports and breaking down the trusted relationship between them and prosecution.⁵ Add the layers of vulnerabilities that face refugees and people seeking asylum, and the impact of the process is magnified.

In addition, the attrition rate of sexual assault cases⁶ is a significant barrier to reporting in the first place. Our clients fear repercussions for reporting, particularly where the report leads to nothing, and experience feelings of hopelessness, believing that there is 'no point' in making a report.

³ Lievore D (2004) Victim credibility in adult sexual assault cases. Trends & issues in crime and criminal justice no. 288. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi288>

⁴ Dr Cathy Kezelman AM and Dr Pam Stavropoulos (2016) Blue Knot Foundation 'Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts', 5.

⁵ Victorian Law Reform Commission 'Improving the Justice System Response to Sexual Offences: Report' (16 November 2021) <<https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report/19-sexual-offence-trials-key-issues/>> 19.25.

⁶ NSW Bureau of Crime Statistics and Research, 'Attrition of sexual assaults from the New South Wales criminal justice system' <https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/BB/BB170-Summary-attribution-sexual-assaults.aspx>.

Our clients also often report not understanding when or why an investigation, following a report of sexual violence, is discontinued. In RACS' experience, attempting to obtain information from police about this is extremely hard, with officers often difficult to contact and unwilling to provide information to legal practitioners. In this environment, it is challenging to provide specific recommendations given the lack of information and understanding as to why our clients' reports do not progress to charges.

In order to successfully implement trauma-informed practice within the criminal justice process, organisations and institutions must cease working in silos and better cooperate. This is addressed below, for example, when highlighting the difficulties that RACS encounters in trying to obtain witness statements from police to provide in support of other concurrent legal processes, including the process of seeking asylum.

International codes of best practice could be introduced on a Federal and State level in Australia to implement consistent and well understood trauma-informed practices for all front-line services, including law enforcement. An example of such an international code is the Murad Code, which was developed to consider responses to sexual violence perpetrated in conflict. The code can be accessed here, and we submit that it is essential reading for the purposes of the Inquiry: <https://www.muradcode.com/>

One consideration could be whether an initial, comprehensive report or statement/statutory declaration of sexual assault (for example, to a legal practitioner) could then be used for other legal processes (including, for example, reporting to police, or seeking victims support and compensation), limiting the need for the victim-survivor to repeatedly lead front-line workers through their experience.

To further inform approaches that could be adopted by the criminal justice system when responding to reports of sexual violence by refugee and asylum seeker women, we would also like to draw the Inquiry's attention to the gender-sensitive techniques recommended by the UNHCR Guidelines on the Protection of Refugee Women (UNHCR Guidelines). While the Guidelines are now dated, they make some useful recommendations:⁷

- Be aware of gender differences in communication, particularly regarding non-verbal communications. As an interviewer [or person of authority], avoid intimidating gestures that inhibit responses. In assessing the credibility of the female applicant, for example, do not judge it on the basis of Western cultural values such as the ability to maintain eye contact.
- Be patient with female applicants to overcome inhibitions, particularly regarding sexual abuse. Questions may need to be asked in a number of different ways before victims of rape and other abuses feel able to tell their stories. Enough time

⁷ UNHCR Guidelines on Protection of Refugee Women (1991) 19.

should be allowed during the interviewing process to permit the applicant to build a rapport with the interviewer so she is able to recount her experiences.

- Recognise that women who have been sexually assaulted exhibit a pattern of symptoms that are described as Rape Trauma Syndrome. These symptoms include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, a pervasive feeling of loss of control, and memory loss or distortion. These symptoms will influence how a woman applicant responds during the interview. If misunderstood, they may be seen wrongly as discrediting her testimony.
- Understand that women in many societies do not have specific information about the activities of the men in their families. Gaps in their knowledge should not be construed as lack of credibility.
- Provide women the opportunity to be questioned by themselves, out of the hearing of other members of their family. Victims of sexual abuse may not feel comfortable recounting their experiences in front of their fathers, husbands, brothers or children.

In the development of RACS' toolkit to outline what best practice may look like when assisting women seek asylum in Australia, we have held consultations with service providers who regularly work with refugee and asylum-seeking women who have experienced or fear violence. The following have been found to be common practices that we would urge police, courts and prosecutors to adopt:

- Utilising discrete, women's only locations for consultations.
- Providing an interviewing officer and interpreter of the victim-survivor's preferred gender.
- Providing the victim-survivor with assurance of confidentiality from the beginning of the process, including the ability to withdraw reports if they choose to.
- Using appropriate lines of questioning, with a mix of open and close ended questions.
- Using plain English when describing legal criteria and complex concepts, and checking in that the victim-survivor understands.
- Being mindful of one's own body language, tone of language and facial expressions along with that of the victim-survivor.
- Using language that empowers the person, for example, checking with the client whether they are comfortable with the term 'victim-survivor' and how they would prefer the perpetrator to be referenced.
- Considering the time of day and time of week when contacting a person, for example, not after 3:00 pm where the person may have school-aged children or on a Friday afternoon, where supports over the weekend are limited.

- Ensuring that witness statements are read back, using an interpreter where appropriate, to ensure that they do not contain inaccuracies or errors.
- Ensuring clients are adequately informed about the next steps and their options.

Case study: Sara

At the request of an Australian citizen, Sara arrived to Australia on a visitor visa from a non-English speaking country. Upon meeting this Australian citizen, Sara developed a relationship with them, which quickly turned violent. After being subjected to many instances of sexual assault, Sara was able to escape and contacted an Australian health service. From there, Sara was referred to organisations to assist her with housing, post-assault medical examinations and legal support. When asked however about the reporting of the violence to the police, Sara noted that she was not sure what was happening. She was issued a pamphlet in English titled 'What Happens Next?'. This pamphlet contained 6 columns of detailed information explaining AVOs, police statements and SAIKs. Upon seeing this pamphlet, it became apparent to RACS that the information process offered to Sara was not developed with the vulnerabilities of refugee and asylum seekers in mind.

While RACS does not appear in criminal courts, it is clear from reports from our clients that trauma-informed practice must be embedded in the criminal justice system, and that this is currently not often occurring. Specialised training should further be completed by lawyers, judges, court staff, decision makers and law enforcement involved in working with refugees and asylum seekers to reinforce the needs of this group and how they may differ to that of other complainants.

RACS proposes the following recommendations to improve access to justice for refugees and asylum seekers in Australia seeking to report sexual assault:

Recommendation 1:

View people seeking asylum and refugees as a distinct group that requires unique considerations when reporting sexual violence, and seek to individualise responses to sexual violence to address disadvantage

Recommendation 2:

Implement trauma-informed best practice training for all front-line workers including law enforcement

Recommendation 3:

Establish protocols for cooperation between law enforcement and other front-line workers and services

Recommendation 4:

Establish protocols to ensure that victim-survivors better understand why reports of sexual assault are discontinued by police

Access to information

A constant source of difficulty for our clients is the inability to access necessary information.

This problem can be seen through two lens: firstly, our clients often experience difficulty in accessing personal information held by government agencies, in a quick and discrete manner.

Secondly, our client also find it difficult to find accessible information that empowers them to make decisions after the perpetration of violence. This is illustrated by Sara's case study, and is addressed in further detail later in this submission.

When relying on claims of domestic or sexual violence for protection visa matters, access to personal police files and witness statements may serve as crucial supporting evidence that can support a victim-survivor's evidence and, critically, reduce the risk of re-traumatisation by requiring victims-survivors to retell their story.

We understand that the [NSW Police Code of Practice for Responses to Domestic Violence](#) seeks to prioritise the safety and rights of survivors, specifically the CALD community, and refers to the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**) as a means for victims/survivors to gain access to information. The NSW Police Code of Practice also notes that legislation, such as the GIPA Act, exists to better facilitate services for victims. The [Domestic Violence Info Sharing Protocol](#) further notes that at the heart of the protocol is the safety and protection of victims.

However, RACS has been confronted with challenges in gaining access to survivor's statements and personal information. Often, we have found it difficult to obtain information from police, and difficult to contact relevant or investigating officers. While it is possible to formally request information through the GIPA Act, GIPA requests attract a fee. In our submission, this should be waived where a survivor of violence is seeking information and documents to support other legal processes, such as applications for compensation or visa applications. Further, we have had GIPA requests refused, with reference to section 60(1)(e) of the GIPA Act. Section 60(1)(e) notes the following:

An agency may refuse to deal with an access application (in whole or in part) [where] the agency reasonably believes the applicant, or a person acting in concert with the applicant, is –

- (i) A party to a current proceeding before a court, and*
- (ii) Able to apply to that court for the information.*

With respect to clients at the Administrative Appeals Tribunal (AAT) seeking review of a refusal of the Department of Home Affairs to grant a protection visa, making claims of violence, the above section can form the basis of a refusal of the GIPA request on the basis that the Applicant could apply to the AAT for a summons to seek the relevant material from police. This raises significant concerns, as the production of evidence by way of a summons does not allow the visa applicant to review or weigh up the probative nature of the documents before they are produced to the Tribunal decision maker, which can be an issue where police documents contain mistakes or prejudicial information.

In our submission it is important for the victim-survivor to have access to documents that form part of police files, so that they are able to review the material and obtain adequate legal advice before providing it to AAT (or other) proceedings, and removes an Applicant's authority and autonomy over her personal and sensitive information. Confidential information sharing protocols between a person's legal practitioner and police officer could be put in place to manage risks of disclosure where an active investigation remains on foot.

Recommendation 5:

Implement information sharing protocols between police and other service providers to allow the flow of information including witness statements to victim-survivors to minimise re-traumatisation

Interpreting services

The ability of service providers to meet the needs of and provide access to justice for refugees and asylum seekers often directly correlates to the quality of interpreters provided. Trauma-informed work allows survivors to provide a narrative of their experiences in their own language, with the knowledge that interpreter services are funded, confidential and professional.

RACS strongly advocates for better funding for front-line services for the use of funded, qualified interpreters who are trained in trauma-informed practice and are accredited accordingly. Currently, RACS' use of interpreting services is not funded. This constitutes our organisation's second biggest cost, after staff wages.

This was recently recognised in the Attorney-General's Department's funded Independent Review of the National Legal Assistance Partnership. The resulting Report found:

While NLAP recognises culturally and linguistically diverse people, numerous submissions pointed to distinct needs of migrants and refugees, which require the groups to be expressly prioritised. People who are seeking asylum as well as people who are refugees have distinct and significant legal needs. While we have specialist legal services to provide migration assistance, the demand significantly outstrips supply. [...] If listed as a priority client group, recent migrants and refugees would receive a more appropriate level of attention in funding and service delivery. Community Legal Centres NSW notes that: ...despite migration issues being listed under the schedule of priority groups, the Refugee Advice and Casework service does not receive funding either for legal services under NLAP, and as a result, they cannot access funded translation and interpreting services.⁸

RACS recommends that other front-line services and responders that come into contact with victim-survivors, include police, court staff, healthcare workers and victim services providers are trained in using interpreting services and adhere to best practice, with the needs of the victim-survivor in mind. This begins by identifying a need for an interpreter, and seeking the person's consent to use an interpreter.

RACS is aware of cases where police did not use an interpreter due to time constraints, and circumstances where a victim-survivor arrives to court only to have the matter adjourned due to the failure to ensure that appropriate interpreting services were available. Clients report that this is extremely stressful and protracts legal processes.

Too often, RACS is aware of police and other front-line services using family members to interpret for victim-survivors. This leads to significant issues, such as the survivor feeling uncomfortable or unable to provide complete testimony, questions around confidentiality, and has led to the misidentification of perpetrators of violence.

⁸ Dr Warren Mundy, Independent Review of the National Legal Assistance Partnership, <https://www.ag.gov.au/sites/default/files/2024-05/nlap-review-final-report.PDF> 74.

Case study: Ola

Ola came here as a temporary partner visa holder. One night her partner became physically violent with her and the police are called by a neighbour. When the police arrive, they use Ola's son as an interpreter. Her son is 9 years of age.

The police notes taken during this evening are later put to Ola as a possible reason to refuse her application for permanent residency. This is because the dates of the relationship history are incorrect, namely the dates Ola met her husband and how long they had been living together for, and her reports of violence do not mention the sexual assaults she experienced throughout the relationship, that she later reported to her lawyer.

While Ola was successful in reversing the assumption that her relationship was not genuine based on inconsistent information provided to the Department of Home Affairs, RACS notes this situation has occurred more than once. It raises concerns about the level of awareness amongst NSW police of both trauma-informed practice, the impact of using children as interpreters in domestic or sexual violence matters and the impact of simple errors or omissions in police factsheets.

RACS has worked with many survivors of forms of violence who were misidentified by police as perpetrators in contexts where the perpetrator's evidence was preferred due to language and cultural barriers faced by the victim-survivor. We are aware of cases where the victim-survivor was misidentified as the perpetrator, which led to significant consequences, including intervention/protection orders against her or criminal charges, and subsequent visa cancellations or consequences for citizenship applications.

RACS is also aware of issues where a victim-survivor does not wish to use an interpreter due to fear of identification, particularly in smaller communities where the pool of interpreters is not large. Best practice centres the survivor's wishes, and where a survivor wishes to proceed in English, adjustments and special measures must be made to allow for the collection of evidence and to ensure the person is able to understand, for example, by speaking in plain English, and taking the time to ensure that concepts are explained.

When utilising an interpreter there are certain factors all service providers, first responders and decision-makers should consider:

1. Whether the interpreter is accredited, and has undertaken appropriate training to ensure that they are trauma-informed.
2. The gender of the interpreter and confirming whether a particular gender is preferred by the victim-survivor.
3. Briefing an interpreter prior in regards to any sensitive material that will likely be discussed.

4. Reinforcing professional obligations of the interpreter including the importance of confidentiality, remaining impartial and using appropriate language during the conversation.
5. Establishing any boundaries with the interpreter for example ensuring the interpreter is only engaged for language translation and does not engage in additional or inappropriate conversation with the victim-survivor or seek to identify the victim-survivor.

Recommendation 6:

Provide better training and guidance to both interpreting services and front-line services to ensure the use of interpreters centres the needs of the victim-survivor. Fund interpreting for frontline-services such as RACS.

Immigration framework

As noted in this submission and in the Government's National Action Plan to End Violence, women and children on temporary visas often face increased vulnerability to harm, and this is compounded by an inability to access safety under the current visa framework.

There are a number of reforms that could be made to Australia's immigration framework that would ensure better outcomes for women and children who are survivors of sexual assault and other serious crimes.

As a member of the National Advocacy Group on Women on Temporary Visas Experiencing Violence, RACS commends the group's publication, the *Blueprint for Reform*,⁹ to the Commission. The *Blueprint for Reform* makes several recommendations aimed at improving the safety and welfare of women and children who have experienced forms of family violence including sexual assault. Key to this is reforming the migration system so that all women on temporary visas who experience domestic, family and sexual violence and their dependants can access protections, supports and justice.

Experiences within the refugee status determination process

Often, the first disclosure of sexual assault may be made in the context of working with an immigration legal service, like RACS, in order to seek protection in Australia.

In RACS' experience, the outcome of this disclosure can have a significant bearing on whether a victim-survivor chooses to make a further report to police.

In this context, RACS holds concerns about the way that some decision makers within the Department of Home Affairs (**Department**) and the AAT interact with victim-survivors.

⁹ See <https://awava.org.au/2022/12/06/research-and-reports/the-blueprint-for-reform-2022>.

This often acts as another barrier or disincentive to refugee or asylum seeker women reporting sexual assault again to law enforcement, outside of the immigration visa assessment process.

RACS would like to acknowledge that the Department has made significant improvements to the way that it responds to survivors of sexual violence and other forms of domestic and family violence. The establishment of the Domestic and Family Violence Support Section within the Department has been a welcomed step to meeting the needs of temporary visa holders experiencing violence.

Both the Department and the AAT have guidelines around interacting with victim-survivors who raise claims relating to experiences of sexual violence and gender-based harm.

While some decision makers exercise care and implement a trauma-informed practice when interviewing clients who raise claims relating to sexual violence, RACS is concerned by some decision makers who do not, and disregard both best practice as well as their own guidelines.

RACS is aware of lengthy interviews and hearings with victim-survivors with minimal breaks, where visa applicants are required to revisit and retell their traumatic experiences to decision makers in detail. RACS has observed decision makers react to sensitive testimony by rolling their eyes, interrupting or responding with a lack of empathy or care for the applicant's well-being. In some cases, decision makers appear to be adversarial, and do not extend applicants the benefit of the doubt with respect to credibility, for example by misunderstanding the impact that trauma can have on a survivor's ability to recall and recount traumatic experiences.

Further, some of RACS clients who have experienced sexual assault have also experienced forms of modern slavery and trafficking. Applicants for protection may raise a well-founded fear of harm in their home countries due to their trafficking and modern slavery experience, or a fear of re-trafficking. In our experience, decision makers within the protection determination process at primary and merits review levels find it difficult to grapple with these complex claims, and the intersection of gender-based harm and forms of modern slavery and trafficking. We recommend improved training for decision makers, with reference to United Nations High Commissioner for Refugees (UNHCR) guidance such as Protection Note 7.

Recommendation 7:

Mandate training for all decision makers to better respond to applicants who have experienced sexual and other complex forms of violence.

There are also processing issues that compound trauma for victim-survivors and disempower them from reporting abuse.

An example of this is circumstances where protection visa applicants are refused without the benefit of an interview. RACS is aware of a number of recent cases in these circumstances, despite claims related to sexual or other forms of gender-based violence being raised in the initial application.

While this inquiry is not focusing on law reform in the immigration space, we want to make it clear that the ability of a refugee or asylum seeker woman to report sexual violence is inextricably interlinked with her experiences within the immigration system. The following are a few examples of processing concerns we have seen:

- Lengthy processing times. Many of our clients have been living in Australia with uncertainty awaiting a decision from the Department for over 2 or 3 years. Tribunal waiting times have ballooned to 7 years in some cases. In RACS' experience, even where there is supporting evidence of sexual violence, the Department and Tribunal rarely exercise the discretion to make a protection finding on the weight of the evidence on the papers.
- Access to Medicare, work rights and study rights are often restricted for certain bridging visas. A victim-survivor's experience of sexual assault is not taken into account in the application of these conditions.
- Refusals of visas under the deficient 'fast-track' process, which have included the refusal of women fearing gender-based harm and sexual violence. This system has led to many applicants facing removal from Australia following inadequate assessment processes and a lack of merits review.
- Strict limitation periods, including to seek review of a visa refusal or cancellation in the AAT. There is no discretion to extend time frames on the basis of a person experiencing violence and being unable to engage in their migration matter due to being unsafe.
- Lack of consistent access to Ministerial intervention for survivors who have previously been refused a protection visa. Even where a protection visa applicant may have experienced a sexual assault after the refusal of their visa, there is no guarantee that any newly arising fear of harm in their home country (in circumstances including, for example, where their former partner is the perpetrator) will be assessed with respect to refugee status.

Case study: Mila

In 2019, Mila arrived to Australia with her husband and newborn child. Upon arrival, Mila's husband applied for a subclass 866 permanent protection visa on the grounds that he would be persecuted based on his political opinion and activities. Mila and their baby were added to this application as dependents. Mila raised no protection claims of her own. In 2021, Mila and her husband had their second child. Knowing very little English, Mila met with RACS a few times to discuss adding her second child to the pending protection visa application. It wasn't until her fourth visit in 2022, she disclosed that she was being subjected to domestic violence at the hands of her husband since their arrival to Australia and wanted advice on separating her application. Mila confirmed however that outside of her husband's political claims, there was no fear of harm she specifically held in her home country, other than from her husband if he was returned there. The advice given to Mila as a result was that she could consider:

1. Lodging her own protection visa application with her children, which could be refused; or
2. The children and her remain on her husband's protection visa application for a chance at permanent protection, given the strength of his political claims.

With her children in mind and wanting to raise them with better opportunities in Australia, these two options realistically restricted Mila to one dreaded choice; that it is better to remain on the already pending protection visa application and continue residing as a member of the same family unit as her perpetrator. Mila has no access to other visa types that would assist her to safety in Australia. Mila and her husband are still awaiting their matter to be assessed by the Department.

With cases like the above, reform is necessary to empower refugee and asylum seekers' to leave circumstances of violence.

Visa cancellations

As an immigration legal service that is often the first place that a person may share an experience of sexual assault, RACS is often in a position where we are asked by our clients to provide them with advice about any immigration consequences before they consider reporting sexual assault to the police.

Currently, due to the operation of the immigration framework, there are a number of considerations that may discourage victim-survivors from reporting.

First and foremost is Australia's visa cancellation scheme.

Case study: Mariam

Mariam holds a permanent protection visa. She receives a letter from the Department of Home Affairs in English which she cannot read. She brings it to a community legal centre to ask what it means.

The lawyer tells Mariam that her visa has been cancelled under section 116 of the *Migration Act 1958* because her husband has been charged with sexual assaulting someone at his work.

When a person is charged with a serious crime, like sexual assault, the Department can cancel their visa at the point of a criminal charge if they are considered a risk to the community – they don't have to wait until that person is convicted. Automatically at law, this cancels the visa of any person who holds their visa on the basis of being that person's dependent.

In this instance, Mariam was successful in appealing her visa cancellation to the Administrative Appeals Tribunal. But the cost to file this appeal is currently over three thousand dollars and this can only be discounted by 50% in financial hardship – which is a lot of money for Mariam as she is not working and was reliant on her husband for money.

As Mariam's case illustrates, it is difficult for people holding visas (and not citizenship) to feel comfortable reporting assaults to police when they receive legal advice that points to the possibility of their own visa cancellation.

Similarly, RACS works with many refugee and asylum seeking women who may experience sexual assault from their partner. Providing advice about reporting in these circumstances is also difficult, as the following case study illustrates.

Case study: Asmaa

Asmaa, her husband and her children are granted protection visas in Australia. Asmaa's husband suffers from complicated mental health conditions born out of PTSD from torture he endured in his home country. Asmaa experiences domestic violence including sexual assault from her husband, which she reluctantly reports to police at the urging of a social worker.

Asmaa does not want her husband to go to gaol, she wants to escape the violence, separate from him, and rebuild her life. She wants her ex-husband to rehabilitate, access the mental health supports he needs, and she wants her children to continue to have a relationship with their father and she hopes to continue to rely on him to provide financial support for the children.

After Asmaa's report to police, her husband's visa is cancelled. As he is a refugee, after his gaol term, he is sent to immigration detention while the visa cancellation process is considered at primary and merits review levels. As Asmaa's husband is a refugee, he cannot be refouled to his home country. His future and freedom are uncertain.

Asmaa's voice is not heard in the cancellation process, and the strict application of visa cancellation considerations mean that she deeply regrets reporting to police. Asmaa states that if she knew the outcomes of reporting would be so out of her control, she would never have done so.

Asmaa's case demonstrates the complexities in the visa cancellation process, and the advice that immigration lawyers have to provide around cancellation processes to victim-survivors. Reports of feeling 'out of control' of processes that are supposed to empower victim-survivors are common.

Recommendation 8:

Allow for great consideration of victim-survivor wishes in the application of the character provisions.

Recommendation 9:

Focus on the rehabilitation of offenders to lower the risk of recidivism, and how this can be managed in the community, to avoid years of protracted detention and uncertainty for refugees and their families.

Family violence provisions reform

Advocacy within the sector has long called for reform of the family violence provisions that exist in relation to partner visas.

Firstly, as the *Blueprint for Reform* highlights, these provisions are only available to applicants who have applied for partner or spousal visas. RACS echoes calls for the provisions to be extended to dependents on other permanent visa applications. Without this, women and their children will remain in unsafe situations, including those of sexual violence, due to a lack of visa security and reliance on the main applicant/sponsor's visa.

Secondly, and in brief, RACS agrees with calls across the sector that a person not be required to demonstrate that a relationship was genuine and continuing after they have made a claim relating to violence. This is upsetting and traumatising for our clients. RACS also calls for overhaul of the definition of marriage within departmental policy which currently raises questions about the exclusion of those in forced marriage from access to a visa pathway under the family violence provisions.

RACS commends the Government on expanding the kinds of non-judicial evidence that visa applicants can provide to establish that violence has occurred where they do not report the matter to police.

Establishing visa pathways for victim-survivors with Australian citizen children

Outside of the domestic family violence provisions that exist in the partner visa scheme, there are no separate visa pathways offered to women who have suffered domestic, sexual or gender-based violence, or for women with Australian citizen children under 18, including where other legal processes such as criminal justice mechanisms or family law proceedings are on foot.

The devastating consequence of this for many women who experience significant violence, including from intimate partners, is that survivors are faced with no choice but the heart-breaking consequence of leaving Australia, in some cases without their Australian citizen children (in circumstances, for example, where their children are not eligible for citizenship of their mother's home country). This is also at odds with Australia's obligations to the rights of children under our international treaty commitments.

Recommendation 10:

Consider a new visa subclass that could provide safety for women who have experienced sexual and other violence in Australia. This could be modelled on the current referred stay (trafficking) visa framework, but RACS advocates that the visa not be tied to participation in the criminal justice system nor include a 'danger' criterion be met in the applicant's home country, and instead focus on the compelling circumstances of the victim-survivor and their children.

Access to resources and legal services

Empowering refugees and people seeking asylum to gain control of their lives to seek safety or to rebuild after an experience of violence requires the provision of accessible, useful and up-to-date information and resources.

With some refugee and asylum-seeker women still living in the same household as their abuser and subjected to limited autonomy, resources must contain safety features that can comprehensively inform them of their rights, what to expect as part of any given process and provide relevant contacts.

Ultimately, when escaping violence that may be occurring within the home, women must have the capacity to act independently, develop safety or escape plans and know which support networks will be able to assist. It is therefore vital that women have access to the correct information in their own language and understand which organisations are safe to contact. Providing seamless access to wrap-around support services and relevant information as early as possible will significantly alleviate the initial barriers women are confronted with.

We acknowledge the Government's recent announcement of \$15 million over the course of 3 years towards information and education activities with a view to empower migrant women about workplace safeguards, protections and compliance measures. RACS is highly supportive of this initiative. We advocate for similar resources and activities to be made available in other sectors such as family, immigration and criminal law. Funding for front-line services to produce these resources is critical. Providing a broad and holistic range of resources will equip women of refugee and asylum seeker backgrounds with the knowledge and tools to report experiences of sexual violence more confidently and safely.

Independent, expert legal advice and representation is often a crucial step in empowering and equipping a person experiencing violence including sexual assault to leave a situation of unsafety. Access to funded legal services can enable women and children to put in place supports and take steps to seek safety.

Recommendation 11:

Fund front-line services to deliver resources to empower refugees and people seeking asylum to know their rights when experiencing sexual violence. Fund front-line legal services adequately to deliver specialised services for victim-survivors, including immigration legal support, family violence support, and support for family law services.

Access to services

For many years now, RACS and others in the sector have advocated for improved access and resourcing of the Status Resolution Support Services (SRSS) program. The erosion of the program over many years has meant people seeking asylum and refugees rely on

already over-stretched civil society organisations for assistance with housing and financial support.

To illustrate this point, in recent weeks RACS has attempted to obtain emergency housing for women experiencing violence, and services such as the Salvation Army Trafficking Safehouse and several women's refuges were unable to assist due to lack of beds.

Women on temporary visas, or women who are intending to apply for protection but have not lodged an application yet (often due to the need to address other pressing needs such as accommodation and financial support) are ineligible for many support programs.

Obtaining the SRSS eligibility guidelines was not possible in time to provide this submission. The SRSS Operational Procedures Manual was released by the Department under FOI processes in 2021 (see disclosures log FA 21/05/01201, 30 July 2021) and the documents released are silent on sexual and other violence as a priority for support.

RACS also advocates for improving access to counselling and mental health services that are sexual assault and domestic violence specific for people seeking asylum. RACS works closely with the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS), whose services focus on trauma experienced in a person's home country. Extended funding for addressing sexual assault and gender-based harm, including that experienced in Australia, should be considered.

RACS commends the Government's initiative to offer a one-off payment to domestic and sexual violence victims/survivors through the Red Cross. In our submission, this support must be extended.

Recommendation 12:

Increased funding for front-line services to provide supports for refugees and asylum seekers who experience violence (including sexual violence).

Recommendation 13:

Establish a support program for survivors of sexual violence. This could be modelled on the current Support for Trafficked People Program (STPP), and should not be tied to a person's ability to engage with the criminal justice system. Sexual assault is a crime of a similar severity to many crimes in the trafficking and modern slavery space, and Government supports should be commensurate.

Developing a holistic approach

Wrap-around services

With reference to Recommendation 13 above, RACS calls for the establishment of a wrap-around service delivery model that would provide refugee and asylum seeker women safety and confidence when reporting sexual violence and potentially engaging in the lengthy criminal justice process. When designing a wrap-around service model, we envision an integrated, comprehensive and cooperative process whereby a variety of services can be offered to one individual as part of a package. This should not be tied to an individual's ability to engage or continue to engage in the criminal justice process, and should have several referral pathways from different front-line services to access the support.

As noted above, refugee and asylum seeker women must benefit from the services of medical and legal professionals, housing and refuges, counsellors, quality interpreters, financial aid and social workers/settlement services caseworkers. It has been made clear that the multiple barriers that confront this cohort of women upon arriving to Australia are numerous. They must be provided with external support to assist them with their safety, health and settlement in Australia.

Such a model must also centre the rights of children, as victim-survivors in their own right, and as witnesses to their parents' distress.

Alternative reporting mechanisms

RACS is interested in engaging with the Commission and government on considering alternative reporting mechanisms for survivors of sexual assault.

We note that police services offer reporting in person at any station and understand it is possible to report an assault online via SARO. These services are only in English and rely heavily on an individual being able to navigate online material, thereby excluding the needs of the refugee and asylum seeker woman.

With the cooperation of community representatives, medical centres and community legal centres, discrete and approachable locations may be provided to victims-survivors of refugee and asylum seeker background. We would urge the inquiry to consider innovative ways in which refugee and asylum seeker women could file reports at external and discrete locations, with the assistance of legal services. Information about the process must be accessible, and appropriate funding provided to ensure legal services can provide support with reporting.