

Dear Commissioners,

Thank you for the opportunity to make a submission in response to the Issues Paper 49 (Issues Paper) by the Australian Law Reform Commission (ALRC), in its inquiry into Australia's Justice Responses to Sexual Violence (Inquiry).

I am a survivor-advocate of child sexual abuse perpetrated by another child of the same age, we were both 14 years old. I am a member of the Lived-Experience Expert Advisory Group supporting this Inquiry. My submission is informed by my lived-experience and with my work with young victim-survivors across the country with *Youth Against Sexual Violence Australia*.

I am writing this submission because the experience I was subjected to in engaging with the justice system was deeply traumatic, and I believe that changes must be made to current legal and non-legal responses to sexual violence impacting children and young people. In many ways, my experience with the police and legal system was far worse, and far more traumatic, than the violence I was subjected to.

My submission relates to 3 key areas:

1. Improved responses to sexual violence in secondary school communities,
2. Non-legal responses to sexual violence between young people, and
3. Safe reporting options for children and young people.

It is concerning to me that in the many public discussions around law reform and sexual violence children and young people are frequently left out of the conversation, especially young people who have been harmed by their peers. There are legal grey areas where both the victim-survivor and the perpetrator are below the age of consent which need to be addressed. There is also serious harm done to young victim-survivors subjected to justice responses to sexual violence, who may have no choice in participating in a justice process due to mandatory reporting requirements. As a result, too often young victim-survivors receive no support, healing or justice and are left further traumatised by a harmful justice system response, and the young person with harmful sexual behaviour receives no meaningful intervention to put them on a safer path.

We must do better by young victim-survivors, and ensure our voices and lived experience are genuinely heard in these discussions around reforming justices and ending gendered violence. Talking solely about consent education and pornography simply isn't enough, and platforming adults who often have no idea what it is actually like to be a young person today also isn't good enough. We must improve how we respond to violence impacting young people, and we ensure that reforms take into consideration the unique needs and experiences of young people. Current systems are failing children and young people.

I hope you will read my submission with an open heart, and genuinely consider the many recommendations that could be put forward to meaningfully change the lives of young victim-survivors across this country. Despite the years of trauma and pain I have endured, I still truly believe that a better, safer future is possible. I hope you will help make that future a reality.

Kindest,
Dani Villafaña

Summary of Recommendations

Improved responses to sexual violence in secondary school communities

1. The creation of a standardised *Schools Code of Conduct* that outlines minimum standard responses to sexual violence in school communities.

Non-legal responses to sexual violence between young people.

2. Reforms to mandatory reporting, and
3. The introduction of comprehensively available non-legal, and transformative and restorative justice options for children and young people.

Safe reporting options for children and young people, and

4. The creation of comprehensive online resources to support and provide information to children and young people who have experienced violence.
5. The creation of comprehensive resources to demystify court and reporting processes for young people who are interested in pursuing a legal justice outcome.
6. The introduction of online support services for young people to make reports of violence anonymously, and receive support.

1. Improved responses to sexual violence in secondary school communities

Recommendation: The creation of a standardised Schools Code of Conduct that outlines minimum standard responses to sexual violence in school communities.

Australian secondary schools and school communities have emerged as a frontline for sexual violence experienced and perpetrated by children and young people yet they remain ill-equipped to respond to this violence. When victim-survivors report sexual violence poor responses can exacerbate trauma and impact students' ability to participate in their education. Similarly, poor responses may also mean young people with harmful sexual behaviour don't receive meaningful intervention that supports the development of safer, healthier behaviours.

Given that the upcoming rollout of comprehensive sex and consent education across the country will likely result in an increase of disclosures of violence within schools, schools must be adequately equipped to respond to these disclosures to minimise further harm to young victim-survivors. Currently, there is no standardised Schools Code of Conduct to ensure that schools are equipped to appropriately respond to reports of sexual violence within school communities, especially when both the victim-survivor and perpetrator attend the same school. Instead, this response lies solely with the justice system. This justice-system-centred response cannot ensure all the needs of young victim-survivors - including academic accommodations, education support, and health needs - are met.

Under current systems, when students disclose having experienced violence all school staff are bound by mandatory reporting requirements. This requirement is important as it means that all incidents must be taken seriously and be responded to. However, this response is not comprehensive enough in considering the broad range of needs a young victim-survivor might have, and does not give young people any choice regarding their participation in a justice process. I will elaborate on the latter later in this submission.

Current mandatory reporting requirements generally require that school staff make a report to the school principal and then to the police. Children are then made to give statements to the police as part of a police investigation which will then inform whether charges are made, and if a justice process ensues. The issue with this process is that it is not thoroughly comprehensive enough to consider all the needs a young victim-survivor might have. In particular:

1. They may need changes to occur in their schooling environment that cannot be ensured through a justice process.
2. They may need access to counselling, health, or other support services that cannot be ensured through a justice process.

Additionally, we know that very few reports of sexual violence result in charges, let alone convictions. As such, young people are often told that police aren't making charges then are left without any formal process to support their path to healing or ensure they are safe at school.

Schools have a duty of care to their students, and student-survivors should have the right to learn in an environment that is safe and accommodating in light of their experiences. It is estimated that 75% of rape victim-survivors experience symptoms of post-traumatic stress in the immediate months following an assault. For some, these symptoms may last much longer.

Students who don't have access to the correct support and accommodations can struggle with their education. PTSD impacts survivors' ability to engage in class, complete assessments, and attend school. Without the appropriate support, survivors are more likely to drop out of school.

These barriers to education are compounded when victim-survivors are deterred from going to school because they want to avoid going to class with the perpetrator. In many incidents, victim-survivors are the ones made to adapt in the aftermath of violence - we are the ones who have to drop out of our extracurriculars, change classes, and even move schools. In some instances, victim-survivors have had to attend class with perpetrators even when A(D)VOs are in place.

The creation of a Schools Code of Conduct outlining minimum standard responses to sexual violence within secondary school communities would address gaps not currently considered within the existing school response, which relies almost solely on mandatory reporting.

This intervention should aim to:

1. Ensure a minimum standard for responses to reports of sexual violence within secondary schools and their communities.
2. Ensure that all students have the right to a safe, accessible education - including that standard practices support basic academic accommodations for survivors of sexual assault; and that remove barriers to them continuing and completing their studies. (For example, extra learning support, extensions on assignments, extra time on exams).
3. Ensure that students have autonomy and dignity to make decisions on their own behalf that relate to their education, and to the incident they are reporting.
4. Ensure that students with harmful sexual behaviour receive meaningful support or intervention.
5. Ensure that teachers are equipped to respond to reports of sexual violence, through means such as professional development and work health safety training.
6. Ensure that teachers have the resources needed to address and manage any vicarious trauma.

I would recommend that we look towards the mandatory standardised school response used in US educational institutions - Title IX. Title IX is a federal *civil* rights law which prohibits sex discrimination in education. It applies to all education institutions that receive public funding thus encompasses almost all schools from K-12 and tertiary education institutions.

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."
- Title IX

A key feature of Title IX is that it gives all schools mandatory obligations to adhere to when reports of sexual violence are made, or made known, to the institution.

These obligations include:

- That all schools must have Title IX coordinator who is appropriately equipped to respond to reports of sexual violence. This coordinator must also monitor compliance with the law.
- Schools must have a policy in place that prohibits sex discrimination, including sexual harassment and sexual violence.
- Schools must immediately take action to protect the individual that has been harmed.
 - Schools must also make accommodations and interim measures available to students to address the effects of sexual harassment and violence. These measures can range from changing class schedules to avoid contact between students to providing campus escort services
- Schools must take reasonable steps to ensure that victim-survivors do not experience retaliation for reporting sexual violence.

Source: American Association of University Women

While the application of Title IX can vary across states and across institutions, as an ideal policy it is far more comprehensive and in tune with the various needs of the victim-survivors.

Australian systems are far behind and it is crucial that reforms are implemented to ensure that all young people have access to an education where they are safe and supported. No child or young person should have to drop out of school because their schools' response to their report was so poor that they are too scared to return, or because they have no choice but to go to class with someone that has harmed them.

No child should have their education suffer because they have been sexually assaulted. It is crucial that action is taken to ensure that responses to sexual violence are standardised across all Australian schools, and that victim-survivors are supported to safely continue their education.

2. Non-legal responses to sexual violence between young people.

Recommendation:

- (1) Reforms to mandatory reporting, and
- (2) The introduction of comprehensively available non-legal, and transformative and restorative justice options for children and young people.

Current mandatory reporting requirements mean that when an incident of sexual violence is reported or otherwise made known to adults they must report it to relevant authorities, usually the police. The young victim-survivor is then made to give evidence as part of a police investigation process, sometimes against their own will. While it is necessary to respond to all reports of harm done to a young person, it is possible to take steps to ensure a young person is safe and supported without forcing them through a likely traumatic experience with the Police and Children's Court.

In my experience, I called Kids Helpline late on a school night because I had been experiencing symptoms of PTSD after being assaulted including nightmares, anxiety attacks and thoughts of suicide. While I did not go into detail they did say that what happened to me was wrong, and that I deserve help and could talk to the school counsellor the next day.

The next day I broke down in class after a sleepless night full of nightmares. I had to leave class and told a teacher I trusted what had happened to me. I was fortunate that she was very kind. She then had to tell the school counsellor and the principal who then told the police. I had told the teacher in the hope that I might receive help or support. Instead, I was subjected to a justice process that was in some ways more traumatic than what had happened to me.

I remember distinctly the moment my Mum came into my room to tell me that I had to speak to the police. I broke down and cried myself to sleep that night. I was terrified. I didn't want to detail the worst experiences of my life to strangers who I had never met. I didn't want to go through a court process. I wanted all of this to be over.

I then had to speak to police in Parramatta who were a part of a Joint Investigation and Response Team in NSW. This entire experience was terrifying to me as a child. The interview was recorded, which I didn't want it to be. I didn't know what the purpose of the recording was or if it would be rewatched or shared with other people I didn't know. Police asked me what I was wearing, and how long my skirt was. They made me feel stupid and like I was making a big deal out of nothing.

When they called me months later to say they chose not to press charges they said that next time I should do something differently like scream to make sure it didn't happen, as if it was my fault.

Throughout high school when my peers would disclose to me that they had had similar experiences I would tell them not to tell the teachers or go to the police because of the awful experiences I had. I knew they wouldn't have any choice but to go to the police even if all they wanted out of disclosing was to be able to access a counsellor, or get an extension on an

assignment. I'm not sure if this is how I would respond now as an adult, but this is certainly how I felt at the time as a disempowered and traumatised young person.

I struggle to believe that forcing any young person, especially a young person who has experienced sexual violence, through the courts is genuinely in their best interests. For any victim-survivor, having to relive and re-share the details of some of the worst moments of their life with strangers is immensely difficult and traumatic, especially for young people who may have no choice in the matter.

Young people are uniquely vulnerable, but that does not mean they are without agency, and their wishes should be taken into consideration when adults are acting in their interests. If a young person wishes to go through a formal justice system process they should be supported throughout this process, however, this should not be the only option. Young people may also be less likely to tell an adult they have been harmed if they are aware that they will be made to report to the police.

Additionally, young people have a reduced capacity for consent and there are significant legal grey areas in instances where both the victim-survivor and perpetrator are below the age of consent. As such, it is difficult for thresholds for charging and convictions to apply to instances of harm between young people. While changes could be made to improve these rates of charging and conviction, I do not believe it is necessarily in the best interests of young victim-survivors or young people with harmful sexual behaviours to be subject to a traditional justice response. As you know, these processes rarely deliver justice outcomes for complainants and risk putting young people on paths of criminalisation. Putting a young person with harmful sexual behaviour through a court system or putting them in prison will not make them a safer person when they come out the other side.

Therefore, the Commission should consider non-legal and restorative/ transformative justice processes for children and young people. This could be especially helpful in instances where the law does not clearly apply due to both young people being below the age of consent, but where it is still important and necessary for some form of intervention and justice process to occur.

3. Safe reporting options for children and young people

Recommendation:

- (1) The creation of comprehensive online resources to support and provide information to children and young people who have experienced violence.
- (2) The creation of comprehensive resources to demystify court and reporting processes for young people who are interested in pursuing a legal justice outcome.
- (3) The introduction of online support services for young people to make reports of violence anonymously.

Access to online information and resources

There is a general lack of resources that provide information to victim-survivors of sexual violence with most existing resources not taking the unique needs and experiences of children and young people into consideration. Additionally, many resources that address child sexual abuse focus specifically on instances where children have been harmed by an adult and there is a gap in information available to children who have been harmed by their peers.

Access to this information is important and can help survivors understand their experiences, understand that they are not alone and become aware of support services that are available to them. This is especially important for young people who may not understand that what happened to them was wrong. Similarly, specific resources that demystify police processes and the Children's Court may help young people feel more empowered to pursue this option for justice and feel less scared throughout the process. It may also help young people feel more comfortable and confident in disclosing their experiences to a trusted adult.

Further, while many young people report their experiences to adults in their lives, many do not feel comfortable reporting to someone who is known to them. This may be because of fear of not being believed, cultural differences, or fear of retaliation. For example, I know of many young people who have been scared to report because their schools or family is religious and are concerned that cultural values of abstinence may result in them being shamed rather than supported.

Access to online support and reporting services

The option for an online service that allows young people to make disclosures or receive counselling support could assist in helping young people understand their options and begin the pathway to healing.

While services such as Kids Helpline or 1800 RESPECT can provide some of these services, many young victim-survivors do not realise these services are available to them because they assume 1800 RESPECT is only for adults or they don't know Kids Helpline can help with a range of issues including sexual violence. It may be possible to embed services specific to young victim-survivors within existing services, and couple this with increased awareness of services to ensure that young people know they exist and can access them.