



7 June 2024

Australian Law Reform Commission

By email: jrsv@alrc.gov.au

Dear Australian Law Reform Commission Colleagues,

Justice Responses to Sexual Violence: Issues Paper (2024)

1. Youth Law Australia thanks the Australian Law Reform Commission (the ALRC) for the opportunity to provide a submission in response to the Justice Responses to Sexual Violence: Issues Paper (2024) (the Issues Paper). We also thank the ALRC for the opportunity to meet on 13 May 2024 and for providing a short extension of time for this submission.
2. We welcome a focus on reforms to justice responses to sexual violence and the potential this brings for harmonisation of laws and specialisation to enhance access to justice, particularly for children and young people who are disproportionately reflected in sexual violence statistics. These are important reforms which will strengthen existing protections and empower victim survivors to engage with criminal justice processes with less risk of re-traumatisation.

Acknowledgements

3. Youth Law Australia acknowledges the Traditional Owners and Custodians of Country and pays respect to the Elders, past and present. We acknowledge the strength, resilience and capacity of Aboriginal and Torres Strait Islander peoples from the many locations across Australia where we support children and young people in their journey for safety, dignity, equality and justice.
4. We also acknowledge all children and young people who are courageous and hopeful in sharing their experiences with us.

About Youth Law Australia

5. Youth Law Australia (YLA) (formerly the National Children's and Youth Law Centre) is an accredited community legal centre dedicated to helping children and young people under the age of 25 years and their supporters to understand their legal rights and find solutions to their legal problems. YLA is Australia's only national, technology-based community legal service,



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providing specialist child-safe and trauma-informed legal services and referrals primarily through web content, email, phone and live webchat.

6. We receive funding under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* via the *Enhance and Expand Legal Assistance Services for Victims and Survivors of Child Sexual Abuse* program to provide a national legal service, including an online legal webchat service, for children and young people experiencing, or at risk of experiencing child maltreatment including child sexual abuse. This is known as the Harm Practice.
7. During 2023 the Commonwealth Attorney General's Department commissioned an independent evaluation of the Harm Practice by Urbis. The *Evaluation of the Enhancement and Expansion of Legal Assistance Services for Victims and Survivors of Child Sexual Abuse Final Report* was published on 20 December 2023.¹ The evaluation concluded that YLA provides a unique legal service via an online legal platform that is a mostly appropriate response to the needs of the children and young people experiencing, or at risk of experiencing harm.

Our work with children and young people relating to sexual violence

8. YLA has significant experience and expertise in advising and supporting children and young people and their advocates on matters relating to sexual abuse; historical child sexual abuse; grooming; online harm such as child sexual exploitation material, image-based abuse and sextortion; sexual exploitation and sexual harassment, particularly in employment and education contexts; and assisting children and young people with concerning or harmful sexual behaviours.² We also assist children daily to navigate the complex laws around age of consent, similar age defences, affirmative consent, sexting and accessing pornography.
9. We provide advice, advocacy, and referrals in relation to legal issues such as reporting to police and child protection authorities, providing statements, trial processes and giving evidence, obtaining records through processes like freedom of information requests, victims and injury compensation, information sharing and protecting sensitive records, lived experience advocacy, dealing with the media, and defamation.
10. We also provide advice and assistance to children and young people accused of using harmful or concerning sexual behaviours, which provides opportunities for preventative education and to help young people who may have both experienced and used sexual violence. A significant component of this work is providing guidance and resources to reduce the risks of offending or reoffending.
11. We also provide a holistic legal practice for children and young people which means that whatever the presenting legal problem, we can also assist with any other legal problems that arise. For example, children and young people experiencing child sexual abuse may also be

¹ The *Evaluation of the Enhancement and Expansion of Legal Assistance Services for Victims and Survivors of Child Sexual Abuse - Final Report* prepared for the Commonwealth Attorney General's Department by Urbis, 20 December 2023, is not publicly available but a copy can be provided on request.

² In the 2022-2023 financial year YLA provided 1,350 legal services relating to sexual abuse matters. We also note that the demand for services across all our practices surpasses our capacity and due to measures undertaken to reduce intake we estimate that about 50 children and young people are unable to access a YLA service each week.

dealing with family and domestic violence and require support to leave home; obtain identification documents; obtain copies of records; change their name or gender; obtain housing; transfer school enrolments; obtain and understand the effect of a restraining order; or make an application for victims support.

12. Children and young people are also often the cohort most likely to be impacted by emerging forms of sexual victimisation, particularly in relation to online sexual harm and exploitation. The Australian Child Maltreatment Study report noted that their forthcoming analyses of the data *“will show additional concerning trends, and new emerging forms of child sexual abuse requiring major national prevention efforts”*.³
13. Wherever possible we support Gillick competent young people⁴ to make independent decisions and informed choices and prioritise the direct participation of all children and young people in all matters that impact them where safe to do so.⁵ This is particularly important when responding to sexual harm arising in the contexts of family and domestic violence and peer sexual violence and abuse, to ensure that children and young people’s experiences are acknowledged and believed, that they have agency in assessing risk and they are supported in help seeking and problem solving to build capacity and resilience.
14. It is our experience that when provided with free, confidential, trauma informed and child rights informed access to legal services, children and young people are proactive and engaged in help seeking and finding solutions to their legal problems and are not afraid or uncomfortable to talk about sexual abuse.
15. We have provided comments in response to the Issues Paper which are primarily focused on the needs, gaps and priorities for reforms relating to children and young people and which supplement the observations that we provided during our meeting with the ALRC on 13 May 2024.
16. In summary we want earlier and ongoing engagement by children and young people throughout the justice response to sexual violence; higher reporting rates; transparent and expedited police and court processes; lower withdrawal rates; children and young people being empowered to make informed choices; a reduction in the trauma and adverse consequences associated with contact with police and court processes and increased safety and wellbeing. We believe that there is a clear need for specialist sexual violence legal services for children and young people that can provide holistic engagement for continuity of care, including end-to-end legal service support.

³ Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023), *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*, Australian Child Maltreatment Study, Queensland University of Technology, accessed at: http://www.acms.au/wp-content/uploads/2023/04/ACMS_BriefReport.pdf.

⁴ *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (“Gillick”).

⁵ Direct participation to give effect to United Nations, *Convention on the Rights of the Child*, 20 November 1989, articles 12 and 19.

Reporting the experience of sexual violence safely

17. We have daily contact with children and young people experiencing and using sexual violence in both the real world and online. We continually reflect on what best practice sexual violence legal services for children and young people should look like and what needs to be prioritised. We see great value in a prevention and harm minimisation focus that enables early reporting and identification of risks, and which reassures children and young people that they can get free, confidential and trauma informed legal support no matter what happens and as many times as they need.
18. It is well understood that sexual violence is underreported and many of the reasons are clearly outlined in the Issues Paper. There are additional specific barriers to reporting for children and young people. These include:
- Confusion and misunderstanding about what sexual violence can look like.
 - The views of children and young people are not seriously considered in decision making that impacts them.
 - A lack of specialised information and help options for children and young people who wish to access support and report sexual violence as most of the information is targeted towards adult victims of both recent sexual violence and historical child sexual abuse.
 - Paternalistic views of childhood and persistent systemic failure to assess the maturity and capacity of children and young people to participate in processes or decision making about them independently.
 - Concerns about mandatory reporting. It is crucial to preserve and emphasise the confidentiality of communications with lawyers who are also not mandatory reporters.⁶
 - In addition to not wanting to get anyone into trouble, reporting can be the catalyst for a range of negative consequences that disproportionately impact children and young people like loss of home, family and kinship networks; loss of respect; loss of peer support; bullying; disruption to education; punishment by parents and carer; exacerbation of mental health disorders like anxiety and depression; self-harm and suicidal feelings and concerns or fear that it will become known that they have engaged in behaviours which could disappoint or bring shame to parents and carers and community.
 - A lack of child rights informed and child friendly policies and procedures to ensure that care is taken to understand the help seeking behaviours of children and young people and provide child friendly pathways to participate and engage in developing solutions.
 - Some children and young people also face further additional barriers, for example due to being in a closed environment like a detention centre or from not having independent, unmonitored access to phones or internet capable devices.
19. Based on over 30 years of providing child rights informed and specialist legal services to children and young people, we know that by prioritising the direct participation of children and young people we keep them safer and effectively assist children and young people to reconcile

⁶ Except for legal professionals in the NT pursuant to *Care and Protection of Children Act 2007* (NT), see sections 15, 16, 26 and 27.

complex matters. It is common for us to assist children and young people to understand the decisions made by authorities. For example, we routinely hear from children and young people that they have reached out for assistance, often very bravely contacting police or child protection authorities, only to be told that it is not serious enough to warrant intervention at this stage and to come back when something else happens. We will assist that child or young person to understand statutory thresholds and how risk is assessed and engage in safety planning to identify other justice and practical solutions.

20. We also note the recent announcement of Sexual Assault Services Victoria that Justice Navigators will be embedded in every specialist sexual assault service in Victoria to assist victim survivors to understand and exercise their rights and navigate all the support, compensation, justice and recovery options available to them, including by attending court and hearings.⁷ We welcome this initiative and suggest that child rights informed Justice Navigators be embedded within specialist services for children and young people like YLA. This would enable children and young people to access specialised legal advice and enhanced support within a holistic practice.

Police responses to reports of sexual violence

21. Most of our contact with children and young people who have experienced sexual violence is at the disclosure and reporting stages with the majority of matters not proceeding to trial. The reasons for this include the choice of child or young person not to pursue a justice response and the police assessing the evidence of the young person to be insufficient to proceed or unsubstantiated or unreliable.
22. We also work with young people who have experienced sexual violence and are thinking about making a report to the police but would like to provide the information anonymously or via an online form until they feel ready to seek more formal police assistance. In some jurisdictions such as NSW and Queensland, adult victim survivors can do this by completing an online form, for example the Sexual Assault Reporting Option form (SARO) available on the NSW Police Force website.⁸
23. Whilst we support the need for a formal child protection response in relation to most child sexual abuse, we also believe that an equivalent online reporting option for Gillick competent young people would provide more opportunities to report. This would also have the added benefits of preserving evidence by enabling a report to be made in proximity to the sexual violence and to facilitate greater access to victim support options by generating evidence of a report to police. This would be of particular assistance in response to peer sexual violence or online sexual harm, where fear of a formal investigation leading to parental involvement is a known barrier.
24. It would also be helpful for the police generally to be more transparent about interview processes with children and young people who are victim survivors of sexual violence including

⁷ Accessed at <https://www.sasvic.org.au/news/justice-navigators>.

⁸ The NSW Police Force Sexual Assault Reporting Option form can be accessed here: https://portal.police.nsw.gov.au/adultsexualassault/s/sexualassaultreportingoption?language=en_US.

options for support during interviews, explaining the technology that is being used to record interviews, where the recordings will be stored and who will have access to them and at least one dedicated child friendly interview space in all police stations. The police could also provide children and young people with a short video to watch prior to an interview which outlines what to expect and their rights to ask for breaks and to stop or speak to a support person.

Prosecution responses and trial process

25. There is limited publicly available information about many aspects of prosecuting sexual violence, and even less that has been written with children and young people as the intended audience. Gaps include details about being a witness and what to expect when the matter goes to court; the evidence required for a conviction; what to do if something goes wrong; why certain decisions have been made, including the reasons for an action or inaction; rights to confidentiality and privacy; how information will be shared; how to access records or statements and how to make a complaint.
26. We strongly believe that children and young people are best supported by services that are child rights informed, child safe and designed for and with them. We recommend that courts engage in a co-design consultation process with children and young people to review criminal justice spaces such as courtrooms and interview rooms and also online resources, to ensure that they are safe, inclusive and accessible to all children and young people. We note some of the additional special measures flagged in recommendation 61 of the *Final Report Recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse* include having a support person or support animal, partitions, one-way glass, clearing the public gallery of a courtroom during the witness's evidence and having the judge and counsel remove their wigs and gowns.
27. We support prerecording of evidence and suggest the development of best practice guidelines to assist the judiciary and criminal justice professionals to effectively engage with children and young people about the recording of evidence. We also see benefits in using intermediaries to assist child complainants but recommend that there also be an assessment of alternative measures that can be adopted to facilitate the direct participation of children and young people where they wish to do so.
28. Ongoing mandatory training is needed for all key stakeholders responding to sexual violence against children and young people, particularly police, judiciary, court staff and legal professionals, which is trauma-informed, victim and survivor centred and culturally safe. For those working with children and young people, they must also be required to undertake regular training about child-safe organisations, how to speak with children and young people and how to assess the maturity and capacity of children and young people to participate.
29. We support further consideration and consultation about specialist sexual violence lists and courts and specialist police and prosecutors.

Restorative justice

30. In our experience some of the most common forms of restorative justice that children or young people ask about include safety measures like restraining orders or cease and desist type correspondence. Occasionally, where they feel safe to do so, a young person may request assistance to write to a perpetrator about the impact of the sexual violence. Children and young people are also rarely interested in or motivated to seek compensation or civil awards but do like to know that they can make a claim at a later time when they feel ready. In general children and young people mostly want the violence to stop and be safe, reassurances of confidentiality and quick resolutions.
31. The other type of restorative process that is very important to children and young people is the right to speak their truth and share their experiences. Children and young people have the *right to freedom of expression including freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*⁹ The option to openly share lived experience of sexual violence can be a pathway to resilience and recovery for victim survivors, particularly children and young people, who often have strong online communities and global support networks.
32. YLA is regularly contacted by children and young people with lived experience of sexual violence and regularly assesses their competency and capacity to understand the risks associated with sharing their experiences in online and public forums, including the potential for further abuse from a known or new offender, self-harm and suicide, defamation, online harassment and an assessment about the potential impact on current or future legal actions.
33. We support the removal of restrictions on the publication of self-identifying material for a vulnerable person, which includes a child witness or a child complainant, and the streamlining of the requirements for another person to publish identifying information of a vulnerable person with their informed consent. We also acknowledge and support the need for protections to ensure that a vulnerable person is not further exploited via media or research.

Workplace laws

34. YLA provides the *Young Workers' Rights Service* in NSW, the ACT and NT and provides employment legal services for children and young people in other jurisdictions via our General Practice. We routinely receive requests for assistance from young people who have experienced sexual harassment and sexual violence at work.
35. Young people in this situation are often overwhelmed by the range of criminal and civil legal decisions they are required to make. For example, do they want to report to police; which jurisdiction is most beneficial for a sexual harassment complaint; and what state or territory based victims support options can they access in addition to any payout that may be made in response to the sexual harassment complaint.

⁹ *Convention on the Rights of the Child*, 20 November 1989, articles 13.

36. These decisions are more difficult due to lack of transparency around payouts, including through the use of non-disclosure agreements.
37. We recommend funding for a specialist national sexual harassment in employment legal service for children and young people. An organisation like YLA is well placed to provide such a holistic and trauma informed service due to our existing specialisations in both employment law and in responding to sexual violence.

Compensation schemes

38. A specific barrier to justice for children and young people is the requirement for any payment awarded via state or territory based compensation schemes to be held on trust until the young person turns 18 years old. We have assisted young people who are living independently due to reasons such as family violence who would benefit enormously from access to their compensation awards prior to turning 18. In some jurisdictions it is possible to ask a Public Trustee or other body to access some of the award as an advance prior to turning 18, but this typically requires the assistance of an advocate like a lawyer or an adult, which may not be an easy option for some young people.
39. We recommend that all state and territory based compensation schemes inform applicants for compensation under 18 about their rights and their options to access assistance to advocate for early release of part or all of their payment. For example, this information could be included with the notification of the decision to award compensation. In jurisdictions where there may not currently be an option for early access to payments by under 18s this is to be reviewed as a matter of urgency.
40. As flagged in the Issues Paper there are significant variations in the processes and awards for the compensation schemes in each jurisdiction. We are aware of victim survivors who have experienced sexual violence by the same perpetrator in more than one jurisdiction receiving quite different awards for similar acts of violence in each jurisdiction. This can be confusing and deflating.
41. We also note that in the compensation schemes where there are standardised categories of payment such as the Victims Support Scheme in NSW, the requirement for evidence of injury arising from sexual violence can be a barrier to making an application. We recommend the removal of the need to separately establish injury arising from sexual violence as evidence that the sexual violence occurred should be sufficient, unless evidence of injury is required to establish something like serious bodily injury to access a higher payment category.

Victims' charters

42. Children and young people must be recognised as victim survivors of crime in their own right across all stages of the justice response. We recommend the development of specific victims charters for children and young people in consultation with children and young people with

lived experience of sexual violence and their advocates and which give effect to the principles of the *Convention of the Rights of the Child*.¹⁰

43. We also recommend the establishment of independent Commissioners of Victims Rights in all jurisdictions to provide victim survivors with a genuine opportunity to be supported to enforce victims' charters and to complain about negative experiences of the justice system.
44. It would also be beneficial to conduct an audit of the role that existing Children's Commissioners, Advocates and Guardians in each state and territory play in assisting children with enforcing their rights as victim survivors of sexual violence and implement measures to ensure a dedicated pathway for children and young people to access assistance to enforce charter rights.
45. In summary the key principles that must underpin the provision of justice services to children and young people in response to sexual violence are:
 - The safety of children and young people must be prioritised.
 - Direct participation of children and young people to give effect to Articles 12 and 19 of the Convention on the Rights of the Child.
 - Recognition that children are not a homogenous group and require flexible and varied points of access including digital service delivery involving both active and passive technologies, place-based options, as well as phone lines as not everyone can access technology or devices.
 - Having an option for anonymous access to a legal service to assist children and young people to build trust in the service and gain confidence to disclose and discuss sensitive matters.
 - Preservation of the legal relationship to ensure confidentiality and provide children and young people with the opportunity to make an informed choice about next steps without the risk of a mandatory report and a statutory response which may create new risks and additional legal and social problems.
 - All organisations that provide services to children and young people in response to sexual violence must be committed to a child-safe culture, including implementing the National Principles for Child Safe Organisations.

We look forward to reading the ALRC's report and we are available to provide additional comments or information if that would be of assistance.

Yours faithfully,



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¹⁰ United Nations, *Convention on the Rights of the Child*, 20 November 1989.