

**Family and Sexual Violence Alliance (FSVA) Steering Committee  
Tasmania**

Submission to:

Australian Law Reform Commission (ALRC) Issues Paper 49:  
*Justice Responses to Sexual Violence (2024)*

June 2024

*The FSVA Steering Committee is comprised of the following Tasmanian specialist family and sexual violence organisations:*

women's  
legal  
service  
tasmania



Engender  
Equality

**Sexual  
Assault  
Support  
Service**



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## Acknowledgements

FSVA acknowledges Tasmanian Aboriginal people as the First Peoples and Traditional Owners of the land, water and air of lutruwita/Tasmania. We acknowledge that Aboriginal sovereignty was never ceded, and the continuing hurt caused by colonisation. We acknowledge the ongoing leadership role of Tasmanian Aboriginal communities in addressing and preventing family and sexual violence.

FSVA acknowledges all people who have experienced family violence, sexual violence, and all forms of violence against women and children. We recognise the importance of system changes being guided by their experiences, expertise and advocacy. We thank them for their generous contributions to this submission. We also remember and pay respects to those who did not survive and all of those who have lost loved ones to family and sexual violence.

## Further information and insights upon request

FSVA invites the ALRC to:

- a) Meet with representatives of FSVA to discuss the contents of this submission
- b) Request further information arising from this submission.

Requests can be made via the Family and Sexual Violence Alliance Secretariat (currently located at the Tasmanian Council of Social Services); [REDACTED]  
or to Kathryn Fordyce, Chief Executive Officer, Laurel House Sexual Assault Support:  
[REDACTED]

## 1. Introduction

This is a submission from the Tasmanian Family and Sexual Violence Alliance (FSVA) Steering Committee in response to the Australian Law Reform Commission (ALRC) Issues Paper 49: *Justice Responses to Sexual Violence* (2024).

FSVA notes the submissions to ALRC Issues Paper 49 made by other specialist sexual assault and family violence services and peak bodies across Australia. FSVA has been provided with drafts and advance copies of some of these submissions and notes the overwhelming evidence of the ways in which Australia's justice systems structurally and systemically fail victim-survivors of sexual violence, especially women and children.

FSVA also notes the many detailed reports and research papers that exhaustively detail the need for urgent, system-wide change in justice responses to sexual violence. In particular, FSVA notes the recent (614 page) 2021 report by the Victorian Law Reform Commission *Improving the Justice System Response to Sexual Offences* and the (807 page) 2022 *Hear Her Voice Report 2 - Women and girls' experiences across the criminal justice system* by the Queensland Women's Safety and Justice Taskforce.

These reports, led by people from inside the justice system, exhaustively detail the need for change. Findings from these reports that are applicable to Tasmania include (but are not limited to):

- Sexual violence is driven by a culture and socio-economic system that authorises the sexual entitlement of men and boys to the bodies of women and children
- Sexual violence has devastating, life-long impacts on the lives of victim survivors
- Most sexual violence remains unreported, and even fewer cases proceed to court
- There are too many barriers to reporting sexual violence, especially for women and other people from marginalised communities
- Access to forensic examinations following sexual violence is unequal and inconsistent, particularly for women and other marginalised people in remote and regional communities
- Victim-survivors have limited choices, little control and insufficient support when seeking justice for sexual violence
- The justice system is overly complex and traumatic for people who experience sexual violence
- Victims of sexual violence are often forced to navigate a confusing, inconsistent and re-traumatising legal maze, involving intersecting criminal, civil, family and child protection legal systems - for women and other marginalised people the experience of systemic discrimination within these systems creates further trauma and distress
- There are delays at every stage of the justice system that make it more difficult for victim-survivors to achieve just outcomes
- More than any other crime, victim-survivors of sexual violence are forced to prove their credibility and reliability, and are often humiliated in this process
- The rules of evidence do not allow victim-survivors to tell the whole truth of their sexual violence to jurors and judges
- Multiple features of the criminal justice system make it hard for sexual offences to be proved in court, and traumatising for complainants to go through the process
- Many cases of rape and sexual assault occur in intimate partner contexts, and there should be a strong requirement for affirmative consent during sex
- The criminal justice system rarely holds men responsible for sexual violence to account

- Options for victim-survivors to be heard in the sentencing process are too constrained
- Effective change requires simultaneous attention to many parts of the system which deal with sexual violence, and for victim-survivors the system is only as good as its weakest part
- The justice system for responding to sexual violence is under-resourced, over-worked and backlogged
- There are clear and persistent gaps between the evidence of ‘what works’ and how the system operates
- Many victim-survivors, including women and other marginalised people do not trust the justice system or see it as a source of support
- There are often long wait times to access specialist services
- The justice systems consistently fails to hear and understand the needs and circumstances of victim survivors
- Police, prosecutors, defence lawyers and judges continue to demonstrate attitudes, behaviours and practices that oppress and re-traumatise victims of sexual violence, especially women and other marginalised people
- Few people working in the justice system have specialist skills in the field of sexual violence
- There are often no viable alternatives for most victim-survivors to seek justice outside of the criminal justice system
- There is little or no justice system support for victim-survivors at the time of a perpetrator’s acquittal or release from custody
- First Nations victim-survivors, especially First Nations women and gender diverse people, experience heightened and disproportionate discrimination, lack of safety and unjust outcomes in the justice system
- There is a lack of transparency – including hidden data and information - relating to the justice system’s treatment of sexual violence
- Reforms rarely (if ever) adopt a ‘systems-wide’ approach to design and implementation.

## 2. Tasmania's disturbing rates and patterns of sexual violence

### A: ABS Data on Sexual Violence in Tasmania

*Adult women in Tasmania report some of the highest rates of sexual and other gender-based violence in Australia (and at higher rates than the national rate across all types).*

<b>ABS Personal Safety Survey, Australia, 2021–22</b>			
<i>Table 9.3 Women aged 18 yrs and over, Experiences since age of 15, By state and territory Proportion</i>			
Type of Violence Against Women	Rate in Tasmania	National Rate	Tasmania 'rank' re: other States/Territories
Sexual violence	26.0%	22.3%	Second highest (to NT)
Intimate partner violence	28.1%	23.3%	Equal Highest (with NT)
Cohabiting partner violence	21.6%	16.9%	Highest
Cohabiting partner emotional abuse	28.3%	22.9%	Highest
Cohabiting partner economic abuse	19.6%	16.3%	Highest
Stalking	21.1%	20.3%	Equal Highest (with SA)
Sexual harassment	56.8%	52.9%	Third Highest
Physical violence	32.7%	30.8%	Fourth Highest

This equates to 58,400 adult Tasmanian women who have experienced sexual violence (sexual assault and sexual threats) since the age of 15.

*Over the last five years the increase in sexual assault offences in Tasmania has been far higher than any other state or territory.*

<b>ABS Recorded Crime – Victims, 2022</b>							
<i>Table 9 Victims, Selected offences by states and territories, 1993–2022 (Sexual Assault)</i>							
State	2018	2019	2020	2021	2022	Increase from 2018 to 2022	Increase 2022 from previous 4 year average
Tasmania	199	211	307	493	560	181.41%	85.12%
Queensland	4,849	4,859	5,120	6,891	7,431	53.25%	36.86%
NSW	10,241	11,009	11,276	11,485	12,412	21.20%	12.81%
ACT	278	327	289	341	325	16.91%	5.26%
South Australia	1,611	1,550	1,625	1,783	1,816	12.73%	10.58%
Western Australia	2,879	2,769	3,048	3,564	3,158	9.69%	3.03%
Victoria	5,911	5,779	5,513	6,164	6,067	2.64%	3.86%
Northern Territory	360	354	370	355	362	0.56%	0.63%

This may be, in part, a result of increased understanding of violence against women in Tasmania, and rejection of sexual violence against women as measured from 2009 to 2021 in the 2021 ANROWS *National Community Attitudes towards Violence against Women Survey*.

However, despite this increase, the data indicates that rates of recorded sexual assault crime in Tasmania remains a small fraction of the sexual violence experienced by Tasmanian women.

*Further, this increase has occurred even though Tasmania has amongst the lowest rates for reporting of sexual assault victimisation in Australia.*

<b>ABS Recorded Crime – Victims, 2022</b>				
<i>Table 10 Victimisation rates, Selected offences by states and territories, 1993–2022</i>				
<b>Sexual Assault (rates per 100,000 for State/Territory)</b>				
State	2020	2021	2022	3 year average (2020–22)
Northern Territory	150.3	144.4	144.4	146.4
NSW	138.1	140.3	152.2	143.5
Queensland	98.9	132.0	139.5	123.5
Western Australia	114.4	132.9	113.3	120.2
South Australia	91.8	100.5	99.7	97.3
Victoria	82.4	92.7	91.6	88.9
Tasmania	56.8	91.1	98.0	82.0
ACT	67.0	79.0	71.2	72.4

*In addition, Tasmanian women victim-survivors of sexual assault are the least likely in Australia to report within 12 months.*

<b>ABS Recorded Crime – Victims, 2022</b>	
<i>Table 15 Victims of sexual assault, Time to report by sex, States and territories, 2014–2022</i>	
<b>Proportion of Sexual Assault (Female Victims) Reported Less than 1 year (2022)</b>	
State	Percentage
Northern Territory	86.1
Western Australia	80.9
ACT	80.1
South Australia	77.5
Victoria	70.7
Queensland	70.4
NSW	67.2
Tasmania	63.4



*Further, sexual assault against Tasmanian women is significantly more likely to occur in a residential setting than in most other States and Territories.*

<b>ABS Recorded Crime – Victims, 2022</b>	
<i>Table 12 Victims, Location where offence occurred, States and territories, 2022</i>	
<b>Proportion of Sexual Assault Occurring in Residential Setting (2022)</b>	
<b>State</b>	<b>Percentage</b>
Western Australia	74.2
Tasmania	73.8
Victoria	67.6
Queensland	66.0
South Australia	65.7
ACT	61.5
NSW	61.3
Northern Territory	34.3

Therefore, while Tasmania’s justice system responses to sexual violence demonstrate all the failings of those in other jurisdictions, these failures are occurring in the context of unique, complex and high rates of sexual violence experienced by Tasmanian women.

It supports a case for needs-based (rather than only population based) Commonwealth resourcing of services that support victim-survivors of sexual violence in Tasmania, matched with a greater investment by the Tasmanian Government.

## B: Child Sexual Abuse in Tasmania

In April 2024, FSVA presented compelling evidence to the Tasmanian Government that:

- a) Child sexual abuse (CSA) is widespread in Tasmania – including in family, neighbourhood, and community settings.
- b) There is a close, intersecting relationship between CSA and family and sexual violence in Tasmania.

The ABS 2021-22 Personal Safety Survey (PSS) estimates that 25,200 Tasmanian women (11% of all Tasmanian women) have experienced sexual abuse *by an adult* before the age of 15. This proportion is consistent with the national average in the PSS and in other longitudinal studies of sexual violence in Australia.

The PSS found that 343,500 Australian men (3.6%) have experienced childhood sexual abuse, which translates to around 8250 Tasmanian men.

The PSS *understates* the true extent of child sexual abuse due to some people’s reluctance to disclose information. The PSS also does not include CSA perpetrated by adolescents or abuse occurring to children aged 16 and 17.



The 2023 Australian Child Maltreatment Study (ACMS), using a different approach to the PSS (including children up to age 18 and adolescent perpetrators) found 28.5% of Australians had experienced CSA.

The ABS notes that Australians who have experienced childhood abuse (physical and sexual) are much more likely to go on to experience violence and abuse by a partner as an adult (42.8%) than those who have not experienced childhood abuse (17.4%).

Australian research has observed that Aboriginal and Torres Strait Islander women, LGBTIQ+ people, women from culturally and linguistically diverse backgrounds and women with a disability, have discrete patterns of victimisation, including distinct behaviours and norms that may increase the risk of victimisation. Yet across all cohorts, sexual violence in childhood was found to be a risk factor for experiencing further sexual violence.

There is strong evidence that family and sexual violence is a major contributor to harmful sexual behaviours (HSB) in adolescents, which is in turn one of the major causal factors in CSA.

The Tasmanian 2023 *Commission of Inquiry* report, which was almost entirely focused on child sexual abuse in institutions, nonetheless included multiple acknowledgements of the links between child sexual abuse and family and sexual violence.

FSVA would be pleased to present the ALRC with its recommendations for increased awareness, prevention, early intervention, support and therapeutic support for co-occurring CSA and FSV in Tasmania, upon request.

### 3. Three steps to fixing justice system responses to sexual violence

FSVA Tasmania proposes three integrated approaches to address the acute and chronic problems in the Tasmanian justice system's responses to sexual violence:

- A. *Re-imagine the system without constraint, for long-term impact*
- B. *Listen to and learn from victim-survivors*
- C. *Progress specific high value reforms in the short-to-medium term.*

#### A: Re-imagine the justice system without constraint

Tasmania needs to undertake a comprehensive, systemic, 'first principles' review into the way the system perpetuates and exacerbates abuse of victim-survivors of gender-driven violence – including sexual violence.

This proposed systemic review would be unconstrained by the perceived limits of existing legal, administrative and political systems, which were developed in a patriarchal and colonial framework, and are therefore fundamentally and inherently abusive of women and marginalised communities.

This systemic review would re-imagine the ways in which victim-survivors can exercise choice and control when they:

- experience any form of violence, including sexual violence
- manage relationships, including separating from their intimate partner
- are acting in the best interests of their children
- experience violence and abuse perpetrated or enabled by the state
- experienced violence and abuse perpetrated by organisations regulated by the state
- experience intersectional forms of violence, alongside gender-based violence
- seek recovery from the impacts of violence
- seek protection of their family and kin from violence
- seek protection for their communities from violence
- seek help from specialist services designed to provide immediate and long-term support, including appropriate legal support.

While FSVA acknowledges that such a re-imagining of our legal, political and administrative systems is unlikely to be implemented in full, the FSVA believes such an approach would provide bold ideas and new frameworks that could deliver real and lasting change. This proposed systemic review would provide both a long-term vision for the future, as well as developing significant reforms for the short to medium term, including approaches specifically tailored for Tasmania.

To be clear, FSVA members and victim-survivors are *continuously* re-imagining the system, only to see well-researched and workable ideas disappear into an administrative void. FSVA members and Tasmanian victim-survivors are restrained, exhausted, and debilitated by perpetual Sisyphean tinkering with a broken system. Instead, FSVA requests the committed, good-faith, active and equal participation of the Tasmanian Government, Tasmanian legal institutions, Tasmanian communities, victim-survivors and Tasmania's marginalised communities in a 'no constraints' systemic review. FSVA Tasmania is prepared to invest time and resources facilitating the design and implementation of this long term process.

## B: Listen to and learn from victim-survivors

In undertaking a ‘no constraints’ re-imagining of the way sexual violence is managed in Tasmanian and Australian justice systems (as per Section ‘3A’ above) and specific high-value reforms in short-to-medium term (as per Section ‘3C’ below), Tasmania needs to genuinely listen to and learn from the expertise of Tasmanian victim-survivors of sexual violence.

The following expert advice was provided to FSVA member organisation Laurel House, working with victim-survivors in North and North West Tasmania in June 2024, in purposeful response to ALRC Issues Paper 49.

Transcribed excerpts of this advice are provided below across ten themes:

- B1: Police interviewing practices*
- B2: Information, choice and control for victim-survivors*
- B3: Experience of reporting sometime after the offence*
- B4: Training and specialisation within the justice system*
- B5: Support to navigate the justice system*
- B6: Court processes, delay and lack of communication*
- B7: Options for restorative justice for sexual violence offending*
- B8: Sexual offending in workplaces*
- B9: Current victim compensation schemes*
- B10: First Nations victim-survivor advice*

### B1: Tasmanian victim-survivor advice on police interviewing practices

“You could clearly tell that those I was talking to, the receptionist, like didn’t have a lot of experience in this kind of area and they were just there to get you through the door and the person I was speaking to initially was not from a sexual crime squad... they were not as empathetic as I needed.”

“It was a ‘sit down, shut up, give me ABCD’, and then they had to keep going over and over and over certain points and I’m sitting here going, man, I’ve told you the exact same three things, three times in a row.”

“There’s a camera that I kept looking at...I don’t know why, just knowing that it was there just was really intrusive. Where is it going? Do they tell me where that’s going...informed consent process around that?”

“We wasn’t given the option as to whether or not we would prefer to speak with a male officer or a female officer...I myself was so uncomfortable in that room. Even now it was my daughter’s experience because both officers were male. It was just too uncomfortable, like I had to walk out halfway through her giving the report.”

### B2: Tasmanian victim-survivor advice on information, choice and control for victim-survivors in Tasmania

“I haven’t had contact from the detective that I spoke to when I made my statement [...] years ago...and he called me one day... just out of the blue... his name popped up on my phone and it just sent me straight into flight because I had no idea what he wanted. He didn’t do anything special to make sure that I was comfortable through my statement so I don’t know why he would

have thought that I would have been comfortable with him just calling me out of the blue. I had to go home...because I couldn't function.”

“...we need more information...I don't care how, but if you could just sit down and give us options, say this is what you can do. Here is a list of A to Z. I have been in situations that I have been given options in which have been absolutely fantastic, but I feel like the resources are not developed enough across the board... Also verbalising it is quite good, but I have a terrible memory in times of trauma as many people do. So, if you could give us something tangible that we could hold on to, or put on the fridge or something, it would be much more beneficial.”

*[A victim-survivor was asked by police to supply screenshots of text messages after her interview, but found it difficult to return to the police station. She didn't understand why it wasn't obtained at her original interview.]* “Your whole body goes, I don't really wanna go back there and do that anymore, but then you know that's going to help...but I think as well for them to again have those options, you know, ‘would you like us to come to you?’...It means I wouldn't be sitting here in this perpetual state of stress like every other day I wake up and go ‘you really should get to the police, you could do that’. I have an alarm on my phone that goes off every Tuesday... ‘take photos’, every Tuesday, ‘take photos to police’...but I've not been able to get back in that head space to go back...if I just had someone say, ‘look we can do this now’ and give me that encouragement, like that option. If they said, ‘we can do this now’, I would have done it then and there”.

“Explore like going more into depths of what you're looking at. Like if a child comes and says like this happened to me you don't just brush it off. You don't just say, oh yeah, we'll do this, but not really do it.”

“I also think it is important to survivors that they know the perpetrator is being monitored in some form to prevent further victims.”

“When one lives in a small community a victim often doesn't report for fear of being seen entering a service or police station to report. Everyone knows everyone's business in a small town so victims often can't or don't report if they have to go to a physical building to do so. Therefore, phone or online reporting may be the only way to report so contact details have to be knowable in a way that doesn't compromise a victim's safety or privacy.”

### B3: Tasmanian victim-survivor advice on the experience of reporting sometime after the offence

“We also should not be penalised for reporting DV or sexual abuse pass a certain time because it is so traumatic and painful, especially if someone who has been abused has to constantly rehash what happened and then be treated as the perpetrator or just plain ignored or not helped.”

“There was either lack of belief because I reported it so late or not much they could do or they wanted to help me, but they couldn't or they wouldn't because... they said I wouldn't win in court with it or however they didn't put a quite that way, but something along those lines.”

### B4: Victim-survivor advice on the need for training and specialisation within the justice system

“There needs to be education provided to all police, not only ones working in specialised sexual support services...being able to go up to any police officer and not be met with 'but did you

consent?' 'what were you wearing?' 'were you drunk?' is a MUST when it comes to being able to trust police.”

“Legal Aid lawyers are often not qualified to deal with this type of charge in court so adequately professional experienced lawyers have to be engaged who understand sexual violence and will represent a victim to the best of their ability.”

B5: Victim-survivor advice on support to navigate the justice system

“...so having something tangible going, hey... this is a roadmap. Here are the things you can do to get where you’re going because like even outside of that context when I was doing the historic recount, he turned to me and went, look this can take up to seven years... and I’m sitting doing ‘yeah, that’s okay, I’ve got a lifetime of trauma head of me, you know – what’s seven years on top of what I’m going through’ but if you could give me something to do in the meantime or think about it again, that tangible nature.. something that I can do or look at or figure out because otherwise I’m just sitting here in this perpetual state of really it feels like aloofness when I want to actively contribute or participate. It just, there’s nothing there. There’s nothing other than, ‘oh, I’m waiting now’.”

“There’s something so powerful about the doing – I can do a thing. I can do a thing when everything over here feels so out of control and overwhelming. I’ve just got this one thing I can do.. and then, maybe I might do another thing...”

B6: Victim-survivor advice on court processes, delay and lack of communication

“Having the process not be so long and dragged out, the process was very [long], from the time the incident took place to the time my abuser was sentenced and stuff. It was just very long drawn out... things getting cancelled all the time. Then having to go back to Court again and then you rock up and then it being cancelled... I kind of remember the excuses that we had but it was just... a very long, drawn-out process I know some of those things can’t be helped, but yeah, that’s something that I found frustrating over time. Like I said, it’s when it’s long and drawn out, and you’re going back and forth, and you’re answering the same questions, or you’re listening to the same excuses.”

“[The ongoing court delays] could have been communicated better... and had more options instead of having to attend Court all the time waiting for his sentence and stuff to be able to do it like you know - like a video call or just a phone call... like not having to attend all the time because it was a bit of a media circus around my event as well.”

“Yeah, there's not much really you can do about the laws, but I don't know, it's just really hard on the [victim-survivor's] children if [the] case just gets pushed to the back and just ignored and just not looked at or if they're just sitting there in silence and they know.”

“My daughter's perpetrator was allowed parole after only serving half his sentence. We was not informed that he was out on parole. He... lived in the same suburb as we did, and it was only because we spotted him at the local shop one day that we found out he was actually out on parole and back out on the street...”

“I had a different experience where I potentially could have gone to Court and the person who was abusive to me would be standing [distance] away from me, that would be in [town]... I am

on a disability payment - how do I make it? ... or else do I have them stand right there and there's no protection there's nothing....”

“Not having to face the offender would be beneficial. A specialist sexual assault/family violence court should exist to deliver more specialised experience to the process and subsequent outcomes.”

“I just think more power and control needs to be given to the kids/people in these situations. My choice to speak in court was taken from me...and I will never not be angry that I couldn't speak for myself.”

#### B7: Victim-survivor advice on options for restorative justice for sexual violence offending

“Like having to have my say and telling the person like, you know...how they made me feel and how, you know, but sort of letting go of that hate and that anger and trying to like move on with life. Yeah, I found it helped...compared to the other situations I've been in, which I've, you know, I've never had closure, but I definitely think it should be an option.”

“My concern is that is this going to be like something in the justice system where offenders go to a class get a box tick and go ‘oh look I'm not a predator anymore.’ Like is it going to be used in that method? Because if it has good benefits, brilliant, but there are some wickedly disastrous people out there that would see it as a means to an end. ‘Here - I've ticked a box let me near kids here. I've ticked a box. Let me - you know - go and abuse another partner.’”

“Sexually violent abusers I believe are a whole different type of criminal and this form of [restorative justice] may give them the opportunity to further abuse the victim psychologically instead of rehabilitation or inducement of remorse from a perpetrator...”

“I like the thought of doing both. I want the court system and I want him to know exactly that impact.”

“To have someone ask them how they (the victim-survivor) feel and what do they think and have the choice of saying ‘yes’, they want this or ‘no’ they don't that's what I think anyway. So yeah, having it as an option you think would be helpful.”

#### B8: Victim-survivor advice on sexual offending in workplaces

“Workplaces rarely have human resources or departments where a victim can be confident their complaints will be taken seriously and followed up on. Serious work needs to be done to make workplaces safe places to disclose; that is happening slowly but not quickly enough.”

#### B9: Victim-survivor advice on current victim compensation schemes

“Compensations schemes across all types of victim abuse are tedious, take years on average to produce outcomes and demand so much information often unnecessary repetition of said information that the entire process retraumatises a victim and they often cannot continue seeking compensation to the very end. A support person to help a victim through the entire process is desperately required.”

B10: First Nations victim-survivor advice

“I’m aboriginal and police never felt safe to me or my mob for multiple reasons from a young age. I particularly had no trust in police after I had experienced family violence as a child, and they did nothing other than tell me I would be removed by child safety if it kept happening. This made me scared to call them again. They didn’t help my mum or I, and did nothing to stop the violence, so I thought it was pointless in reporting when I was sexually abused as a teenager, and then again when I experienced sexual assault and family violence in my adult years. I still don’t trust them.”

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***Laurel House would be pleased to provide a copy and presentation of its victim-survivor consultation report to the ALRC upon request*** [REDACTED]

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FSVA notes that the expert advice provided by victim-survivors via Tasmania’s Laurel House in 2024 is broadly consistent with that provided ten years earlier (2014) by victim-survivors to Bluett-Boyd and Fileborn in their study for the Australian Institute for Family Studies, titled *Victim/survivor-focused justice responses and reforms to criminal court practice*, which summarised the needs for reform as:

- receiving emotional support and counselling
- having a voice and being heard
- being believed
- having their version of events vindicated
- being informed about the status of their case
- being informed as to how the criminal justice system works
- avoiding having to constantly retell their story
- being able to give evidence remotely
- confronting their perpetrator in a public setting
- having their perpetrator brought to justice/convicted
- having closure and a sense of finality to their experience.



## C: Specific high value reforms in the short-to-medium term

Considering the empirical evidence of sexual violence in Tasmania; the day-to-day experience of workers in Tasmanian specialist family and sexual violence organisations; the documented expertise of victim-survivors of sexual violence; and the capacity of the State and Commonwealth Government to respond, FSVA has identified the following high value reforms in the short-to-medium term (to occur simultaneously with long-term reimagining of the entire system).

### C1: Justice Navigators

**FSVA recommends** that Justice Navigators are deployed in the Southern, Northern and North-West regions of Tasmania, and employed within specialist sexual assault services under long-term (five year) funding agreements with the State and/or Commonwealth Government.

Victim-survivors of sexual violence are often overwhelmed and isolated by a complex and unfamiliar justice system. Tasmanian victim-survivors say they need professional, empathetic, consistent and ongoing support within the systems that respond to sexual violence.

Justice Navigators in Tasmania would support victim-survivors who want support:

- to maximise their choice and control within the justice system
- to understand and exercise their rights and obligations
- to navigate the complex inter-jurisdictional systems of justice, protection, support and recovery
- to explore multiple legal and administrative pathways, if required
- during court and hearings
- beyond the victim-survivor's time in the criminal justice system.

The Tasmanian Justice Navigators program should incorporate a co-evaluation process with victim-survivors, including jointly prepared evaluation reports and recommendations for improvement at 18 months and three years after commencement.

The development of the Tasmanian Justice Navigators program should closely examine the respective roles of proposed Justice Navigators and existing intermediaries and victims of crime support programs.

The Tasmanian Justice Navigators service would be provided at no cost to victim-survivors.

The Tasmanian Justice Navigators service should be seen as supplementary and complementary to independent legal representation for victim-survivors (see 'Recommendation C2' below).

### C2: 'Beginning to end' independent legal representation for victim-survivors

In Tasmania, there is an urgent need for victim-survivors seeking legal outcomes to have independent legal representation through the entirety of the process, from deciding to instigate proceedings through to post-sentencing.

At present, victim-survivors in Tasmania don't have agency in the justice process – the system takes control of their matter and their experience. Prosecutors are generally not providing trauma informed practice, including when assessing the public interest; decisions about how/if to proceed; and communication with victim/survivors. The victim-survivor status as a witness for the prosecution and not a party to the proceedings is often isolating, disempowering and humiliating.

Ad hoc legal support at intermittent points in the justice process is not trauma informed and does not enable victim-survivors to make free and informed decisions at many points in the justice system.

A key marker of a fair trial process must be the victim-survivor making informed choices at all stages of the justice response to their experience of sexual violence, and without free, timely and consistent independent legal advice they are unable to exercise this right. Among other things, legal professional privilege supports control and ownership by the victim-survivor.

**FSVA notes** that the Commonwealth Government provided \$8.4 million over three years (from 2023-24 to 2025-26) to pilot a legal services model in Victoria, WA and ACT, with the aim to provide victims and survivors of sexual violence with greater access to specialised and trauma-informed legal services to support their recovery and safe participation in the criminal justice system. Funding is being delivered through a funding agreement with participating states and territories. This pilot will be evaluated to measure its success and inform the development and funding of future legal services for victims and survivors across Australia.

**FSVA recommends** that the Tasmanian Government immediately commence engagement with the specialised family and sexual violence sector, and particularly Women's Legal Service Tasmania, to prepare for the introduction of 'beginning to end' independent legal representation for Tasmanian victim survivors, incorporating emerging outcomes and learnings from the Commonwealth pilot.

The FSVA also supports the establishment of a specialist LGBTQIA+ legal service in Tasmania to support the unique needs of LGBTQIA+ victim survivors of sexual violence and child sexual abuse, noting LGBTQIA+ people experience violence at much higher rates.

Independent legal representation should be seen as supplementary and complementary to Justice Navigators for victim-survivors (see 'Recommendation C1' above).

### C3: Alternative reporting options

**FSVA recommends** that the Tasmania Government, in close consultation with the specialist family and sexual violence sector and victim-survivor groups, designs and implements an alternative sexual violence reporting platform, supported by a team of staff who are trained to respond to victim-survivors of sexual violence.

FSVA recommends that the alternative reporting platform is designed and implemented in a manner consistent with the research outcomes and recommendations of the national *Alternative Reporting Options for Sexual Assault Project* including:

- being hosted by a specialist sexual assault service rather than law enforcement
- have the capacity to send de-identified and anonymous reports to police for intelligence purposes and facilitate communication between victims and survivors and police

- be safe and secure and prioritise the safety and privacy of victims' and survivors' personal information
- be trauma-informed, tested with victims-survivors and promote the agency of victim-survivors

#### C4: Civil law options

**FSVA recommends**, to improve access to justice for people who have experienced sexual violence, the Tasmanian Government should:

- develop reforms that would enable civil and criminal pathways to be pursued by victim-survivors simultaneously, with independent legal representation
- fund civil cases where a person who experiences sexual violence faces barriers to justice in the criminal justice system
- fund civil cases against defendants that involve important legal or systemic issues
- broaden options for claimants to enforce civil orders and settlements in sexual violence cases
- fund applications by victim-survivors for restraint orders apply to perpetrators of their family and sexual violence.

Tasmanian victim-survivors have said they want outcomes from the justice system that:

- publicly and formally confirm and validate their experience of sexual violence
- provide them with greater control
- provide them with closure
- hold the perpetrator of sexual violence to account.

Accessible, affordable and timely civil law options in sexual violence cases - with a 'balance of probabilities' burden of proof and the victim-survivor as a party to the proceedings - have the potential to provide these options.

#### C5: Restorative justice options

**FSVA notes** that Tasmanian victim-survivors have varied views on the appropriateness and effectiveness of restorative justice options in sexual violence matters, as indicated in section B7 of this submission.

**FSVA recommends** that the Tasmanian Government, in close consultation with the specialist family and sexual violence sector and victim-survivor groups, establish an independently evaluated trial of a restorative justice approach that *supplements* criminal and civil justice processes in Tasmania and be exercisable (in the first instance) as an option for victim-survivors:

- where a victim-survivor decides in a free and fully informed manner not to participate in a criminal justice process, and as a result the matter cannot otherwise proceed, or
- after a guilty plea or conviction and before sentencing, or
- after a guilty plea or conviction and in connection with an application for restitution or compensation orders, or
- at any time after sentencing.

The independent evaluation of the trial should be co-produced with Tasmanian victim-survivors.

## C6: Training and education for justice actors/judicial officers

**FSVA recommends** the Tasmanian Government funds the development and delivery of a program to educate and train police, prosecutors, defence lawyers, judges and magistrates on:

- the patterns and drivers of sexual violence in the Tasmanian community, including gender oppression and power
- identifying and challenging myths about sexual violence
- the exercise of privilege afforded by race, gender and socio-economic status and the impact of this privilege on conscious and unconscious bias
- intersection of family violence, child abuse and sexual assault
- sexual harassment – including to address a culture of permissive normalisation of violence against women in the legal profession
- available strategies to facilitate choice and control for victim-survivors
- the negative impacts of re-traumatisation of victim-survivors by the justice system
- the positive impacts of best practice support for victim-survivors in the justice system
- strategies to reduce the risk of re-traumatisation of victim-survivors, including in police stations and courts
- best practice methods to support reporting of sexual violence by victim-survivors
- the intersection of sexual violence with other traumas experienced by Tasmania's marginalised communities
- best practice communication with victim-survivors through all stages of the justice system, particularly where a decision is made not to proceed; where plea agreements are proposed; and where cases are delayed
- the full range of alternative arrangements for victim-survivor engagement with justice system processes.

This education and training should involve delivery by practitioners in specialist family and sexual violence organisations, and victim-survivors of family violence. To the extent permitted by the law, the training and education should be compulsory and provided on a fee-for-service basis.

The impact of the training should be evaluated and measured continuously within the justice system. For example, evaluative research could measure reductions in the current wide variability in victim-survivor experiences when reporting sexual violence, which currently depend largely on the personnel at the local station and the leadership of local police at any given time.

## C7: Implementation of proposed reforms in Tasmania

It is critical that both long-term 'reimagining' of the justice system, and short-to-medium term reforms are co-produced with specialist family violence organisations and guided by the expertise of victim-survivors.

From 2024-25, an appropriately resourced Tasmanian Family and Sexual Violence Alliance (FSVA) will be positioned to take a leading role in this co-production.

This should be supplemented by:

- Establishment of a Tasmanian Family and Sexual Violence Commissioner. This would be an ongoing, independent role to ensure reforms to family and sexual violence responses are transparently funded and implemented by governments. It would, among other things, work closely with (and then beyond) the Independent Monitor for the implementation of the *Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings*.
- Reestablishment by the Tasmanian Government of the Family and Sexual Violence Community Consultative Committee and commit to working in partnership with the specialist family and sexual violence sector and other related services to ensure coordinated and integrated delivery of all state and national plans, strategies and agreements relating to family violence; violence against women and children; sexual violence; and child sexual abuse.
- A Tasmanian Family and Sexual Violence Workforce Strategy to support the growing demand for an appropriately skilled and supported family and sexual violence workforce, especially in regional and remote Tasmania (noting that workforce mobility requires national, state and region-specific responses).

## C8: Reform concepts identified in previous reviews to be considered in Tasmania

FSVA has considered, in the Tasmanian context, reforms proposed across Australia over the last decade on justice system responses to sexual violence (in the order of themes set out in ALRC Issues Paper 49).

These considerations are flagged in the following table.

They should be considered both as part of the long-term 'reimagining' of the justice system, and the short-to-medium term reforms provided as Recommendations C1-C7 above.

C8: Reform initiatives identified in ALRC Issues Paper 49 that require consideration as part of reforms to Tasmania's justice system responses to sexual violence
<b>1. Reporting the experience of sexual violence</b>
use of technology and new service delivery models to assist people in rural, regional, and remote areas
safe places where people can seek help and information and be supported to report to the police if they choose to do so
enabling victim survivors to report anonymously, so that the 'pattern of offending' by the perpetrator becomes apparent over time
<b>2. Police responses to sexual violence</b>
training for police (including police prosecutors) about trauma and how to ensure culturally appropriate and trauma-informed responses
a program of victim-centred and trauma-informed approaches, policies, and procedures by consulting with people with lived experience, First Nations peoples, specialist services, and legal stakeholders
specialist divisions within the police force to respond to and investigate reports of sexual violence
training of specialist police to interview complainants; engaging with intermediaries for interviews with child complainants and adults with communication difficulties; and recording interviews with complainants
recruitment policies to create a more diverse police force so that, wherever possible, a complainant can speak to a police officer who will understand their background, and choose the gender of the interviewing officer



C8: Reform initiatives identified in ALRC Issues Paper 49 that require consideration as part of reforms to Tasmania's justice system responses to sexual violence
ensuring complainants receive information about the prosecution process and understand the reasons why police may decide not to investigate or continue with a prosecution
translation and interpreting services used for First Nations and CALD people, using translators/ interpreters familiar with the legal system
regular audits of police practices to identify areas in need of improvement
evaluating and including in annual reports information about outcomes and impacts for victim-survivors following initiatives and actions
<b>3. Prosecution responses to sexual violence</b>
trauma-informed training for prosecutors
specialist sexual offence prosecutors
a cultural capability plan for the Tasmanian ODPP
a witness support service and a specialist child witness service to support witnesses throughout the prosecution process
maintaining regular communication with victim-survivors, unless they have asked not to be kept informed
coordination between police and the ODPP relating to the investigation and prosecution of sexual violence cases
specific ODPP guidelines to ensure that prosecution responses are guided by trauma-informed principles
requiring the ODPP to have written policies for decision-making and consultation, including: (i) a right for victim-survivors to seek written reasons for key decisions; and (ii) a formalised complaints mechanism to allow victim-survivors to seek internal merits review of key decisions
providing for an independent review of sexual violence cases that are not progressed, or for cases to be considered by a new Tasmanian Family and Sexual Violence Commissioner if requested
regular auditing of prosecution decisions to identify patterns which affect the decision on whether or not to prosecute.
<b>4. Trial process – standard 'special measures'</b>
the use of facilities outside the court precinct from which complainants may give their evidence
design of courts to limit the complainant's interactions with the accused as far as possible
<b>5. Trial process – 'special measures': audio-visual recordings</b>
adequate technology to be available to police and courts to record victim-survivor interviews/evidence, including in regional areas
improved standards and guidelines for police questioning of child or vulnerable adult complainants, including the training and use of specialist police officers to conduct the interviews
improved involvement of intermediaries to assist police officers before and during interviews with child or vulnerable adult complainants
a safe space for all victim-survivors to disclose the experience of sexual violence to police, including the time at which the recording of interviews should commence
the option for adult victim-survivors to choose that police interviews be recorded and used as the examination in chief at trial
the ability of pre-recording evidence at a pre-trial court hearing to reduce delay to trial generally
<b>6. Trial process – 'special measures': intermediaries, ground rules hearings</b>
introduction of Tasmanian Justice Navigators
increased availability of suitable intermediaries, including culturally appropriate intermediaries and the ability to reach into regional areas
Improved training, accreditation and registration of intermediaries
<b>7. Assessment of the 'credibility and reliability' of complainants</b>
the use of an educative video to be played to jury panels prior to trial about memory and responsive behaviour research
education and training for appeal judges, trial judges, prosecutors, defence counsel, and police about memory and responsive behaviour research
the option for victim survivors and/or prosecutors to have judge-alone trials

C8: Reform initiatives identified in ALRC Issues Paper 49 that require consideration as part of reforms to Tasmania's justice system responses to sexual violence
<b>8. Trial Process: cross-examination and the law of evidence</b>
strengthening of laws to disallow questions that are unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive
strengthening of laws disallowing questions put to the witness in a manner or tone that is belittling, insulting, or otherwise inappropriate; or have no basis other than a stereotype
increased restrictions on the cross-examination of complainants on the topic of 'sexual reputation'
<b>9. Trial process: Interpreters</b>
adequate government funding for suitably trained interpreting services at all stages of the trial process
<b>10. Personal information</b>
complainants being separately represented at the time when submissions are made in court about disclosure and use of personal information about counselling or other therapeutic interventions
<b>11. Trial process: Types of evidence</b>
use of complaint evidence (exception to hearsay rules)
evidence from a witness other than the complainant of distress at the time the complainant makes a complaint
<b>11. Specialisation and training of judges and counsel</b>
separate stand-alone courts which only deal with sexual offending and/or allocation of sexual offence proceedings to specialist sections or lists within an existing court
judges sitting in sexual violence cases required to undertake training
prosecutors and defence lawyers appearing in sexual violence cases required to undertake specialist training
<b>12. Responses to delays in court proceedings</b>
specialist investigative police officers
specialist prosecutors
specialist training for defence counsel
written guidelines for police/ODPP/ courts including time frames
specialist courts and/or specialist divisions/lists within courts
tighter case management by trial courts including the use of orders imposing strict time limits
processes to encourage guilty pleas
more courtrooms and witness facilities for children and vulnerable adults
encourage guilty pleas - special directions hearings and sentencing indication hearings
<b>13. Sentencing</b>
support and information for victim survivors on the content that may be included in a Victim Impact Statement (VIS), and what may be objected to or excluded from consideration
more options for presenting VIS, including the use of remote facilities
increased transparency of the impact of VIS on sentencing judges
victim-survivor independent legal representation during sentencing submissions
<b>14. Post-conviction considerations</b>
better communication with victim-survivors about perpetrator bail, parole and release from imprisonment
<b>15. Appeals</b>
the prosecution's right to bring an interlocutory appeal on pre-trial rulings (if the decision or ruling eliminates or substantially weakens the prosecution's case) and on 'no case' rulings
pre-recording of evidence or recording of evidence at trial to avoid the need for a complainant to give evidence at any re-trial
ensuring that victim survivors are consulted by the ODPP about the continuation of proceedings where a re-trial has been ordered
education and training for appellate judges about trauma-informed practices, including the impact of delay upon victim survivors
<b>16. Restorative justice</b>
establishing options for restorative justice for sexual offences, if chosen by fully informed and supported victim-survivors



C8: Reform initiatives identified in ALRC Issues Paper 49 that require consideration as part of reforms to Tasmania's justice system responses to sexual violence
embedding restorative justice in legislation
establishing strong governance for restorative justice (for example, oversight of training and accreditation, monitoring outcomes, managing complaints, and collecting data about restorative justice programs)
providing victim survivors with independent legal representation to inform their decision about participating in restorative justice
designing restorative justice through co-design processes that engage with people with lived experience in the design of restorative justice programs or legislative frameworks
supporting Aboriginal and Torres Strait Islander communities to develop restorative justice programs for Aboriginal and Torres Strait Islander people
<b>17. Civil proceedings</b>
government funding for victim-survivors of sexual violence in civil proceedings
supporting applicants to apply for restraining orders
government enforcement of orders to pay damages
trauma-informed civil court processes, support for victim survivors, and the availability of training and other measures to address the myths and misconceptions about sexual violence
excluding the admissibility of prejudicial evidence of little or no probative value
extending the available civil remedies and actions, including a tort of family and sexual violence
enabling victim-survivors to manage the intersection of sexual violence issues with family violence matters, family law matters, and child protection matters in civil law
<b>18. Compensation schemes</b>
awareness of compensation schemes and adequacy of education to promote awareness
accessibility of compensation schemes and potential barriers to accessibility, such as eligibility requirements which may include a conviction being secured and time limits for applications
adequacy of compensation for victim survivors
timeliness of compensation being awarded
providing government funded legal advice and representation to victim survivors to ensure they can understand and exercise their options for compensation in an informed way
<b>19. Victims' Charters</b>
review and amend The Charter of Rights for Victims of Crime' in Tasmania to progressively include reforms that improve choice and control for victim-survivors of sexual violence
increasing transparency around complaints, both in terms of the number of complaints and how they have been addressed
<b>20. Workplace laws</b>
safe disclosure mechanisms for sexual harassment
a positive duty for all employers to take reasonable measures to eliminate sexual harassment
amending the Australian Human Rights Commission Act 1986 (Cth) and Fair Work Act 2009 (Cth) to facilitate civil proceedings, for example by permitting representative groups to bring proceedings, inserting protections regarding costs orders, and including the perpetration of sexual harassment as valid grounds for dismissal
harmonising anti-discrimination laws
protections for witnesses, including non-publication orders and supports in the courtroom
ensuring awards of damages reflect contemporary understandings of the harms arising from sexual harassment
best practice principles for non-disclosure agreements
training and education to workers' compensation bodies on drivers and impacts of sexual harassment

**Submission ends**