Submission of Rape and Sexual Assault Research and Advocacy (RASARA)

Australian Law Reform Commission

Justice responses to sexual violence

About RASARA

Rape and Sexual Assault Research and Advocacy (**RASARA**) welcomes the opportunity to make submissions to the Australian Law Reform Commission (ALRC) on matters relating to the justice systems response to sexual violence.

RASARA is an independent, not-for-profit charitable organisation established to build and hold the evidence base for survivor-centric rape justice reform.

We advocate for best practice in legal responses to rape and sexual assault.

More information about RASARA is available at: http://rasara.org.

This submission is made on behalf of RASARA, comprising:

- Dr Rachael Burgin, CEO
- Ms Saxon Mullins, Director of Advocacy
- Professor Jonathan Crowe, Director of Research
- Mr Michael Bradley, Chair
- Ms Nina Funnell, Board member
- Ms Lauren Gasparini, Board member

RASARA's submission focuses on 3 key issues:

1. Affirmative consent
2. Policing sexual violence
3. "Good character" evidence

We extend our invitation to the Commission to discuss the contents of this submission and other issues not canvassed in more detail.

Introduction

The criminal justice system as it stands is incompatible with justice for victim-survivors. Instead, victim-survivors are re-traumatised by their experience of the system and a message is sent to the community that there are no consequences for sexual violence. Rape has been, in effect, decriminalised in Australia.

The criminal justice process has been described as the 'second rape' by survivors, and mounting evidence about experiences of reporting, investigations and prosecutions demonstrates that re-traumatisation is no longer a risk of engaging with the criminal justice system, it is a given.

Though beyond the scope of the Inquiry, it must be said that all survivors – whether they report to police or not – are underserved by the whole of system(s) response to sexual violence. Crisis support services are critically underfunded. The impacts of this warrant its own inquiry, and significant, long-term investment is required by governments if we are to believe that gendered violence is a priority.

In this context, and in a community where sexual violence is endemic – one in five women, and one in 16 men have experienced sexual violence as adults (ABS, 2023) – all reform to the criminal justice system's response should centre trauma-informed approaches that seek to improve the experience and outcomes for victim-survivors.

High rates of attrition are recorded across the system. Most survivors never report to authorities. This is the most significant point of attrition. Low reporting is driven, however, by the failure of the justice system's response and the community's perception and understanding of this. Victim-survivors have described various reasons for not reporting, including concern that they will not be believed or that they will be blamed for their own rape, a fear of the perpetrator and a lack of trust in police and the courts (see Brooks-Hay, 2020; Stokbæk et al., 2021). For marginalised and criminalised communities who experience hyper-surveillance and intervention by police, these concerns can be compounded. Aboriginal and Torres Strait Islander women have revealed a persistent lack of belief when reporting to the police, which drives underreporting (Australian Human Rights Commission, 2020). Thus, most victim-survivors never come to the attention of the system in anticipation of the trauma it will inflict.

The evidence demonstrates that traditional legal approaches to sexual violence are not fit for purpose. Long-standing, established principles of law must be critically examined and realigned with the evidence base.

Affirmative consent

Law reform across Australia in recent years has been premised on the introduction of an affirmative standard of sexual consent. Yet, rarely have law reformers engaged sufficiently with the knowledge base about the standard. As a result, there are significant failings in attempts to legislate it.

Adopting affirmative consent, a specific social theory of consent, relies on certain threshold principles. Absence of one or more of these principles voids affirmative consent. A standard of affirmative consent refers to a requirement that consent be an active conversation between all parties to a sexual act. That consent must be communicated by actions and/or words. All parties must confirm that the other parties are also consenting. The premise of this standard of consent is to shift focus away from narratives that blame women for their own victimisation and that focus on their actions before, during and even after rape. Central to this goal is the reallocation of that focus onto whether the accused had sought active consent from the other party(ies), that consent had been given and that the accused continued to ensure that they received that consent throughout the entirety of the sexual act(s).

Implied consent

As such, the theory of affirmative consent (and the legal application of the theory) is designed to eliminate the reliance on so-called 'implied consent' (which is more accurately described as inferred consent). The concepts are fundamentally contradictory.

'Implied consent' refers to the outdated concept that women's consent is indicated through and by their unrelated, everyday, benign behaviour. Thus reconstructing women's ordinary behaviour as sexualised, forming the basis for a claim of reasonable belief in consent. Such narratives ignore women's experiences, instead describing a male perpetrator's subjective interpretation or inference of the woman's actions.

When consent can be 'implied' by the law, what matters is how the accused perceived the actions of the other person(s). However, more accurately, the narratives surrounding implied consent reflect what the accused inferred by certain actions, and what they believe that those actions mean about a desire for sexual contact (see Burgin and Flynn (2021) for an exploration of these narratives in rape trials). As such, reform to rape law across Australia must ensure that unrelated factors cannot be considered in a determination of 'actual' consent, or a belief in consent. This requires reform to fault elements, mistake of fact provisions and evidence law.

Withdrawal of consent provisions

Withdrawal of consent provisions have been adopted across multiple states which claim to be legislating affirmative consent. However, withdrawal provisions, which require a person who no longer consents to continuing an act to actively withdraw their consent, by 'words or conduct', as per the proposed section 348(3), stand in contrast to affirmative consent.

Such withdrawal provisions construct consent as something given once, and then assumed to exist until either the completion of the act (determined by the person who wishes to continue the act) or through a revocation of consent.

This is problematic for a number of reasons. A sexual interaction may be made up of a sequence of acts. Consent to one act is not (or should not be considered to be) consent to another. A change in the nature of the act, or the type of act itself, also requires a fresh seeking of consent. For example, a person may consent

to penile-vaginal sex. It does not follow that the person consents to penile-anal penetration. Such a change to the type of act should require the person seeking the change in act to 'take steps' to ascertain consent from the other person. Thus, an accused person must demonstrate what they did to determine whether the other person consented.

An act may turn violent. This shift in the nature of the act should not bring with it an obligation on a person to withdraw consent. This may be plainly impossible in some circumstances. The provision is problematic for reintroducing the outdated idea that women must actively resist sexual advances to indicate non-consent. There are a number of reasons that a person may be physically unable to revoke consent, including tonic immobility, known more commonly as the freeze response. The provision also ignores the micro and macro social dynamics at play that impact whether a person can 'say no' (including, but not limited to patriarchy and relationships characterised by violence).

Requiring that consent, once given, be revoked by the unwilling party reinforces the belief that consent is a 'tick box exercise' and once obtained, no further action is required. This is plainly not accurate.

"Reasonable" time and cognitive and mental health impairment provisions

Affirmative consent requires a person wanting to have sex to ensure that the other person(s) also want to have sex. In rape trials, this translates as a requirement for the accused to show that they 'took steps' to ascertain whether the other person(s) wanted the sexual contact to occur.

In legislating this, some jurisdictions have also introduced "reasonable" time provisions concerning when a person must seek consent from their sexual partner(s). There is no evidence base to support the inclusion of such provisions. Affirmative consent requires that consent is an ongoing conversation by both or all parties to a sexual act. As such, participants must take steps at the time of, and throughout the entirety of, the sexual act.

The earliest introduction can be traced to New South Wales (NSW). When these laws were drafted, RASARA enquired as to the evidence supporting this provision. No evidence was able to be provided. Yet, the provision has since been adopted in other jurisdictions. RASARA therefore urges the ALRC to look to the evidence, not to the decisions made at the whim of politicians.

Similarly, NSW legislators carved out exemptions to the need to ensure that consent is given for people with a cognitive or mental health impairment. There is no evidence base to support these inclusions. Further, they are far too broad, and could be misused by perpetrators who wish to act with impunity. This is particularly problematic given the inclusion of 'mood disorders' within the provisions which covers a significant range of circumstances, including depression and anxiety. It is unclear why such provisions are being proposed in relation to legislation concerning sexual violence, in circumstances where equivalent provisions do not exist in other areas of the law.

Implementing affirmative consent

To support law makers in adopting the standard, RASARA has developed minimum standards for affirmative consent. The minimum standards are as below (see also Appendix A).

> *1. Consent is defined as positive agreement, actively communicated in positive words and/or positive actions by all parties to a sexual act. A person does not consent if they do not say or do anything to give consent to another person(s).*

2. Consent must be consistently given and received throughout the entirety of a sexual act.

3. Consent cannot be implied.

4. Submission or lack of resistance is not consent. Once consent stops being communicated, it is taken to be absent. There is no requirement that a person actively withdraws consent.

5. All persons must take active and reasonable steps to ascertain whether the other person (or persons) is consenting. A failure to take steps to ascertain consent means that any belief in consent is unreasonable.

6. Steps to ascertain consent must be taken before and consistently throughout a sexual interaction. Consent is not 'achieved' and then taken to exist until withdrawn.

7. Change to the nature or type of act, without a positive expression of consent, is taken to occur without consent.

8. A person's intoxication cannot be considered in relation to whether their belief in consent was honest or reasonable.

Police and investigations

The policing stage is the most significant point of attrition once a matter is within the justice system. Recent Australian research, led by RASARA CEO Dr Rachael Burgin, identified the reasons for high attrition from police investigations. Drawing on a sample from the Australian Capital Territory (ACT), the findings shed light on systemic problems which can be expected to be identified in other Australian jurisdictions. The study, the 'Police Process Review', involved reviewing police case reports of 389 sexual offences against adult and child victim-survivors in the ACT, 33 interviews with victim-survivors and their support people and reviewing ACT Policing and Australian Federal Police (AFP; which contracts domestic policing in the ACT) policy and procedure. Seventeen recommendations made by Dr Burgin were accepted by an oversight committee co-chaired by Ms Christine Nixon and Ms Karen Fryar.

This submission draws on the findings of this study throughout this section, including quotes from victim-survivors and excerpts from police case files. Pseudonyms have been used. The project report is attached as Appendix B.

Reporting to police

Evidence has long shown that victim-survivors choose to report to police for many reasons. The Police Process Review also identified complex drivers of reporting. For some, calling the police is just what one does when a crime has been committed:

> 'I thought it was the right thing to do to report it, because he did the wrong thing.' (Megan)

> 'It was pretty simple. I think that someone did the wrong thing. I should report it to police.' (Casey)

Some wanted to take back the power and control that the assault had taken from them.

> 'I guess I just wanted to get it out there. Yeah, I wanted to make it a thing. … So I wanted to take control. And I wanted to get some of my own back. And by doing that, it actually gave me that. What's the word? It gave me, gave me my power back. So yeah, so I did it.' (Ash)

For others, there was no other option – they had to report for their own immediate safety, or that of their children. Others had reported a coworker, and a police report was required for their workplace to put measures in place to allow them to return to work. Others felt immense responsibility to report to protect other people:

> 'I might be preventing someone else going through something similar.' (Alex)

Some victim-survivors who participated in the Police Process Review shared that accountability was important. However, this was defined more broadly than a criminal justice response, and it was never about revenge:

> 'I basically wanted validation that this had happened to me; that what had happened to me was wrong. I didn't necessarily want him to go to court. But I wanted him to own what he had done.' (Selena)

> ‘I wouldn’t really mind like even just someone goes over to him and is like “What you did has been talked about now and this is not OK”.’ (Ebony)

Some worked up the courage to report over years, even decades. In the end for all of the victim-survivors who participated in the Police Process Review, reporting was about ‘understanding and accepting that it really did happen’ (Matilda) and overcoming the fear of not being believed, or ‘made to feel like the perpetrator and not the victim’ (Matilda).

The experience of reporting was for many though, overwhelmingly negative. Alex was sent from one police station to the next, told that she needed to report to the closed station to where the sexual assault occurred. Some victim-survivors made appointments to make formal statements. When Vera and her son Riley arrived at the police station for their appointment, the suspect was also present. Nicole waited hours for police to arrive at her home for a scheduled appointment. Police arrived 8 hours late, at 10pm.

Police case notes for one matter within the dataset of the Police Process Review reveals that one victim-survivor who attended a police station to report a rape that had occurred within the previous two years, police tried to send her away to report through the online reporting portal: ‘informed [Victim] there was an online reporting system with historical sexual assaults’. It was only once the victim ‘advised she really wanted to talk with someone’ that they look an initial statement. In the six lines relevant to what the victim-survivor disclosed to police, only one line relates to the sexual offence. The victim-survivor left that day with no supports in place and the case was closed.

Another victim-survivor, Sofia, was turned away from a police station after attempting to report a sexual assault that had occurred the night before. She was told that the station was too busy, and to come back the next day which ‘would be more organised’. As a result, police later discovered that crucial forensic evidence was lost.

Online reporting

Online reporting options provide victim-survivors with choice in how they report to police, and offer them control over the first step in investigations. However, these online or digital reporting options must also not put undue burden on victim-survivors. One participant to the Police Process Review shared that he found the online form for reporting historical sexual offences onerous. Maz was glad he had an alternative option, but said that the online form was lengthy, and it took him many attempts to complete it:

> ‘Umm, I tried to fill the form in a couple of times, but it was just massive. Like, if the abuse went on for any sort of time listing things like people involved is enormous…places and incidences and I’m thinking do I have to write it all down [or] just a little bit?’ (Maz)

The impact of this was that he felt pressure to provide a complete and full account in writing:

> Maz: ‘I felt I had to write everything down, everything I could think [of]. I thought maybe they wouldn’t believe me [if I left something out].’

To overcome this challenge, supportive guidance for victim-survivors should be made available before and throughout the online reporting process, in multiple languages.

Contact with police

Many victim-survivors who participated in the Police Process Review shared that they felt that the officers that they spoke with were empathetic and kind. However, they also shared that this felt like lip service, or did not translate into the actions of police.

Information about the case progression, and information about when and how police will make contact, have been identified as important for victims (Davies & Bartels, 2020; Skinner & Taylor, 2009). Yet, many described the constant waiting, and inability to receive updates from police:

> 'Honestly, … not a whole lot. I was kind of like... there was a period of waiting for them to get back to me. And then by the time I kind of realised that they wouldn't, I'd moved on.' (Casey)

> 'I mean, the worst thing about it was that I just could never get an update, ever, ever, ever, ever. Like, I would just ask and ask and ask for updates and never hear anything.' (Nicole)

This was particularly problematic for young victim-survivors, who felt the power imbalance between them and police even more keenly.

Others, Like Tess, reported to police, and then 'never heard from them again'. Another victim-survivor had to repeatedly re-report because the contact number for the original case officer was incorrect.

It was common for victim-survivors to have to accommodate police officer's schedules, including repeatedly travelling to certain police stations to speak with police, giving statements late at night, including with children on weeknights. As Sofia expressed:

> 'And I think, yeah, a big part of the trauma that comes from it, it seems not just for me, but for other people, seems to be in that disparity of it feeling like the most important, worst thing in my life at that time and to some of the people I talked to, it was kind of administrative.' (Sofia)

For victims, a lack of information is akin to a lack of control, characteristic of sexual violence. This contributes to the feeling described by victim-survivors as the 'second rape' of the criminal justice system. So, while victim-survivors described officers on one hand as caring and compassionate, on the other, the lack of communication made this redundant.

Investigations

As also identified in the recent Police Process Review, many cases did not proceed to charge because little or no investigation had been undertaken. This included a failure to collect perishable evidence such as CCTV or medical evidence. Police also failed to lay charges in cases involving serious violence, including strangulation – recognised in the international evidence base as a serious family violence risk factor increasing the likelihood of homicide. Other cases where charges were not laid include cases involving an underage victim-survivor with suspects more than twice their age. In at least two of those cases, the underage victim-survivor reported a pregnancy resulting from the conduct.

Police also declined to proceed with an investigation until a victim-survivor had participated in a video and audio recorded forensic interview. This interview would act as the victim-survivor's evidence-in-chief should the case proceed to trial. Victim-survivors described this process as daunting:

> 'It was the little, small room… cameras, lights, television screens. Everything. Everywhere. Yeah, it was very daunting. I wasn't expecting that. I was expecting just to tell my story, but not to have to give a formal statement. So, I was a bit shocked.' (Matilda)

Malia, who participated in an interview with her mum, Scarlet, was under 16 years at the time of report and discovered that her case was closed due to 'insufficient evidence' being identified during her EICI. She shared that she had told police that she did not feel ready to participate in the EICI:

> 'Like … it was the truth, but it wasn't explained properly. I explained that at that time it wasn't the right headspace and I was just trying to like, rush it and like, not explain it properly cause I didn't wanna do it.' (Malia)

She described feeling the weight of the responsibility for charges not proceeding and feeling like she 'failed' in telling the police what had happened:

> Malia: 'And I kind of just fucked it all now.'
>
> Dr Burgin: 'You didn't fuck it.'
>
> Scarlet (Malia's mother): 'You didn't say anything that was wrong.'
>
> Malia: 'Yeah, but like, I wasn't ready to go talk about it. And now it's ruined.'

“Good character” evidence

Many rape and sexual assault offenders possess behavioural characteristics which align with courts’ understanding of “good character”. Employment, family and community engagement are mechanisms that perpetrators can use to commit offences, but more importantly, which are usually maintained during and despite their offending – therefore offering no logical proof of good character, let alone speaking to prospects of rehabilitation or recidivism.

Good character may be applied as a mitigating factor to reduce the severity of a sentence. In determining “character”, a court may consider an offender’s previous convictions, history of domestic violence, significant community contributions and any other matters considered relevant, such as their “good work” in visiting the sick or elderly; their “kind nature”, and other “conduct or matters which reveal redeeming features of the offender’s character” (*Ryan v The Queen* (2001) 206 CLR 267 at [32]; [102]; [142])

In hearing good character evidence, courts are susceptible to be groomed by offenders’ “excellent capacity for presenting themselves in a prosocial way” (Valliere, 2023). That an offender has an excellent employment history, a clean slate of convictions, or family members who vouch for their compassionate nature is totally unrelated to their *demonstrated* capacity and willingness to engage in rape or sexual assault. It is illogical to consider these factors as mitigating the severity of a sentence when these factors did not prevent commission of the offence in the first place.

Barring consideration of good character evidence from all rape and sexual assault offences would improve the clarity of the court’s task in sentencing: good character has no relevance to the guiding purposes of rehabilitation, deterrence, community protection, punishment or denunciation as articulated by the PSA. It is more liable to distract decision-makers with irrelevant information, the assessment of which may be influenced by a judge’s unique social values and prejudices.

Compounding these considerations is the impact of good character evidence on survivors, whose credibility is undermined and weaponised during the offender’s trial. The tendering of references from the offender’s friends, co-workers, and community members speaking to the offender’s inherent decency compounds the harm inflicted by the assault. It turns the trial and sentencing process into a personality contest. A community can hardly be said to denounce rape or sexual assault if their support is tendered as evidence in support of the person who committed those offences.

Recommendations

Victim-survivors are forced into the role of 'witness'. In this way, their rights become secondary to the process. The time is now for governments to show survivors that they hear them, they see them, and they are committed to reducing the harm caused by the systems tasked with protection. With this in view, RASARA recommends:

1. Sexual Assault Survivor Support Advocates, independent of police, should lead the referral to supports for all people reporting a sexual offence to police. This aims to ensure that referrals relevant to each survivor's circumstances are made, including to rape crisis services, family violence intervention and financial aid.
2. Survivors should have access to independent legal advice during engagement with police.
3. Trauma-informed alternative mechanisms for victim-survivors to report to police in their own language, including anonymous reporting, should be developed. This should include the ability of victim-survivors to submit prepared written statements to police as a report. Such approaches should be developed in consultation with victim-survivors and First Nations peoples to ensure they are culturally safe.
4. Police training should be reviewed in each jurisdiction, and improved attention to tackling rape myths and stereotypes, whole story interview techniques and better legal training for police.
5. All sexual offences should be investigated by specialist investigators.
6. Increased access to and use of intermediaries for all victim-survivors of sexual offences.
7. Provision of specialist training for prosecutors to support engagement with victim-survivors
8. Improved complaints mechanisms and review schemes
9. Pilot and roll out specialist courts to deal with sexual offences
10. Eliminate consideration of "good character" evidence in sentencing of sexual offences and family violence
11. Develop trauma informed practice guidelines for obtaining Victim Impact Statements
12. Identify avenues for alternative avenues for 'justice', while ensuring that the criminal justice system is fit-for-purpose where victim-survivors choose it

Appendix A

Affirmative consent: Minimum requirements

Rape and Sexual Assault Research and Advocacy (RASARA)

Affirmative consent refers to a specific theory or understanding of consent. As such, it is strictly defined. Without meeting the standards set out below, the law cannot be said to reflect affirmative consent.

1. Consent is defined as positive agreement, actively communicated in positive words and/or positive actions by all parties to a sexual act. A person does not consent if they do not say or do anything to give consent to another person(s).

2. Consent must be consistently given and received throughout the entirety of a sexual act.

3. Consent cannot be implied.

4. Submission or lack of resistance is not consent. Once consent stops being communicated, it is taken to be absent. There is no requirement that a person actively withdraws consent.

5. All persons must take active and reasonable steps to ascertain whether the other person (or persons) is consenting. A failure to take steps to ascertain consent means that any belief in consent is unreasonable.

6. Steps to ascertain consent must be taken before and consistently throughout a sexual interaction. Consent is not 'achieved' and then taken to exist until withdrawn.

7. Change to the nature or type of act, without a positive expression of consent, is taken to occur without consent.

8. A person's intoxication cannot be considered in relation to whether their belief in consent was honest or reasonable.

Appendix B

Begins on next page.

Beyond reasonable doubt?

Understanding police attrition of reported sexual offences in the ACT

March 2024

Dr. Rachael Burgin
Jacqui Tassone

Beyond reasonable doubt?

Understanding police attrition of reported sexual offences in the ACT

March 2024

Dr. Rachael Burgin
Jacqui Tassone

Publisher:

Swinburne University of Technology
Hawthorn Victoria 3122 Australia
www.swin.edu.au
First published 2024

DOI: https://doi.org/10.25916/k8vh-f242

ISBN: 978-1-925761-55-9

Design and data visualisations by Ashlea Coen

Suggested citation:
Burgin, R., Tassone, J. (2024). *Beyond Reasonable Doubt? Understanding police attrition of reported sexual offences in the ACT.* Swinburne University of Technology. https://doi.org/10.25916/k8vh-f242

Contents

Acknowledgements

Thirty-three victim-survivors and their supporters lent their voice to this project through consultations with the researchers. They spoke for the 371 other victims whose experiences are presented here. They represent the tip of the iceberg of sexual violence. Most victim-survivors never report to police. Some never tell another soul. Some speak out, but they are unheard, ignored or disbelieved. This report is for all of them. All of us. For an end to sexual violence.

Thank you to:

Abagail
Alex
Amira
Ash
Aya
Blair
Casey
Cora
Desi
Diana
Ebony
Farrah
Frankie
Kirra
Lillian
Malia & Scarlet
Maree
Matilda
Maz
Megan
Nicole
Olivia
Pepper
Peter Parker, Ms. Marvel & May Parker
Phoebe
Pinkie
Riley & Vera
Selena
Sofia
Stevie
Tessa
Wendy
Zara

We are grateful to the ACT Government for funding this review. The work was guided by the Sexual Assault (Police) Review Oversight Committee, chaired by Ms Christine Nixon and Ms Karen Fryar, and the Working Group, led by the Domestic, Family and Sexual Violence Office of the Community Services Directorate. Members of the Oversight Committee and Working Group represented on behalf of agencies with leading roles in the sexual violence response in the ACT:

- **ACT Government (Domestic, Family and Sexual Violence Office of the Community Services Directorate)**
  Kirsty Windeyer, Domestic, Family and Sexual Violence Coordinator-General
- **Australian Federal Police and ACT Policing**
  Neil Gaughan, Chief Police Officer
- **Director of Public Prosecutions**
  Shane Drumgold, Director of Public Prosecutions
  Anthony Williamson, Acting Director of Public Prosecutions
- **Victim Support ACT**
  Heidi Yates, Victims of Crime Commissioner

We extend our thanks the Australian Federal Police and ACT Policing for allowing access to the cases in support of the review, and for committing to changing organisational culture, and improving police responses to sexual violence. Successful reform hinges on the willingness of agencies, including the police, to reflect on existing policy and practice frameworks with the experience of victim-survivors at the fore. ACT Policing members have demonstrated this commitment.

We particularly recognise the work of the representatives of these agencies on the Police Process Review Team and from the ACT Government:

- **Amy Lindner (ACT Policing)**
- **Elysha Treacy (Victim Support ACT)**
- **Felicity Clement-Jones (formally Victim Support ACT)**
- **Juliette Ford (ACT Government)**
- **Kelly Lokan (ACT Government)**
- **Kylie Lawson (ACT Policing)**

We would like to thank Dr Adrienne Byrt and Professor Anastasia Powell for their work in the early stages informing project design and methods. Thank you to Georgia Keam for carefully transcribing the victim-survivor interviews and to Ashlea Coen for designing the report.

This work was conducted on the lands of the Ngunnawal people of the Canberra region and the Wurundjeri lands of Melbourne, where Swinburne's campuses are located. We pay respects to Elders past and present, and thank them for their ongoing custodianship over these lands and waterways.

Sovereignty over these lands was never ceded, and they always were and always will be Aboriginal land.

We acknowledge Aboriginal and Torres Strait Islander survivors of sexual violence, and the unique barriers to access to justice experienced by First Nations survivors.

List of acronyms

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACTP	Australian Capital Territory Policing
AFP	Australian Federal Police
CAM	Child Abuse Material
CARHU	Child at Risk Health Unit
CCTV	Closed Circuit Television
CEM	Child Exploitation Material
CI	Criminal Investigations
CYPS	Child and Youth Protection Services
CRCC	Canberra Rape Crisis Centre
DFVDR	Domestic and Family Violence Death Review (ACT)
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
EICI	Evidence-in-Chief Interview
FAMSAC	Forensic and Medical Sexual Assault Care
FVRAT	Family Violence Risk Assessment Tool
JACET	Joint Anti-Child Exploitation Team
MARAM	Multi-Agency Risk Assessment and Management
MoU	Memorandum of Understanding
NCAS	National Community Attitudes towards Violence against Women Survey
POI	Person of Interest
PROMIS	Police Real-time Online Management Information System
SACAT	Sexual Assault and Child Abuse Team
SAPR	Sexual Assault Prevention and Response Steering Committee
UK	United Kingdom
VLO	Victim Liaison Officer
VSCAT	Victim Support ACT at the ACT Human Rights Commission

Executive summary

‘I used to want “justice” … but now; I just want peace.’ (Frankie)

This report presents the findings of a study that aimed to understand the reasons for the high rate of attrition of reported sexual offences in the Australian Capital Territory (ACT). This ‘Police Process Review’ adopted a rigorous, trauma-informed methodology, triangulating findings across multiple sources to determine trends.

A total of 389 sexual offence cases were analysed as part of the Police Process Review. These cases captured a range of sexual offending, including sexual assault, non-consensual sharing of intimate images, child sexual abuse, indecent assault and child exploitation or child abuse material. Most cases were reported to ACT Policing (ACTP) during 2021, though some cases were included where the victim self-referred their matter into the review, or where the victim agreed to an interview with the researcher.

First, a **case review** of information drawn from the Police Real-time Online Management Information System (PROMIS) for each case was completed. This included analysis of all police case notes detailing the nature of the report, investigative activities on the case and the reasons for closing the case with ‘no further action’ to be undertaken.

Second, **consultation with victim-survivors** and their supporters, whose cases fell within the review dataset were conducted. Participants were victim-survivors over 16 years of age who either reported a sexual offence to ACTP, or the parents, guardians, or carers of victim-survivors who were children or young people under 16 years at the time of the offence. Consultations took the form of in-person or online interviews or an online ‘self-administered interview’.

Third, a **review of available Australian Federal Police and ACTP policy** and guidance was conducted to understand the extent to which such policy is informing interactions with victim-survivors, investigative activities, and police decision-making in sexual offence matters.

The review found that, not only are sexual offences rarely charged in the ACT, sexual offences are rarely investigated.

Forty-two per cent of the cases analysed in the Police Process Review were closed by way of ‘victim withdrawal’. Police typically refer to such cases as ‘complaint withdrawn by victim’. However, this study demonstrates that victims are not typically withdrawing the ‘complaint’ or report, instead, **victim-survivors are disengaging from the police process, which they described as ‘triggering’.**

A further 28.5 per cent of the total cases were marked as 'unfounded' or as 'insufficient evidence to proceed'. Cases were often closed with no further action in this way where no investigation had occurred. Very few suspects were approached by police in relation to the reported sexual offence, even where they had a history of family violence or sexual violence, including against children.

Police decision-making was impacted by an acceptance of rape myths, that is, the widespread untruths that prevail about sexual violence. Police also focused on their perception of what might happen at later stages of the criminal justice system, and how factors such as the victim's demeanour or their lack of physical resistance to an attack would be perceived by the jury. This demonstrated **a fundamental lack of insight about the realities of sexual violence,** such as that it is not uncommon for victims to freeze, or that broader relationship contexts characterised by coercive control might impact a person's ability to 'resist'. It also demonstrated a **misapplication of legal principles,** including a belief that police must prove the case 'beyond reasonable doubt', or in some cases, that victims themselves must meet that benchmark.

Victim-survivors described a sense of powerlessness and feeling pressured by police to withdraw their reports, indicating that the 'victim-led' approach of ACTP has not translated on the ground. Conversely when victims wanted their case to be investigated, victim-survivors had to push officers to act. Thus, ACTP were victim-led only when it meant dropping a case, not when it meant pursuing one. This powerlessness was reinforced by a **lack of meaningful information sharing between police and victim-survivors,** who instead felt left in the dark about the progress of their case, and then finally, the reasons that it did not proceed.

In light of these findings, 17 recommendations are made to improve the ACTP response to sexual offences, and to improve the experience of victim-survivors who report sexual offences to ACTP. The recommendations draw on existing capabilities identified by the victim-survivors who participated in the study, to develop a pathway forward for investigations of sexual offences.

Recommendations

1. Establish an ongoing independent Sexual Assault Case Review
2. Establish a new role of Sexual Assault Survivor Advocates
3. Develop and implement a Memorandum of Understanding between ACT Policing and Victim Support ACT
4. Provide victim-survivors of sexual offences a 'touch point' with a justice agency every four weeks
5. Direct all sexual offences to the Sexual Assault and Child Abuse Team for investigation
6. Mandate an improved training program focused on challenging rape myths and educating ACT Policing officers about the dynamics of sexual violence, including grooming and coercive control, and the law reflated to sexual offences (including evidence law)
7. Re-establish an improved Meet and Greet policy
8. Revise the ACT Policing approach to Evidence-in-Chief Interviews
9. Develop pathways for collaboration and co-investigation between Family Violence Unit and the Sexual Assault and Child Abuse Team
10. Develop robust policy concerning the collection of data relating to Aboriginal and Torres Strait Islander people who experience violence, in consultation with community
11. Engage victim-survivors in the development, review and monitoring of policy reform, centring children and young people, Aboriginal and Torres Strait Islanders and others from marginalised communities
12. Develop practice guidance in consultation with NSW Police to support officers working either side of the border and to improve victim-survivor's experiences of reporting interstate offending
13. Improve data recording on police information systems in relation to family violence, to support identification of patterns of family violence
14. Adopt the ACT's Domestic and Family Violence Risk Assessment Framework, and develop mechanisms for family violence risk assessments to be used across a range of relationship types, and with child and young people
15. Offer victim-survivors pathways to access legal advice at the time of report, and particularly before participating in an Evidence-in-Chief Interview
16. Review case finalisation codes
17. Ensure adequate resourcing of agencies to respond to sexual violence reports, including support services

Introduction

‘[Victim] stated she understands that this cannot be pursued criminally but is sad that is how the system works.’

This report presents the findings of a ‘Police Process Review’ aiming to identify the reasons for the high police attrition rate of reported sexual offences in the Australian Capital Territory (ACT). It draws on a review of police ‘case files’ relating to sexual offence reports that did not proceed to charge, and consultations with victim-survivors who reported those sexual offences to ACT Policing (ACTP). A majority of the cases analysed were reported in 2021. Existing ACTP and Australian Federal Police (AFP) policy and procedural documents, particularly those relevant to the work of the Sexual Assault and Child Abuse Team (SACAT), where they were made available, were consulted to determine the ways that these policies and procedures are adhered to, and departed from, in the investigation of sexual offences. Triangulation of this data informed recommendations for change.

Sexual violence is a significant social problem. In Australia, one in five women, and one in 16 men have experienced sexual violence as adults (Australian Bureau of Statistics (ABS), 2023). The ABS reports 25 per cent of women living in the ACT are survivors of sexual violence committed in the ACT or elsewhere (ABS, 2023a). Sexual violence then, affects a large proportion of the population, with devastating health, social and economic consequences for victim-survivors and for the community.

Most people who experience sexual violence never report to police. Reasons for non-reporting include, but are far from limited to, concern about not being believed, fear of the perpetrator or of the criminal justice system, failure to recognise the experience as sexual violence, or a lack of trust in the police, particularly amongst criminalised or other marginalised communities (see Brooks-Hay, 2020; Stokbæk et al., 2021). For Aboriginal and Torres Strait Islander people who have experienced violence, hyper-surveillance and intervention by police and other government services has hindered trust in the police, amplified by Aboriginal women’s experiences of not being believed when they do report violence (Australian Human Rights Commission, 2020).

Despite high prevalence and low reporting, attrition rates for sexual offences are high (Daly & Bouhours, 2010). That is, even when sexual offences are reported to the police, most cases do not progress beyond this. International evidence shows that police commonly close cases, recording the reports as ‘non-crimes’ or as ‘unfounded’ (Kelly et al., 2005). In addition, a significant proportion of victim-survivors withdraw from the police process. This is the most significant point of attrition within the criminal justice system (Kelly et al., 2005). Attrition also occurs at other stages of the criminal justice system, including through prosecutorial decision-making. Of those cases that are reported, charged and proceeded with, conviction rates are low.

In December 2021, the Sexual Assault Prevention and Response (SAPR) Steering Committee recommended actions be taken to improve the way that the criminal justice system handles sexual violence. SAPR made 24 recommendations in the *‘Listen. Take Action to Prevent, Believe and Heal Report’* (herein ‘SAPR Report’).

The Police Process Review responds to Recommendation 15:

> **The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.**

As the SAPR Report outlines, of all sexual offences reported to ACTP in 2020, only 2.8 per cent progressed to prosecution within 30 days (SAPR Report, 2021; ABS, 2021). This was the lowest charge rate in Australia for that year. In real terms, this meant that within 30 days of report, eight people accused of a sexual offence in the ACT during 2020 were charged, 66 cases were closed without any proceedings against the accused and 219 cases were not finalised (ABS, 2021). The SAPR Report also determined that cases that were not finalised (or were not 'cleared') often remained as such 'for extended periods' (SAPR Report, 2021; 35).

An analysis of ABS data in the SAPR Report also demonstrates that these figures represent a decrease in the proportion of matters charged when compared to previous years (SAPR Report, 2021). SAPR's review of ACTP data also supports the contention that the proportion of sexual offence matters charged by ACTP has decreased over the ten-year period to 2021 (SAPR Report, 2021). In 2021, the year that most cases analysed here were reported to police, 93 per cent of reported sexual offences did not proceed to charge.

Despite considerable efforts in the ACT to improve the experience of victim-survivors in the criminal justice system and rid the law of 'rape myths', attrition has remained a significant barrier to justice for survivors of sexual offences in the ACT.

Recommendation 15 provided an opportunity for the ACT to develop a robust evidence base to improve police and broader justice responses to sexual offences. In support of this goal, the ACT Government commissioned the Police Process Review. The review sits aside a concurrent study led by the Director of Public Prosecution (DPP) (the 'Investigation Case Analysis'), not reported on here. Both reviews were conducted with the support of an Oversight Committee, comprising leaders of the relevant agencies: the Domestic, Family and Sexual Violence Office of the Community Services Directorate, ACTP, the DPP and Victim Support ACT (VSACT). The Oversight Committee was jointly chaired by Ms Christine Nixon and Ms Karen Fryar.

The report commences with an exploration of the dataset and the methodology undertaken. Next, the report follows the 'journey' that a victim takes through the police process. First, a sexual offence comes to the attention of police by victims 'Reporting' the matter. Here, characteristics of the cases within the dataset, and victim-survivor experiences of the first point of contact with police are presented. Next, findings about police 'Investigations' are discussed, drawing insights from the PROMIS cases and from victim-survivors. Lastly reasons for 'Case closure', and the influence of legal and extralegal factors in decision-making are analysed.

The results of this study present a troubling view of the investigations of sexual offences by ACTP. While there have been shifts in ACTP practice over time towards a more victim-centric approach to sexual offence investigations, this has not substantially translated into improved experiences for victim-survivors or improved criminal justice outcomes. At the same time, applying a strengths-based lens to the data identifies possible pathways to improvement, where existing capability can be uplifted to improve outcomes and experiences. Given the high rate of attrition of sexual offences at a policing level internationally, this study also identifies areas for reform to police responses across Australia and beyond.

Terminology

The term used to describe people who report a sexual offence against them, where that offence has not resulted in a conviction in a criminal court, is hotly debated. The term complainant is used in the context of the criminal trial (unless and until there is a conviction), and often in media reporting of sexual violence in any context. Larcombe (2005; 64) has argued that in the criminal trial, 'the complainant is required to testify as a witness, suspending her subjectivity as a victim'. These understandings are drawn from the binary perspective of victim either a as 'true' or legitimate or a 'vindictive' liar (see for example, Larcombe, 2002; Gavey, 2005). Yet, sexual offences often hinge on the issue of consent, or more specifically on whether the suspect (or accused) believed honestly and reasonably that consent was given. In these circumstances at least, it is possible to have a victim, with no guilty party. The adversarial trial allows for no nuance of this kind.

In the ACTP context, the term 'complainant' is not interchangeable with 'victim'. Consistent with the language adopted by ACTP the complainant is the person who reports an offence to the police. This may be the victim (the person against whom the reported conduct occurred) or may be another person or organisation. For clarity, this report uses the term 'complainant' to refer to the person who reported the offence to ACTP and the term 'victim' to refer to the person who is reported to have been offended against. Where quotes, either from PROMIS cases or existing literature, use an alternative term, it is retained.

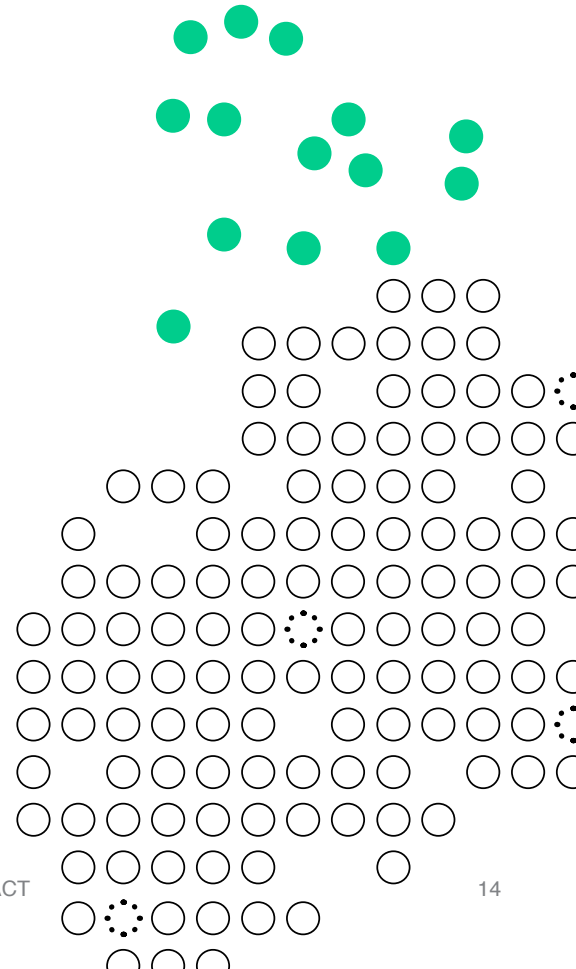
Importantly though, many people who have experienced sexual violence prefer other terms, including 'survivor' or 'victim-survivor'. In recognition of this, the term 'victim' is used in relation to all police data to reflect operational language. When referring to those who participated in a consultation for this project, we refer to participants as 'victim-survivors'. This reflects that a person may at varying times, feel like a victim, or a survivor, as both or as neither; regardless, it is a spectrum.

Since most of the matters reported on here never proceeded to charge, the terms 'suspect' or 'person of interest (POI)' are used to identify the person who is alleged to have committed the act(s), again to align with ACTP's operational language. Where the term 'offender' is used in PROMIS cases or existing literature, it is retained.

Lastly, the terms 'report', 'matter', or 'case' are used interchangeably to refer to the reported conduct and the details concerning that conduct that are recorded by police. The terms 'sexual violence' and 'sexual offending' are sometimes used throughout as a general descriptor. When analysis is presented concerning a specific data subset the terms 'adult sexual assault', 'child sexual assault', 'other adult sexual offending' and 'other child sexual offending' are used. More information about these terms is presented in the following chapter.

Methods

The Police Process Review aimed to better understand the reasons for the low number of sexual assault reports proceeding to charge in the ACT. These cases – those that 'drop out' – reflect police attrition. This was achieved by reviewing the case information, recorded in the Police Real-time Online Management Information System (PROMIS), speaking with victim-survivors whose reports are the subject of those PROMIS cases, and through an analysis of existing ACTP policy and procedure. This chapter lays out this method and the rationale for the dataset drawn upon here.



Dataset

Sexual Assault Prevention and Response reference period

Within scope of the SAPR reference period were matters where the reported conduct falls under Part 3 (sexual offences) and Part 3A (intimate image abuse) of the *Crimes Act 1900* (ACT) ('*Crimes Act*'). We refer to these matters collectively as 'sexual offences'. This includes cases where the reported sexual offence was committed against an adult or a child. Offences captured within these provisions of the *Crimes Act* include, for example, penetrative sexual offences such as *sexual intercourse without consent* and *sexual intercourse with a young person*, non-penetrative sexual offences such as *act of indecency without consent* and *act of indecency with young people* and a range of non-contact sexual offences against adults and children such as *possessing or trading in child exploitation material, grooming* or *non-consensual distribution of intimate images*.

The SAPR Report recommended a reference period of cases reported to ACTP between 1 July 2020 to the end of 2021. Given the scope of the data analysed for the Police Process Review, along with various delays and complexities related to data protection requirements and information sharing protocols, it was determined that a shorter period would be appropriate for the Police Process Review. The Police Process Review dataset is discussed below.

To assist in building the datasets for both the Police Process Review and other projects stemming from Recommendation 15 (the Investigation Case Analysis), ACTP conducted a series of PROMIS searches for cases within the SAPR reference period (i.e. those reported to ACTP between 1 July 2020 – 31 December 2021). The searches were based on three PROMIS field entries. Two were searches of fields that identify the type of incident either being reported or that was confirmed by ACTP: 'original incident type' which reflects the incident being reported, and 'confirmed incident type', which reflects an ACTP officer's categorisation of the incident. The third search captured all cases where a sexual offence was recorded in PROMIS. The resultant lists were combined, and duplicates removed. This approach ensured that cases that were reported as a non-sexual offence and later confirmed as a sexual offence were captured, and vice versa. It also ensured that cases with no incident type that reflected a sexual offence, yet included an attached sexual offence, were within the dataset. This approach was led by the Oversight Committee, prior to the commencement of the Police Process Review.

It is possible that some cases have not been captured through these searches, such as where a report is labelled as a non-sexual crime or a non-crime across both incident types, where no sexual offence was recorded. Reviewing the free text narrative of all PROMIS cases opened during the review period would be the only method to ensure that there are no cases missing from the dataset due to such errors. This was not feasible.

Matters that did not proceed to charge were identified as within scope by the SAPR Report. Accordingly, cases were excluded where charges were laid, regardless of whether they were proceeded with by the DPP. However, to allow for charges to be laid in matters reported at the end of the reference period, the Oversight Committee determined that where charges were laid before 1 May 2022, the case remained in the dataset. This date was applied across the entire dataset, so should not be taken to be a commentary about the reasonable timeframe in which charges should be laid. Instead, this reflects the date upon which it was announced that the review would take place.

Once all cases were captured through the searches, and cases that were charged had been removed, ACTP arranged them into 'tranches'. Twelve tranches were developed to organise the cases into reporting periods and crime types. The tranches are not reflective of any belief of importance by any organisation, instead they were adopted as a mechanism of containing and managing the large dataset. Cases reported within the most recent six months of the review (1 July 2021 – 31 December 2021), where the victim was a child or young person under 16 years, were allocated to Tranche 1. Cases in the same time period where the victim was an adult were allocated to Tranche 2. This pattern repeated over each six-month period, alternating between crimes with children and adult victims. This identified six tranches.

Next, given the sheer quantity of cases, further categorisation was conducted. Each tranche was 'split' into two, based on whether the offending conduct was penetrative or non-penetrative. Thus, each tranche was categorised into, for example, Tranche 1 (penetrative offences, victim under 16) and Tranche 1A (non-penetrative offences, victim under 16). This division was based on the volume of penetrative offences, not reflective of a view of seriousness. Thus, each tranche was categorised into, for example, Tranche 1 (penetrative offences, victim under 16) and Tranche 1A (non-penetrative offences, victim under 16). This division was based on the volume of penetrative offences, not reflective of a view of seriousness.

After this was complete, the tranches were as displayed in Table 1.

In addition to those cases captured within the searches and allocated to the appropriate tranche, reported sexual offences outside of this timeframe were included upon request by the victim. These were called 'self-referrals'. Self-referrals typically were facilitated by an organisation or agency familiar with the review.

Tranche 1	Allegations of sexual assault against people under 16 years reported between 01 July 2021 and 31 December 2021
Tranche 1A	Allegations of non-penetrative sexual offences against people under 16 years reported between 01 July and 31 December 2021
Tranche 2	Allegations of sexual assault against people 16 years and over – reported between 01 July 2021 to 31 December 2021
Tranche 2A	Allegations of non-penetrative sexual offences against people under 16 years reported between 01 July 2021 and 31 December 2021
Tranche 3	Allegations of sexual assault against people under 16 years – reported between 01 January 2021 and 30 June 2021
Tranche 3A	Allegations of non-penetrative sexual offences against people under 16 years – reported between 01 January 2021 and 30 June 2021
Tranche 4	Allegations of sexual assault against people 16 years and over – reported between 01 January 2021 to 30 June 2021
Tranche 4A	Allegations of non-penetrative sexual offences against people 16 years and over reported between 01 January 2021 to 30 June 2021
Tranche 5	Allegations of sexual assault against people under 16 years – reported between 01 July 2020 to 31 December 2020
Tranche 5A	Allegations of non-penetrative sexual offences against people under 16 years – reported between 01 July 2020 to 31 December 2020
Tranche 6	Allegations of sexual assault against people 16 years and over – reported between 01 July 2020 to 31 December 2020
Tranche 6A	Allegations of non-penetrative sexual offences against people 16 years and over – reported between 01 July 2020 to 31 December 2020

Table 1: Tranches across the SAPR reference period.

Police Process Review dataset

A total of 389 cases formed the Police Process Review. It was not possible within the time available to conduct the in-depth analysis of all cases identified as within scope of the SAPR reference period. Instead, a bespoke dataset was developed, drawn from the SAPR reference period via the tranches identified above. Nonetheless, the dataset forming the Police Process Review is significant, and data saturation was reached.

Penetrative sexual offences over the most recent year of the SAPR reference period were included. In addition, the most recent six months of non-penetrative offences, captured in the 'A tranches' in Table 1 above, were also included. Some matters that were identified by the Investigation Case Analysis as requiring reinvestigation were not included.

Self-reported matters that fall outside of this period have also been included. Victim-survivors from across the SAPR reference period who agreed to participate in a consultation were also included regardless of when they reported to ACTP. A total of 12 self-referral cases were included within the Police Process Review.

Adopting this approach, 'case categories' according to offence types were developed for the Police Process Review to assist in analysis. Categories are named and defined as follows:

Adult sexual assault:
all reports within the dataset of a penetrative sexual offence against a person aged 16 years or older at the time of the offence (n=164)

Other adult sexual offences:
all reports within the dataset of nonpenetrative or non-contact sexual offences against a person aged 16 years or older at the time of the offence (n=84)

Child sexual assault:
all reports within the dataset of a penetrative sexual offence against a child or young person aged 15 years or under at the time of the offence (n=100)

Other child sexual offences:
all reports within the dataset of a non-penetrative or non-contact sexual offences against a child or young person aged 15 years or under at the time of the offence (n=41)

Some cases involve reports of multiple sexual offence types, including penetrative and non-penetrative (or non-contact) offences. Accounting for this, all cases with a reported penetrative sexual offence were captured in the 'adult sexual assault' or 'child sexual assault' categories. For example, in one case, the child victim reported two incidents – one of oral penetration (child sexual assault) and another as an indecent assault (other child sexual offence). The child sexual assault was not investigated, as after conversation with the victim the Case Officer determined that it was *'more consensual than first reported and it was more that the POI had pressured her into intercourse'*. The indecent assault was investigated. The case was nonetheless included in the 'child sexual assault' category, since it reflects the reported incident.

Similarly, where a PROMIS case relates to multiple victims and the conduct against one of the victims was penetrative, the case was counted as a penetrative sexual offence.

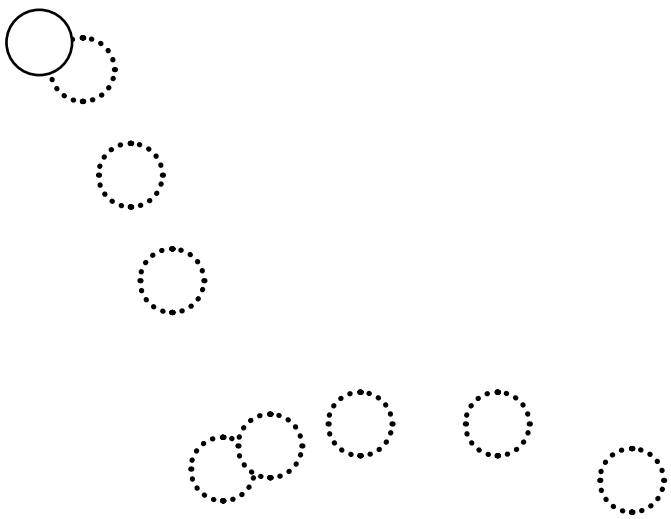
Limitations of the dataset

Police data only captures matters reported to *and* recorded by police. Lievore (2003) refers to the 'hidden recording' of sexual offending, which may be mislabelled under non-sexual crime types (as noted above) or other mechanisms that exclude sexual offences from official police statistics. She continues that 'a range of administrative, procedural and legal or evidential matters influence whether [a reported sexual offence] will be recorded as an incident' (Lievore, 2003; 45).

Accounting for such hidden recording, the dataset is most accurately described as cases of *recorded* sexual offences. This contrasts with *reported* sexual offences. The former requires that, upon a report of a sexual offence by a complainant or victim, a police member opens a case in PROMIS. The latter refers to all instances of formal or informal report made to the police, whether recorded or not.

This non-recording of sexual offences contributes to attrition and is often the result of varied practices of recording. Decisions not to record a reported offence may be made on the assumption that for a case to be recorded, sufficient evidence that a crime has taken place, must first be identified. Widespread perceptions in the community that sexual offences are 'one word against another' manifest in police as a belief that the evidence of a victim-survivor alone is not sufficient to proceed to charge (Saunders, 2018). Given this, police officers operating under this 'evidentiary model' of recording practice are likely to fail to record all reported incidents.

As such, there may be incidents that are reported to ACTP that are never recorded in PROMIS. Such reports would not come to the attention of this review.



PROMIS case review

All reports to police should have a 'PROMIS case' opened to facilitate the recording of information relevant to the incident. Each PROMIS case is identified through a 'PROMIS number'. Police are required to include a narrative of the report, including particulars of the offence, and record all investigative activities in PROMIS. PROMIS also enables police to record information about POIs, suspects or offenders, victims, and the nature of the reported offences. Correspondence between police personnel and external agencies, for example, Forensic and Medical Sexual Assault Care (FAMSAC), VSACT or Child and Youth Protection Services (CYPS), can be attached to the PROMIS case. Medical or forensic reports, images, transcripts or recordings of interviews with victims, suspects and witnesses and other relevant documentation should also be uploaded.

Where a case is passed between teams or among officers, previous entries into the PROMIS case can be accessed, reviewed and edited. As such, and as the name suggests, the system is 'real-time', recording a point in time of an investigation, and can be changed or added to until the case is closed.

Access to information from PROMIS was facilitated through PDF downloads of the 'summary report' and 'case report' for each matter. Additional screenshots of other views of PROMIS not captured in the above were supplied, such as the page where relevant identified offence types are recorded. An AFP issued and password protected external hard drive held this information. Where the researchers identified missing information, or corrupted computer files, ACTP supported the researchers by re-downloading files, or otherwise gathering the information and documents. The transfer of information was, each time, made in-person in Canberra, and on-site in AFP or ACT Government buildings.

Data security was prioritised through the research design. All researchers who had access to the PROMIS data sought and received a Baseline Security Clearance from the AFP prior to accessing the data. Ethical clearance for this stage of the research was approved by the Swinburne University Human Research Ethics Committee (number 20246990-17672).

To complete the review of PROMIS information for each of the cases within the dataset, a set of 'pro forma tools' were developed, into which deidentified information could be collected across a range of themes and questions, to capture qualitative and quantitative findings. The development of the tools was informed by reference to established case file review projects internationally, namely the Philadelphia Model and the Canadian Framework for Collaborative Police Response on Sexual Violence. The existing evidence base, including other similar reviews, and AFP and ACTP policy documents were consulted to build the tools. The design was also iterative, evolving in response to themes that emerged from the data. As such the approach was both inductive and deductive.

A unique tool was created for each of four categories of offences: sexual assault; child sexual assault; other adult sexual offences, and; other child sexual offences. This reflected the need to capture varying information for each offence category to align with ACTP and AFP policy, and provided a robust framework to guide the collection of data from PROMIS.

Support in data collection in the early stages of the project was provided by VSACT staff who had also sought and received AFP Baseline Security Clearance. VSACT data collectors accessed the tools through an online interface using Qualtrics

software, to ensure that the entire dataset was only accessible by the researchers. Only deidentified information was sought. Prompts throughout the tools reminded the VSACT data collectors not to record personal information such as names and addresses. Any remaining identifiable data was removed by the researchers through a later process of data cleaning.

Reviewing the data for each case revealed that there is no consistent use of PROMIS in recording information. This presented difficulties in coding the data, since police data entry points or 'fields' are interpreted variously by police officers. For example, one field, labelled 'incident start date/ time' was diversly used to record the time of the offence being reported or the time of the report itself. In one use, the offence is the 'incident', in the other, the report is the 'incident'.

Record keeping was also identified as an issue in the field denoting the reason for case closure. A number of cases were recorded as 'not cleared', even where charges had been laid or where the case had been 'finalised' (closed) with no further action to be completed. In order to categorise cases based on the rationale for finalising cases, a review of the case narratives was conducted. The identified reason for case closure in the written entries by officers thus determined the allocation of cases into categories.

Further, it was not uncommon for officers to opt not to complete a comprehensive narrative of the investigation. Numerous prompts in the summary section of PROMIS cases to *'see blue folders'* were present across the files. The term 'blue folders' refers to the section of PROMIS that allows officers to upload documents (among other relevant information). This deviates from the expected practice to record completed and ongoing investigative activities, as well as actions to be taken, in the open text space on the 'front screen' of PROMIS. An email attached to one PROMIS case from a senior officer reminded Case Officers to review certain PROMIS cases by *'recommending timely attention to putting something in the case logs/front screen beyond just 'refer blue folders' etc...'*. The email, sent with the knowledge that this review was to be undertaken, does indicate that failing to record information 'on the front screen' does not meet the standards of ACTP. Importantly though, it also is representative of a dated recording system, that is slow and difficult to navigate. PROMIS is being replaced by another case management system, which may overcome these issues.

Victim-survivor consultations

Consultations with victim-survivors were also conducted. These consultations took two forms: interviews with the lead investigator, either in-person at VSACT offices in Canberra or online, or an online self-administered interview. In total, 33 victims participated. Most were women and girls (16 years and older), in line with the evidence about those most likely to experience sexual violence. Interviews took place in late 2023. All victim-survivors who were consulted for this work had reported a sexual assault to ACTP and a PROMIS case relating to the report was reviewed by the researchers. All participants are referred to throughout using a pseudonym. Interview participants were given the opportunity to choose their own pseudonym. If they preferred, they were assigned one at random. Any likeness to another person is coincidental.

Recruitment

Potential participants were identified by a review of the PROMIS cases from the SAPR reference period. Where a victim-survivor agreed to participate, the PROMIS case relating to their report was included within the dataset for the Police Process Review. The process of recruitment described below was approved by the Swinburne Human Research Ethics Committee (number 20237113-15333).

Recruitment was supported by VSACT. Importantly, since the cases that fell within the scope of this review typically had not proceeded to charge, and many had not proceeded far into the investigation process, the victim-survivors were less likely to have had access to formal support services. As such, it was identified as appropriate, ethical and necessary to contact these victim-survivors (where safety protocols could be put in place) to offer access to these services. This was identified as the priority of all engagement with victim-survivors.

To identify victim-survivors within the dataset who could be contacted, ACTP compiled briefs with relevant information, including a summary of details of the reported incident, the relationship between the victim-survivor and suspect and any identified safety or welfare concerns. Known contact details and contact preferences (such as preferred contact via email, text message or phone call or at a certain time of the day) were included. These briefs were supplied to VSACT who reviewed them to identify those who should be contacted. Where appropriate, VSACT liaised with Canberra Rape Crisis Centre (CRCC). Given the limited information available to inform this decision, and in some cases, the passage of time since updated information was gathered, a cautious approach was adopted prioritising victim-survivor safety. Recorded agreement on the part of the victim-survivor to be contacted by agencies such as VSACT or CRCC was considered, along with whether any safety concerns had been identified. At the conclusion of this ‘safety assessment’, a ‘short-list’ of people to be contacted was produced.

Calls, emails or text messages were approved contact methods. All contact was initiated by VSACT. Given the known contact information and the known preferences for contact, drawn from the ACTP briefs, most engagements commenced with a phone call. Where calls were answered or returned, the priority was to provide access to supports for the victim-survivors. VSACT staff made determinations during the calls about whether it was appropriate to raise participation in the consultations. The determination was made according to the needs of the victim-survivor, and whether they wanted to engage with the phone call. Where it was deemed appropriate, VSACT staff proceeded with a recruitment script and flow chart to guide the recruitment conversation, prepared by the researchers. VSACT staff had attended a full day training workshop conducted by the lead

researcher to support them to use the script. They were encouraged to use language appropriate to the call context, and to draw on their professional expertise, in line with trauma-informed methods.

Where recruitment proceeded, victim-survivors were asked if they wanted to see more information or be contacted by the lead researcher. VSACT would send a 'participant information' pamphlet and a detailed 'your rights and consent' form to the victim-survivor. These documents included the contact details of the lead researcher via a dedicated email address for this review. Victim-survivors could contact the researcher if they wanted to participate. If victim-survivors preferred, the researchers could contact them to arrange an interview, or send the link for the self-administered interview (which was called a survey, for ease of understanding).

Interviews

Twenty-five semi-structured interviews were conducted by the lead researcher. These took place on-site at the VSACT offices in Civic, Canberra or online. Participants were greeted by staff from VSACT. All victim-survivors who participated in an interview, whether in-person or online, were offered the opportunity to have a member of VSACT staff present. Where this was requested, the researchers arranged this. Victim-survivors could also bring a support person(s) such as a friend(s) or family member(s) with them.

The length of the interviews varied, between approximately 40 minutes to over two hours. Interviews were participant led, meaning that the length of the interview was dependent on the victim-survivor and how long they wanted to take to respond to questions. Interviews at times were paused for comfort breaks, and often ended with informal conversation, to reduce the jarring effect between the sharing between participant and interviewer in the room and the outside world. At the commencement of each interview, the researcher discussed the victim-survivor's rights as a participant in the research. Risks were also discussed to assist in decision-making about participation. An honorarium in recognition of their contribution was offered in the form of a $100 gift card.

Prior to most interviews, the researcher had reviewed the PROMIS case relating to the victim-survivor's report. Where the PROMIS information was not available prior to interview, a precis of the case was sought from ACTP or VSACT, and the PROMIS case was reviewed at a later date (post-interview).

Given that recruitment was conducted with the support of a government agency (VSACT), and participants knew that police records were reviewed as part of the project, some victim-survivors confirmed (or assumed) that the interviewer knew the details of offending. Having access to the police data prior to the interview meant that no questions about their lived experience of sexual violence were put to the victim-survivor. Participants were advised that they could share what they wanted to share, and nothing more. As such, some interviews included disjointed references to aspects of their experience of sexual violence; details shared to explain the police response. Others shared a brief description at the beginning of the interview, particularly when they felt it was important context for their contact with police.

For those who preferred it, a link to the online self-administered interview was disseminated via email. Eight self-administered interviews were returned. This 'survey' included questions about their experience across varied data points, identified as important in the PROMIS case review. Since this option was intended to be less onerous, only limited questions were included. Scaled questions were included to assist in interpreting the written responses.

The interviews were transcribed by a research assistant, who also deidentified them. Transcription was conducted 'in house' owing to concerns raised about the use of the data, since these cases could, however unlikely, be the subject of criminal or civil court matters in the future. Concerns were raised by the DPP about their obligations to the court to disclose knowledge of a transcript of an interview with a victim-survivor, if a charge was laid in one of these cases. In line with the researchers' responsibilities under the National Statement on Ethical Research (the 'National Statement'), the privacy of the participants must be maintained, including their identities. Only the lead researcher and any present support persons is aware of who participated in an interview, unless the participant disclosed this information to another person or agency themselves (which sometimes did occur).

To meet obligations of confidentiality, interviews were transcribed and anonymised simultaneously and once completed, the audio recordings were deleted in line with ethical approval. As noted, participants were not asked questions about their lived experience of sexual violence, since the focus of the interviews was on their experiences with ACTP. The interviews themselves, conducted in late 2023, cannot be considered a contemporaneous disclosure since the matters referred to occurred in 2021 or prior. They are also not a comprehensive account. Victim-survivor participants were not asked about their lived experience of sexual violence, and further advised that they were under no obligation to respond to any question that they did not want to answer. The participants owed the interviewer nothing. As such, they are not complete accounts.

Should the researchers become aware of any legal cases pending in any matter subject to a consultation, no further redaction of data will be conducted, in accordance with the National Statement.

Social context

The cases forming this review were reported during a period in which sexual violence in the ACT was regularly reported on in the media, specifically in relation to the allegation that Bruce Lehrmann raped Brittany Higgins in Parliament House. On 15 February 2021, an interview with Ms Higgins aired nationally on Network Ten's *'The Project'*. Ms Higgins originally reported sexual intercourse without consent to ACTP in April of 2019, but withdrew from the police investigation until 2021 when it resumed under the name *Operation Covina*. This case does not fall within the dataset for this review, owing to the original report date and that the case eventually proceeded to charge, rendering it outside of the scope of this study.

As *Operation Covina* progressed, the media reported on the progress of the case and on broader issues with the criminal justice system. With the light shining on sexual violence, including the *#March4Justice* protests across the country on 15 March 2021, there was a measurable increase in reporting rates for sexual offences in Australia (see for example, Fitzgerald, 2021).

In this study, some victim-survivors described feeling empowered to report their experience to ACTP due to the media coverage of the case. For others, the media reports raised concerns about how they might be treated throughout the criminal justice process, both by the system and the public:

'I didn't want to be a Brittany Higgins. So, I wasn't going to say anything.' (Abigail)

'I have seen in the media how women get treated who make reports and press charges, and I did not want that to be me.' (Cora)

'We're watching Brittany Higgins being, you know, crucified and humiliated and whatever else at the moment...the stuff about not being believed and the stuff about victim blaming and the stuff about slut shaming and all of that. Yeah, I put my hand up and say, "You can fix it, do something different".' (Maree)

For ACTP, the case drew significant police resources for the year in focus for this review. Mr Lehrmann was interviewed by ACTP in April 2021 and was charged by way of summons in August of that year. However, the low charge rates that characterise the 2021 calendar year cannot be explained by the demands of *Operation Covina*. There is a pattern of low charge across at least a ten-year period. This demonstrates that systemic issues impact upon charging of sexual offences, not the pressures of a single, high-profile case.

Nonetheless, *Operation Covina* was explicitly referenced in the PROMIS data for a small number (n= 7 of 389) of all cases as the source of delays or challenges in investigations. PROMIS records for one case identify that the Case Officer was diverted to duties on the Lehrmann matter, completely halting investigative activities on the case.

In another, the investigation was delayed twice due to *Operation Covina*. First for a period of approximately two months, and subsequently for approximately three. One PROMIS case documented that *Operation Covina* required reallocation of officers to manage workloads. In another, the case information notes that *'Operation Covina is now a priority'*, but there is no evidence that there was any significant delay to investigative activities in that case as a result.

In other cases, activities were delayed due to the requirements of the investigation of Lehrmann:

> **'Due to operational requirements (Operation Covina) the [Case Officer] will have to progress that investigation in the first instance.'**

An additional PROMIS case halted investigative activity for just under 5 months (between June and November 2022), stating that:

> **'Trial for Op Covina scheduled to commence June. Case Officer has inability to progress any other matters at this time.'**

> **'Trial dates vacated due to successful stay application for Op Covina – delayed until October.'**

This shift in priority was felt by victims. One victim-survivor who participated in a consultation expressed that she perceived that her case was delayed or de-prioritised due to the Lehrmann investigation:

> **'I also made my report prior to Brittany Higgins' sexual assault [report] and I watched her matter be expedited via the media, knowing that my matter, as well as many, many other victims' matters were just being moved down the priority line.' (Megan)**

Another victim had a *'change in heart moving forward'* with the investigation, after months of delay due to *Operation Covina*.

ACTP also experienced challenges of Covid-19 during the reporting period for this review, that at times had varying impacts on investigations. Lockdowns in the ACT or interstate meant that travel was restricted, and illness interrupted scheduled meetings and interviews. Notably, on 12 August 2021, ACTP announced that all historical sexual assault cases currently under investigation were to be halted, presumably given the strain on resources during the period. Given, as this study finds, so few witnesses or suspects were interviewed (or even spoken to) about the reported sexual offence, Covid-19 cannot explain the low charge rate for the cases in this dataset. Again, high rates of attrition were recorded over time.

Reporting

A total of 389 cases were captured in the dataset for this review. Of these, 164 cases were reports of penetrative sexual offences against victims aged 16 years or older at the time of the offence ('adult sexual assault reports'). These reports thus refer to conduct covered by the offence of 'sexual intercourse without consent', laid out in section 54 of the *Crimes Act.* Two reported incidents were captured within the same PROMIS case. The reports related to adult sexual assault (i.e. were reports of penetrative sexual offences against two adults). The conduct reported concerned two different victims, two different suspects and two different locations. One victim initially phoned police, and the two victims, who were known to each other, attended a police station together later that day. The matters were investigated separately. Each case was closed for different reasons. As such, while they were recorded in the same PROMIS case, they are more appropriately treated as distinct reports. Certainly, each matter should have been recorded in its own PROMIS case. Counting these separately, there are 164 reports of adult sexual assault within the dataset, each referring to one victim only.

'Sexual intercourse with young person' under the age of consent (s55 *Crimes Act*) was the main reported conduct in 100 cases within the dataset ('child sexual assault reports'). The remaining cases refer to various non-penetrative or non-contact sexual offences against adults (n=84, 'other adult sexual offences'), or children (n=41, 'other child sexual offences').

Incident types

An 'incident' refers to an event reported to and recorded by police that relates to conduct that 'occurs at one location, during one uninterrupted time period and involves the same victim(s) and offender(s)' (Fitzgerald, 2006). A single incident may give rise to multiple charges (or offences). Police recording systems like PROMIS tend to be incident-based, even though this may not always reflect the reality of crime, in particular violence against women. As such, reports to police are first recorded as 'incidents'.

'Incident types' refers to the codes used to capture early information about reported conduct. PROMIS records two incident types. The first, the 'original incident type', records the nature of the offence as disclosed by the complainant at the time of report. The second, the 'confirmed incident type', requires the officer to make a determination about what code most accurately reflects what is being reported. This does not necessarily reflect whether an officer believes that an offence has occurred, but allows the officer to verify, after speaking with the complainant, the exact nature of the incident. For example, if a person calls 000 to report an assault, a PROMIS case might be opened with the original incident type as 'assault'. Upon speaking to police, a further disclosure that the act was a sexual assault would prompt the officer to record a confirmed incident type of 'sexual assault'.

Most reports of adult sexual assault were recorded with an original incident type of 'sexual assault' (n=140 of 164, 85%). That is, the primary reason for contacting police was to make a report of a sexual assault. In most adult sexual assault cases (n=156, 95%), police confirmed the incident as a sexual assault after an initial statement by the complainant (or victim), regardless of the original incident type.

One matter was subsequently confirmed as a 'sexual assault', after initially being recorded as a report of 'suspicious/wanted person'. This matter was a field event where the complainant(s) approached police to report a sexual assault. It is in line with police practice for PROMIS cases opened in the field to be entered as 'suspicious/wanted person' in the interest of officer safety.

One matter was recorded as a reported 'disturbance', then subsequently labelled 'indecent exposure/act'. The physical act described by the victim would align with the physical elements of the offence of sexual penetration without consent. However, the victim was hesitant to label the behaviour as a sexual offence and did not engage with police in recording the incident, which may have contributed to the labelling of the incident in this way.

Incident types presented a challenge for officers when the reported sexual offence occurred in the context of family violence. As mentioned, PROMIS is an incident-based system, and incident types typically reflect 'one-off' or isolated events. Accordingly, officers are required to select a single incident type from a drop-down list. Family violence typically presents as a pattern of violence. This meant that, across the dataset, cases of reported family violence that included reports of sexual offending were variously categorised.

In one matter, despite the victim disclosing sexual assaults in addition to other family violence offences, the reported incident type was recorded as 'assault'. This may be because the volume of other family violence offences disclosed outnumbered the sexual offences disclosed. This matter was confirmed as 'No appropriate code', which supports this conclusion – there is no incident type in PROMIS to capture the patterns of violence that generally define family violence.

Table 2 below presents the 'original incident type' and the 'confirmed incident type' for each report of adult sexual assault.

Original (reported) incident type	Confirmed incident type	# of cases
Sexual assault	*Sexual assault*	138
	Check welfare / premises	1
	Routine assistance	1
Check welfare / premise	*Sexual assault*	9
	Check welfare / premises	2
	Assault	1
Assault	*Sexual assault*	4
	No appropriate code	1
Disturbance	*Indecent exposure / act*	1
Suspicious / wanted person	*Sexual assault*	1
	Indecent exposure / act	1
Breach order	*Sexual assault*	3
No appropriate code	*Sexual assault*	1

Table 2: Original incident type by confirmed incident type, adult sexual assault reports

For reports of child sexual assault, again most original incident types were listed as 'sexual assault' (n=95), and almost all of these were confirmed as such (n=94) after details were obtained from the victim (or complainant). Five reports had an original incident type of either 'assault', 'telecom/internet crime', or 'child exploitation material'. Four of these were confirmed as 'sexual assault'. A total of 98 child sexual assault incidents had a confirmed incident type of 'sexual assault', regardless of the original incident type.

In one case, both the original and confirmed incident types of 'telecom/internet crime' reflect the report of threatening messages received online by the victim. She reported that the messages were being sent because she was speaking out about multiple instances of sexual assault. She disclosed these incidents to police in the report. This again demonstrates the limitations of the incident-based approach. The confirmed incident type of 'telecom/internet crime' is not incorrect, but it is only half of the story.

Table 3 below presents the 'original incident type' and the 'confirmed incident type' for each report of child sexual assault.

Original (reported) incident type	Confirmed incident type	# of cases
Sexual assault	*Sexual assault*	94
	Indecent exposure / act	1
Assault	*Sexual assault*	2
Telecom / internet crime	*Sexual assault*	1
	Telecom / internet crime	1
Child exploitation material	*Sexual assault*	1

Table 3: Original incident type by confirmed incident type, child sexual assault reports

For cases that fell within the other two groups, 'other adult sexual offences' and 'other child sexual offences', captured a broad range of incident types, owing to the various offences captured in these categories. Incident types included:

- Sexual assault
- Indecent exposure/act
- Suspicious/wanted person
- Telecom/internet crime
- Covid19 – compliance
- Internet crime (pornography)
- Check welfare/premises
- Offensive behaviour – act

- Theft
- Mental health/psychiatric incident
- Disturbance licenced premises
- Assault

Most reports of other adult sexual offences had an original incident type of 'sexual assault' (n=30). This accounts for 36 per cent of those reports. In most cases, regardless of the original incident type, police confirmed the incident as either 'indecent exposure/act' (n=27, 32%) or 'sexual assault' (n=24, 28.5%). This may be indicative of the language used to describe the incidents by victims at report. The term 'sexual assault' does not have a fixed meaning. For example, in Victoria 'sexual assault' refers to the offence called 'act of indecency' in the ACT or 'sexual touching' in New South Wales (NSW). The ACT also includes a range of aggravated sexual offences that use the language of sexual assault (ss51-53 *Crimes Act*).

The most common original incident types of other child sexual offences were recorded as 'sexual assault' (n=23, 56%), and 15 of these reports were confirmed as such (65%). Across all of the other child sexual offence cases, most cases (n=15), police confirmed the incident as sexual assault (regardless of the reported incident type), followed by 'indecent exposure/act' (n=11). Further, there were nine reports with an original incident type of 'telecom/internet crime', which were confirmed as either telecom/internet crime (n=3), 'child exploitation material' (n=5), or 'internet crime (pornography) (n=1), reflecting the breadth of incident types that capture the reported behaviour.

Complainants

Most reports of adult sexual assault were made by the victim (n=125, 76%), making victims the most common complainant type.

Figure 1: Complainant types, adult sexual assault reports

*Including schools and workplaces

According to the PROMIS data, the most common method for reporting adult sexual assault was for the complainant to present in-person at a police station (n=61) or call police on 000 or a non-emergency line (n=58). Where the victim was the complainant (n=125), this pattern continued. Fifty-nine matters were reported by the victim in-person at a station and 39 cases reported via phone, together accounting for 78 per cent of all victim-complainant matters. In four cases of adult sexual assault reported by the victim, the report occurred in-person at another location. All reports for this cohort made online (n=7) were made by the victim. This is unsurprising as the online option is marketed as a mechanism for reporting non-recent sexual offences, which are likely to be reported by the victim.

Of the 63 victims who reported adult sexual assault in-person, either at a police station or another location, 13 had an informal support person (such as a friend or family member) present at the time of report. Six victims had a formal support person (such as CRCC, Domestic Violence Crisis Service (DVCS) or VSACT) present, and 25 victims did not have a support person present at the time of report. In the remaining 19 cases, the data was missing, or the details of the report was not adequately described.

For cases of child sexual assault, victims were also the most common complainant type (n=58, 58%).

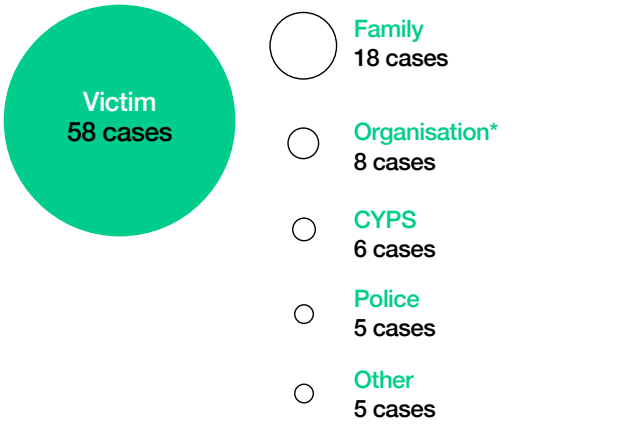


Figure 2: Complainant types, child sexual assault reports

*Including schools

Similar to the above, for reports of child sexual assault, the most common method for reporting was the complainant presenting at a police station (n=31) or calling police on 000 or a non-emergency line (n=24). However, where the victim was the complainant (n=58), the most common method for reporting was presenting at a police station (n=23) or submitting their report online (n=18). In 12 cases of child sexual assault reported by the victim, the offence was disclosed by calling police on 000 or a non-emergency line, and in two cases the report was made in-person at another location.

Of the 25 victims who reported the child sexual assault in-person, either at a police station or another location, 14 had an informal support person (such as a friend or family member) present at the time of report. Three victims had a formal support person present, and three victims did not have a support person at the time of report. In the remaining five cases, the data was missing.

Figure 3 shows the most common complainant type in other adult sexual offence reports. On trend with the above, victims were the most common complainant type, representing 77 per cent (n=65). Of these, almost half (n=31) were reported by calling police on 000 or a non-emergency line. The remaining were reported in-person at a police station (n=23), in person at another location (n=6), or online (n=4). In the remaining case, PROMIS notes were not clear on the method of the report.

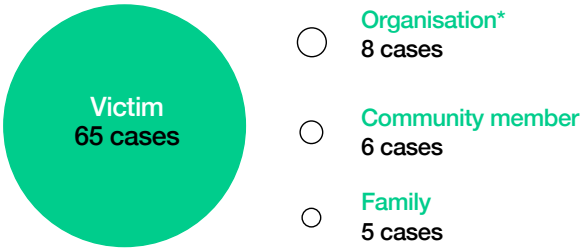


Figure 3: Complainant types, other adult sexual offence reports

*Including schools, workplaces or police

Other child sexual offences were predominantly reported by a member of the victim's family (n=19), making them the most common complainant type as shown in Figure 4. This was followed by victims, 13 of whom reported the offence to the police. Of the cases where the complainant was the victim, seven were reported by calling 000 or a non-emergency line, four were reported online, and two were reported in person at a police station.

Twenty-six or 62 per cent of all other child sexual offence matters were reported by calling 000 or a non-emergency line. Other methods of reporting were by attending a police station (n=6), via an online reporting portal (n=4), or a referral was made by another jurisdiction or agency (n=5).

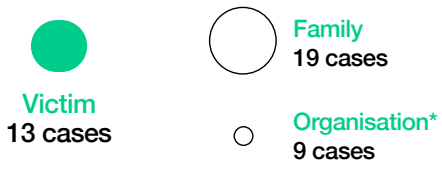


Figure 4: Complaint types, other child sexual offence reports

*Including police

Time between incident and report

The time between the incident and reporting the incident to police varied (see Tables 4 and 5 below). Of the cases of adult sexual assault, that involved a single incident (n=120), one third (n=40) were reported within 24 hours. This was taken to include cases where multiple incidents occurred within a constrained timeframe.

Time between incident and report	Number of cases
Within 24 hours	40
Within one week	22
Within one month	14
Within 6 months	17
Within 12 months	10
More than 12 months	17
Total	**120**

Table 4: Time between incident and report, single incident, adult sexual assault reports

For child sexual assault reports, a different pattern emerged. Of the single incident reports (n=43) just over half (51%) were reported more than 12 months after the incident. Where the sexual abuse was persistent over time, a majority of reports (82%) were also made at least 12 months after the last incident.

Time between incident (or most recent incident) and report	Number of cases
Within 24 hours	5
Within one month	12
Within 6 months	8
Within 12 months	6
More than 12 months	68
Total*	**99**

Table 5: Time between incident and report, child sexual assault reports

*One case did not describe an incident

As per ACTP operational guidance, the *Better Practice Guide on Sexual Offence and Child Abuse Investigations and First Response* (2022; herein, *'ACTP Better Practice Guide'*), historical sexual assault refers to those 'that occurred more than six months ago'. However, the review of PROMIS cases has identified that this definition is not consistently applied. Some officers referred to matters as 'historical' because of a lack of forensic evidence that was (or was likely to be) available in the case, such as where the report was made a number of weeks or months after the conduct. According to the FAMSAC unit at Canberra Hospital, responsible for conducting medical examinations in sexual offence matters and treating victims 15 years and older, forensic evidence can be collected where an assault has occurred in the previous five days. Other documents assert a seven-day window for forensic medical evidence.

Sixty-five adult sexual assault matters were marked as 'historical'. In 12 of these matters, the offending had occurred within the preceding six months, or even sooner, and were thus in conflict with the definition prescribed by ACTP. For example, one matter reported in December 2021 concerned conduct that occurred within the previous five months, and another report made in July 2021 related to conduct that had occurred less than two weeks prior.

Similarly, for child sexual assault, 73 cases were marked as historical. Reviewing the case facts revealed that 72 of these matters were accurately labelled historical, the remaining case was erroneously categorised as such. Thus, historical reports were more common than reports within six months of the incident. All reports where the victim was a boy or young man at the time of the incident were historical reports (n=8). This is consistent with the evidence that men are more likely to delay reporting of child sexual abuse (Cashmore et al., 2017), though all victims are likely to delay.

Victim characteristics

As laid out above, each of the 164 cases of adult sexual assault, involved one victim. In 95 per cent of the cases (n=156) the victim was a woman. One of these women identified as transgender. In the remaining eight cases the victim was a man. No sexual intercourse without consent cases involved victims who identified as non-binary or gender fluid, however, PROMIS generally facilitates a binary entry on gender, so more specific data is not available.

The youngest victim in this cohort was 16 years old, reflecting the lowest age to be captured within the offence type (i.e. penetrative sexual offences against a person 16 years or above). The oldest victim was aged 67 at the time of the report. The average age of the victim at the time of report was 30. This gives some indication about the age cohorts more willing to report to the police. Figure 5 below demonstrates the skew towards increased reporting for those under 35 years.

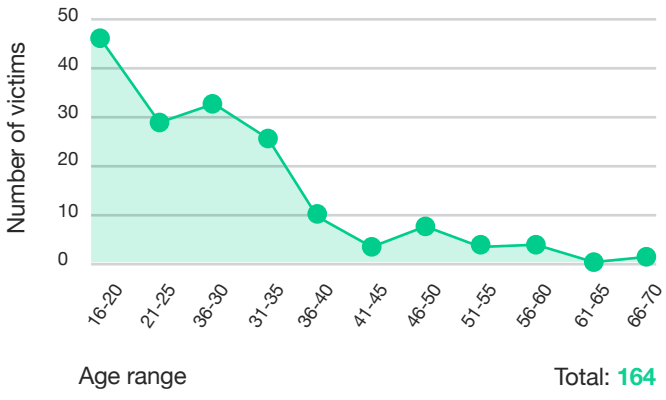


Figure 5: Age of victim at time of report, adult sexual assault

For child sexual assault, 92 victims were girls and young women, 15 were boys and young men and two victims were non-binary or gender fluid. There were 109 victims attached to the cases, since six involved multiple victims. Thus, more women than men reported child sexual assault in this sample. This aligns with the evidence that girls are more likely to experience child sexual abuse and that women and girls are more likely to report to police (Cashmore et al., 2017). Importantly though, as noted, reporting rates for all genders is low.

In child sexual assault matters, 38 victims were a child or young person (less than 16 years of age) and 71 victims were an adult at the time of report. As such, consistent with the high number of historical reports of child sexual assault, the average age at the time of report for this offence type was 42.5 years (See Figure 6). This is in line with the evidence that suggests that victim-survivors are more likely to disclose child sexual abuse during adulthood. This delay in reporting is often due to fear or shame, not recognising the behaviour as abuse or because of the relationship between the victim and the perpetrator (Goodman-Brown et al., 2003).

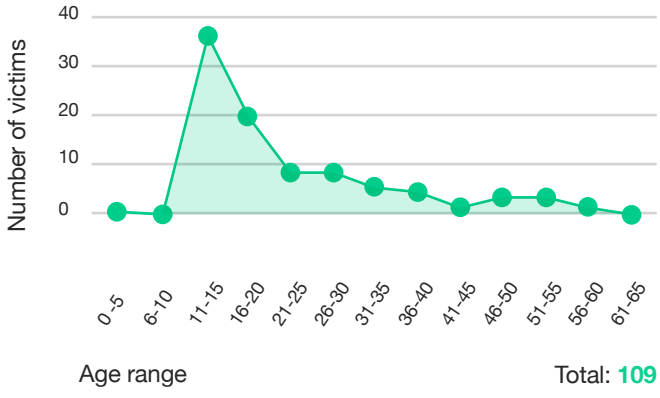


Figure 6: Age of victim at time of report, child sexual assault

Analysis of the information in PROMIS indicates that four victims (2.8%) of adult sexual assault were Aboriginal or Torres Strait Islanders. This means that Indigenous Australians were over-represented as victims of penetrative sexual offences during adulthood, since Census data demonstrates that 2.1 per cent of the population of the ACT identify as Aboriginal or Torres Strait Islander (ABS, 2023b).

Moreover, this is may be an underestimation of the Aboriginal and Torres Strait Islander victims within the dataset. While no adult sexual assault cases had a blank entry for this field, for 79 cases victims were marked as 'not stated or inadequately described'. The remaining 81 (49%) denoted 'no'. While Aboriginal Liaison Officers were involved in four adult sexual assault cases, only in two of these cases was the victim recorded as Indigenous. The other two matters were those where the victim was recorded as 'not' Aboriginal or Torres Strait Islander or where the field was marked as 'not stated or inadequately described'. In those two cases, the two suspects were also marked as 'not' Aboriginal or Torres Strait Islander.

Of reports of child sexual assault, one victim was identified as Aboriginal. In the remaining 99 cases, officers recorded that this was 'not stated or inadequately described (n=55) or selected 'No' (n=43) in response to the prompt, and in one, the field was blank. This indicates that this information is not adequately recorded by ACTP officers. As such, insight into how investigations impact Aboriginal and Torres Strait Islander people who experience sexual violence could not be elicited. The importance of working with community to identify culturally safe ways to investigate sexual offending against First Nations peoples cannot be understated.

Nine victims of adult sexual assault were experiencing homelessness at the time of the report to the police. This included people who were living in short-term crisis accommodation, had no fixed address and those who were currently hospitalised and unable to be discharged due to having no fixed address or because it was unsafe for them to return home. Two victims were pregnant at the time the sexual offence occurred.

PROMIS indicated that 23 victims of adult sexual assault had a criminal history, a small number were in remand at the time of reporting the offending. A small number of victims were taken into custody under the *Mental Health Act 2015* (ACT) by police at the time of report. In one case, a 'Use of Force' log entry reveals that the victim was handcuffed after she refused to voluntarily present to the Canberra Hospital for a mental health assessment. In another, the victim was removed by police, and the suspect was left at the residence.

For cases of child sexual assault, a small number of victims were experiencing homelessness at the time of the report to police, all of whom were adults at the time of reporting. These cases referred to the victims as having no fixed address and as *'couch surfing'*.

The 84 other adult sexual offence reports referred to 87 victims. Some reports referred to multiple victims. Two cases listed no victims (referred to as 'Regina offence'). Seventy-two victims were women (83%) and 15 were men (17%). The average age of the victims at the time of report was 29.5 years. The youngest victim in this data sample was 16 years old, reflecting the lowest age group within the offence type (i.e. non-penetrative sexual offences against persons 16 years or above). The oldest victim was 69 years of age. More than half (62%) of victims were under the age of 30 at the time of reporting, reflecting the data for adult sexual assault.

In a review of the PROMIS information for other adult sexual offences, there were no victims who identified as Aboriginal or Torres Strait Islander. Forty-one victims were marked as 'not stated or inadequately described' and for the remaining 45 victims, 'no' was selected. In one report this information was not available.

There are 41 PROMIS cases of other child sexual offences, with a total of 44 victims. In a small number of cases, there were multiple victims. Two other child sexual offence matters were 'Regina offences' as there was no victim attached to offence. One of these progressed to charge. In total, 31 victims were girls or young women, and 12 were boys or young men. Two of these young men identified as transgender. The average age of victims at the time of report was 17.2 years. The youngest age was one year, and the oldest age was 56 years, at the time of reporting. Thirty-five or 79.5 per cent of victims were under the age of 16 at the time of the report made to police.

PROMIS information indicated that there were no victims who identified as Aboriginal or Torres Strait Islander in these other child sexual offences. In 23 cases, 'not stated or inadequately described' was selected, in 15 cases victims were marked as 'not' Aboriginal or Torres Strait Islander, and in one case, information was not recorded. As already noted, this data point was unreliable.

Suspect characteristics

While there were 164 victims of adult sexual assault recorded within the PROMIS cases, eight of these matters involved multiple suspects. In total, therefore, there were 173 people suspected of committing a sexual assault against an adult. Some matters that referred to two suspects were victims reporting two distinct offences, in other words, multiple distinct incidents with multiple suspects that may have occurred in the same evening, or years apart.

While there were 100 PROMIS cases of child sexual assault, there were 10 reports with multiple suspects. In five cases there were two suspects were involved, and in eight cases, there were three or more suspects involved. In one case there was no offender listed. In total, there were 118 people suspected of committing a child sexual assault. In most of the cases where there were two or more suspects involved, the victim reported separate offences.

Within the 84 cases of other adult sexual offences, there a small number of cases with multiple suspects. Given this, there was a total of 86 people suspected of committing another adult sexual offence. In cases with multiple suspects, the victim reported that the suspects offended simultaneously.

In other child sexual offence reports (n=41), there was a small number of cases with multiple suspects. Also in a small number of cases, no suspects were identified during the police investigation. In total, there was a total of 41 people suspected of another child sexual offence.

In some cases across all of the case categories, the narrative given by the victim indicated the presence of another person, who may have been involved in the offending or who was aware of the offending taking place and made no attempts to stop it. Although these people may have committed sexual offences against the victim or committed other non-sexual offences during the incident, these people have not been included in suspect counts. Insufficient information relating to their involvement and identities was included on PROMIS. In official records too, they were not identified as suspects. In some cases, this appears to be due to a lack of police investigation. These suspect counts then, more accurately reflect the number of persons recorded by police as having been suspected of committing a sexual offence.

Majority of suspects of adult sexual assault were men (n=170, 98%). The remaining three suspects were women. There were no suspects who were transgender or non-binary. Five suspects were recorded as Aboriginal or Torres Strait Islander, however, this information was not recorded (i.e. left blank) for most suspects (n=120, 69%). In a further 17 matters, PROMIS records reflect that the information was 'not stated or inadequately described'.

Was the suspect of adult sexual assault identified at time of report?	Number of cases
Full identification	111
Not identified/No information given	14
Partial description including contact details (phone or address)	8
Physical description	14
Partial details including partial name or nickname	17
Total	**164**

Table 6: Suspect identification, adult sexual assault reports

Mirroring results for adult sexual assault, almost all of the suspects of child sexual assault were men (n=116, 98%). There were no suspects who were transgender or non-binary. One suspect was recorded as Aboriginal. However, this information was not recorded for most suspects (n=76) of child sexual assault. In seven matters, PROMIS records reflect that the suspect(s) were not Aboriginal or Torres Strait Islander. In 35 cases, this information was not available as no information about the suspect was attached to the PROMIS case (including where the offender could not be identified or there was no offender).

Similarly, nearly all suspects of other adult sexual offences were men (n=76, 90%). The remaining 10 suspects were women. One suspect was Aboriginal, and in some matters, no suspect information was recorded.

In the cases of other child sexual offences, 35 suspects were men (85%), four were women, and in two cases the gender of the suspect was unknown. In the available information provided in PROMIS, one suspect was Aboriginal.

The majority of suspects of adult sexual assault (n=110, 64%), were completely identified by the complainant at the time of the report. In 14 matters, no information was given to identify the suspect. In 8 cases, a partial description was given that included some type of contact information for the suspect, such as an address, phone number, social media handle or dating profile. Complainants in 17 cases were able to provide partial details, including a partial name or a nickname at the time of report, and in 14 cases a physical description only was recalled.

Suspects of adult sexual assault were recorded as having a relevant criminal history in 38 matters. Notably, detailed information about these criminal histories, beyond listed charges, was included in the researchers view of PROMIS. For example, how these charges were cleared, incident dates and court outcomes were poorly recorded and often missing. For those 38 suspects with offences recorded, five had recorded history of sexual offending, including a significant history of sexual offending against children under the age of 10. A history of violence, often significant, was recorded for a number of suspects. Family violence related histories, including serious offences that present a significant risk of lethality such as 'chokes, suffocates, strangles another person' and 'contravene Family Violence Order', were not uncommon among those with recorded prior offending. A total of six matters involving suspects with a prior criminal history progressed to charge (16% of the matters where the suspect had a criminal history).

Nine of the suspects were in custody (including remand) or on bail at the time of the report. Some of these suspects were sentenced offenders for other crimes (though, that offending may have committed against the same victim). In the remaining matters (n=163), the suspect was not in custody or there was no information included.

Was the suspect in custody at the time of report?

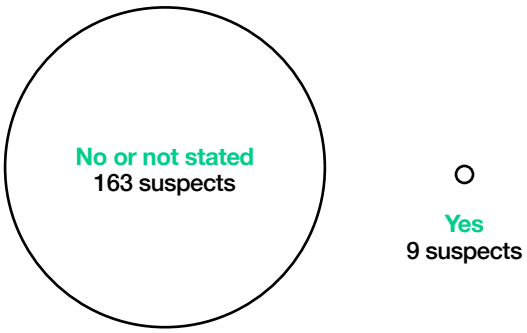


Figure 7: Suspects of adult sexual assault in custody at time of report

In 12 of the 89 cases of child sexual assault that did not progress to charge, the suspect had a prior violent offending history. Some of these suspects had a significant history of violence such as 'chokes, suffocates, strangles another person', 'possess child exploitation material' and 'use carriage service for child exploitation material', 'aggravated assault resulting in actual bodily harm',

‘damage property’, ‘possess child exploitation material’, and/or charges in relation to not meeting their reporting obligations as a sex offender.

Five of the other adult sexual offence cases (n=84) progressed to charge or caution. Of the 79 matters that did not progress to charge or caution, where information was available, 14 suspects had a prior violent history.

For other child sexual offence cases, six progressed to charge or caution. Of the cases that did not proceed to charge or caution, a small number of suspects had a prior violent history, including ‘contravene a Family Violence Order’, ‘arson’, and ‘act of indecency against a person under 10 years’. This information is based on the information available in PROMIS, noting that in 13 cases, the suspect was not identified or their information was not available.

Incident characteristics

As noted above, 73 per cent of cases (n=120) of adult sexual assault involved a single reported incident. This also included multiple acts of sexual violence, within the same interaction. Other cases (n=6) referred to multiple, separate incidents of sexual violence that took place over a 24-hour period and 36 matters referred to a series of sexual offences over an extended period of time. Two PROMIS cases included insufficient information.

Consistent with the evidence base, most incidents of adult sexual assault occurred in a private residence. Figure 8 shows the location of each lead offence on the PROMIS cases, thought notably, these were not always consistent with the narrative of the offending recorded in PROMIS.

Figure 8: Incident location, adult sexual assault reports

For child sexual assault reports, 99 cases described an incident. Of these, 43 cases involved reports of a single reported incident. The remaining (n=56) consisted of multiple incidents of sexual offences over an extended period of time, or persistent child sexual abuse.

Most child sexual assault cases also occurred in a private residence. Figure 9 shows the location of each lead offence on the PROMIS cases.

Figure 9: Incident location, child sexual assault reports

PROMIS records information about the relationship between the suspect and victim via a drop-down list that allows officers to select one option that characterises the relationship as defined by the victim. This information is attached to the records about each victim recorded on a case. So, in matters with multiple victims, the varied relationship types to the suspect can be captured. It becomes problematic however, in cases which involve multiple suspects. PROMIS does not facilitate meaningful data collection concerning relationships across all suspects attached to a case.

Further, the relationship types within the drop-down list are confusing, and may be interpreted differently by Case Officers. Categories include:

- Family – child
- Family – immediate
- Family – LGBTI relationship
- Family – parent
- Family – partner, spouse, etc

- Family – sibling
- Known non-family – ex-partner
- Known non-family – not ex-part
- Known non-family – other
- Known non-family – LGBTI ex-part
- No offender involved
- Person not known to victim
- Relationship is not known
- Relative – not immediate family

Reviewing the cases revealed incorrect use of these categories. As such, 'relationship types' as recorded by police were not useful in understanding the circumstances of reported sexual violence or the impact of this on case finalisation.

Using the written narrative in PROMIS, the relationships were re-categorised in line with the reported details of the incident.

For adult sexual assault cases, most suspects were known to the victim, in line with the long-standing evidence base (Estrich, 1987). Relationship types in adult sexual assaults are laid out in Figure 10.

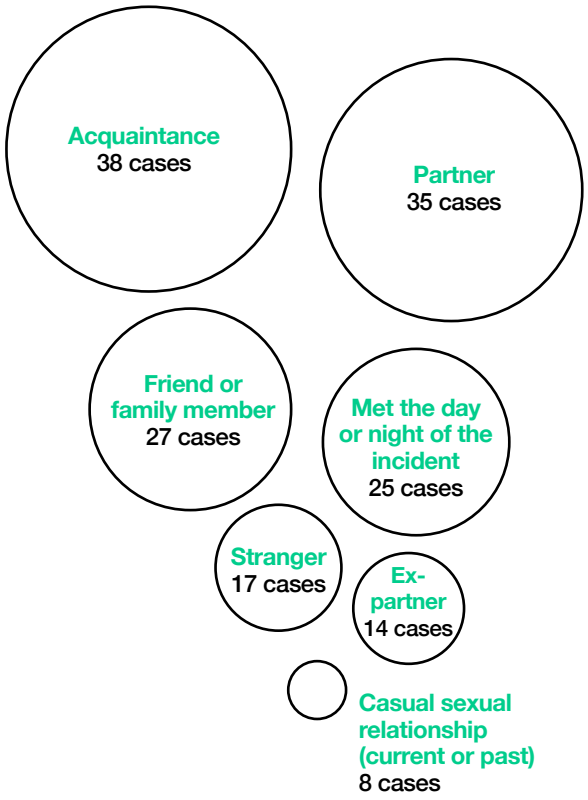


Figure 10: Relationship types, adult sexual assault reports

For child sexual assault cases, a review of the relationship between victim and suspect was also required due to incorrect characterisation. For example, in one case police classified the relationship as 'relationship not known' where details of the narrative identified that the suspect was a family member. After this review, it was made clear that majority of suspects were known to the victim. A wider range of categories was adopted here, to capture the reported relationship types.

In cases of child sexual assault, 15 suspects were the partner or ex-partner of the victim. Although the age of consent in the ACT is 16 years, persons under this age and over the age of 10 are able to consent to sex with someone not more than two years older than them. These cases fall into this category, and thus refer to instances of reported sexual assault in young people's dating relationships.

However, police also referred to circumstances where consent cannot be given as 'relationships' (though they often also selected a different 'relationship type'). This included cases where the victim could not consent because the suspect was more than two years older than the victim. Some reports were the victim reporting that conduct, and in other cases, victims described previous sexual contact as 'consensual' and one incident as 'sexual assault', even though they were unable to give consent to sex with the suspect at all. In these cases, victims were describing a use of violence or force in the sexual assault, as opposed to the grooming that characterised the earlier interactions, which they may not have identified as sexual offending. These cases are reported in the 'partner' categories to protect the anonymity of the victims, though it is acknowledged that this category does not capture the true relationship type.

Twenty-three child sexual assault cases involved a suspect who was known to other adults in the victim's life, including authority figures. Most suspects were known to the victim, as with sexual assault against adults. This is consistent with the evidence that most child sexual abuse is perpetrated by someone

known to the victim (McKibbin & Humphreys, 2020) or who has direct access to the child (such as where the suspect is known to other adults).

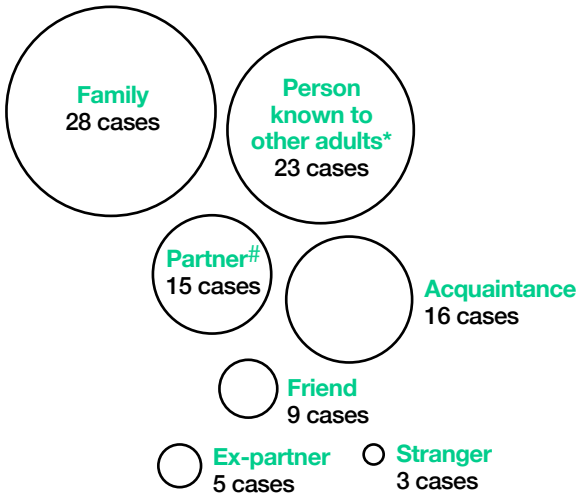


Figure 11: Relationship types, child sexual assault reports

*Including authority figures

Including matters marked as 'partner' by police, where consent was unable to be given

PROMIS records reveal that in 18 cases of adult sexual assault, the victim and suspect met on a dating site or on social media. In 10 child sexual assault cases, the victim and suspect had met through social media (e.g. Snapchat, Instagram).

In some cases, the incident had been recorded by the suspect through video or images. This occurred in eight adult sexual assaults, and in five child sexual assault cases. For matters relating to other adult sexual offences, 22 were image-based offending. These included 'internet crime (pornography)', 'non-consensual distribution of intimate images', or 'capturing visual data' without the consent of the victim. Further, other child sexual offences, there were 11 PROMIS reports depicting child abuse material (CAM)/child exploitation material (CEM).

A majority of victims of adult sexual assault were conscious during the offending. However, 10 reported that they were asleep at the time of the offence. A further 25 were unconscious, either due to intoxication, medication or injury. Consistent with the evidence base that establishes that sexual violence often occurs in the context of intoxication (Anderson et al. 2019), 67 victims (41%) self-reported that they had voluntarily consumed alcohol at the time of the offence. A further 16 victims reported that they had voluntarily consumed drugs at the time of the offence. Fifteen victims self-reported involuntary drug intoxication, primarily through drink spiking, often at bars or clubs.

Of the 151 suspects attached to adult sexual assault cases, 13 suspects (9% of suspects) were recorded as not having consumed alcohol at the time of the offence. Only 29 matters (19%) confirmed alcohol consumption by the suspect. For the remaining suspects, no information was recorded about their alcohol use. Similarly, 13 suspects were reported by the victim to have consumed drugs at the time of offending. Information about suspect intoxication was overwhelmingly missing from the PROMIS cases, indicating a lack of attention to the suspect.

Injury, strangulation and pregnancy

Of the 147 adult sexual assault matters that were not sent to charge, 113 did not record any physical injury to the victim (beyond the non-consensual penetration), compared to 29 matters (20%) where injuries were noted in the report. Injuries ranged from those requiring immediate medical attention, bruising, general pain/discomfort, and historical (or healed) injuries. Of the 17 that did proceed to charge, six were recorded as resulting in an injury, though this sample, and this variable alone, is not enough to draw conclusions about factors that increase the likelihood of charges being laid, particularly as researchers did not review cases that were charged in that year.

Of adult sexual assault cases that included a description of the offending that were not charged, 23 (16%) indicated strangulation during the offending. This was defined as including any and all pressure to the neck, using hands, another body part or an instrument. In a further 28 cases (19%), the victims disclosed some narrative of pressure to the neck, and as such strangulation in those matters cannot be ruled out. However, it was not confirmed by police in the written narrative. Of the 23 cases that strangulation had definitively occurred, five had been sent to charge (thus approximately 22% of adult sexual assault cases involving confirmed strangulation were charged). In child sexual assault cases, seven cases (7%) involved the victim being strangled during the offence, and charges were laid in only one of these cases.

Seven victims of adult sexual assault became pregnant as a result of the offending. Two reported developing a sexually transmitted infection. Of those who were victims of child sexual assault, two reported becoming pregnant as a result of the offending. Neither of these two matters were charged. Both included minors who were 15 years of age who reported sexual abuse by much older suspects.

Reasons for reporting

Victim-survivors shared various reasons for reporting sexual violence to police. PROMIS notes also at times detailed what victims had disclosed to police to be their drive to report. Typically, participants shared multiple reasons.

Some expressed that they felt that there were few other options. Abigail had initially sought remedy through her workplace. But, when nothing came of that, she felt that police were her only option:

> **'I never wanted to go to the police in the first place. So, I went to my workplace … and they did a workplace investigation … that basically came back six months later as "Not our problem". … And it was kind of like, well, I'm out of options here.' (Abigail)**

Wendy's workplace would not make accommodations so that she could attend work without an official police report.

For some victims, reporting crime to the police is just what one does. They often sought advice and support from police, even where they did not want the report to be investigated or were unsure about what they wanted to happen. PROMIS cases notes reveal that victims spoke to police about not wanting the suspect to *'get away with it'*. But importantly, victim-survivors expressed that this was not about revenge:

> **'It's not that I want justice or revenge, but I need people to know who he is. I need people to know how dangerous he is. And justice would be nice, but I just need to make sure that other people are protected from him.'**
>
> **…**
>
> **'I basically wanted validation that this had happened to me; that what had happened to me was wrong. I didn't necessarily want him to go to court. But I wanted him to own what he had done.' (Selena)**

Yet, they often expressed different views about what 'getting away with it' looked like. That is, for some, having police speak with the suspect would be a form of accountability:

> **'I wouldn't really mind like even just someone goes over to him and is like "What you did has been talked about now and this is not OK".' (Ebony)**

Some reported to police simply because the offending was 'the wrong thing to do':

> **'It was pretty simple. I think that someone did the wrong thing. I should report it to police.' (Casey)**
>
> **'I just was like, I don't really want him to get away with this. I don't. I don't think it's fair that nothing happens.' (Nicole)**
>
> **'I believed police [are] the only people to approach.' (Desi)**
>
> **'I thought it was the right thing to do to report it, because he did the wrong thing.' (Megan)**

Some victim-survivors said that they were encouraged or supported to report by a third party, such as a friend or family member. Tessa's colleagues told her that she should report it. Lillian first disclosed to her friend, who first raised the possibility of reporting:

> **'He was the one saying "You need to call police. This is rape, you need to call the police".' (Lillian)**

Pepper's friend was also instrumental in the decision to report, and in helping her overcome her concerns that she did not *'want to make a fuss'* or *'ruin [suspect's] life'*. In response to her worries, her friend reiterated the seriousness of what had happened:

> **'He said, "Absolutely it is rape. You have to go to the police".' (Pepper)**

Similarly, Diana's friend asked if she would like her to report it for her:

> **'And then, you know, it all kind of, just came tumbling down on me. And my friend ended up saying "Would you like me to report this for you?".' (Diana)**

Frankie, who was under 16 years old at the time, reported to the police after telling her father about what had happened. She explained that her father *'just walked us down to the police station'*. Like Lillian, Diana and Frankie, someone else first suggested to Aya that she could speak to the police. Her psychologist recommended reporting as a way of taking back control:

> **'I got a new psychologist and we were chatting about what had occurred and she suggested that it might be beneficial for me to just make a report. She explained that you can just report it and it doesn't have to go anywhere. So she thought it would make me feel, I guess, like, more empowered to have some sort of control over the situation.' (Aya)**

Aya shared that she *'felt like such a victim'*, but reporting was a way to overcome that. For Aya, the knowledge that after reporting, the power was in her hands as to what happens next was key in making the decision:

> **'You can just say it and it doesn't even have to go anywhere. But I think having it there gives you the option. I think that all together made me sort of go [to police].' (Aya)**

The drive to report to address the impacts of the crime, was echoed by other participants. Phoebe said that she had *'decided it was time to take action, so that [she] could start to heal'*. Pinkie discussed how, over time, she came to understand how deeply the incident had affected her, and in particular the impact on her mental and physical health today:

> **'[I reported] because [of] the impact on my health. Long term, so the subconscious and unconscious stuff, it just played such a role in it.' (Pinkie)**

While for some victim-survivors, reporting was a step towards regaining control, for others that process had to happen before they could report. For Matilda, reporting required overcoming fears and channelling her strength:

> **'The strength. To know what you may be faced with by reporting. … It's pretty daunting to actually have to report and know that you could be going though quite a lot, and scrutinised in a courtroom. So that's pretty scary.'**
> **…**
> **'Also feeling like you are not believed. You could be made to feel like the perpetrator and not the victim. All that sort of stuff. You've got to get that strength up.' (Matilda)**

Strength was central for Matilda, but *'it was [also] about understanding and accepting that it really did happen'*. She summarised how she felt about reporting this way:

> **'So, I knew I had to find that strength, and to know that I was worthy. And deserving of being recognised for the kind of thing that happened to me.' (Matilda)**

Ash also felt that reporting was a way to regain control:

> **'I guess I just wanted to get it out there. Yeah, I wanted to make it a thing. … So I wanted to take control. And I wanted to get some of my own back. And by doing that, it actually gave me that. What's the word? It gave me, gave me my power back. So yeah, so I did it.' (Ash)**

Victims also disclosed that they reported to stop the abuse continuing, or to stop it happening to someone else. Amira reported for immediate safety reasons. Ash held concern for a young person who she was aware was known to the person who she reported had abused her. Maree thought that maybe her experience might be evidence in another case that she was aware of. She described how she was driven by *'the furious feminist in [her]'* and that she felt that she *'just had to'*, not for her, but for others. Alex and Kirra also felt this way:

> **'I might be preventing someone else going through something similar.' (Alex)**

> **'My roommate convinced me to report because the perpetrator could do it to another girl.' (Kirra)**

In other cases, reporting was not initiated by the victims themselves. Instead, mandatory reporting requirements were the prompt for report. For example, Ebony was 'requested' to report by Child and Youth Protection Services (CYPS). Stevie's report was similarly prompted by a mandatory reporter, who contacted her parents and together, they reported to police.

As noted, victim-survivors typically expressed multiple reasons for deciding to report. Some of these victims also expressed overcoming the barriers they experienced to reporting, such as recognising themselves as deserving of recognition as a person affected by crime.

Experiences of reporting

During consultations, victim-survivors spoke to their experience of making the initial report to police. For Alex, reporting the sexual assault committed against her was difficult. Although she made the decision to report quickly, it took *'probably a few hours'* for police to take the report. When she arrived at the police station, she was told that she would need to report to the police station closest to where the incident occurred. They sent her off; they did not call ahead to the other station nor accompany her. This advice by the police is contrary to ACTP policy. Alex's report was incorrectly identified as a non-penetrative offence by police, and investigated as such by general duties officers.

For Vera and her son Riley, at the first point of engagement with police, the suspect, who was known to the family, entered the station for a scheduled appointment. Vera and Riley were also there for an appointment, and Vera felt that more could have been done to avoid that. This had ongoing impacts on her sense of safety, for herself and for her son.

Nicole reported via phone and was told that officers would call her later that afternoon or the next day. But she said, *'instead of calling they just showed up on the doorstep'*. She continued:

'Just three police officers showed up on the doorstep and I wasn't ready. Like, I wasn't even dressed. I didn't have a support person with me. So, I was just like "I don't want to report [right] now. You told me you were gonna call me".' (Nicole)

She asked officers to come back another day, and they agreed. At some point, it was agreed that police would attend on a set day at 2pm, and Nicole arranged for a friend to come over to her house as her support person. The scheduled time came and went. Nicole described waiting with her friend *'for another hour, and another hour and another hour'*. Eventually she called the officers who told her they had been pulled away by something else and would be late. By 9pm the police still had not arrived, and Nicole's support person had to leave. Police eventually arrived at 10pm. Nicole reflected that she *'probably [would have] been better off just going into a station'*.

The experience for others was also problematic. In one PROMIS case, where the victim attended a station to report an offence that had occurred sometime within the previous two years, police recorded having *'informed [Victim] there was an online reporting system with historical sexual assaults'*. The victim *'advised she really wanted to talk with someone'*. Alternative mechanisms of reporting are not intended to prevent victims from reporting in other ways, but rather to encourage increased reporting, including potential information only reports, where victims do not want to speak with police (Loney-Howes et al., 2022).

Maz reported historic child sexual assault using the online reporting system. While he was glad that another alternative reporting mechanism existed as an option for him, he also found the process onerous:

> **'Umm, I tried to fill the form in a couple of times, but it was just massive. Like, if the abuse went on for any sort of time listing things like people involved is enormous…places and incidences and I'm thinking do I have to write it all down [or] just a little bit?' (Maz)**

He continued by explaining the impact of the pressure to provide a complete account:

> **Maz: 'I felt I had to write everything down, everything I could think [of].'**
>
> **Researcher: 'What were you worried would happen if you didn't write everything?'**
>
> **Maz: 'I thought maybe they wouldn't believe me.'**

Although the PROMIS case relating to Sophia's report cites that she phoned police, she described attending the police station, only to be turned away. Sofia was reporting a very recent sexual assault that had occurred the night before. Yet, she was told that there was no one at the station that could take her report. Like in Alex's case, Sofia's matter was incorrectly marked as non-penetrative:

> **'They kind of said, "Look, sorry we can't take a statement right now"… they said they didn't have staff. Yeah so no one could have taken a statement from me then. But they also had kind of said that it would be more organised coming in the next day and whatever.' (Sofia)**

Sofia did attend the next day, and officers identified that a medical examination was required. They took Sofia to FAMSAC. This was not offered the day prior when Sofia had first attempted to report. Sofia shared that the officer had asked her whether she needed medical attention, but she understood that to be more about serious physical harm, so she said no:

> **'I wasn't like, injured to a point where I needed or I didn't think I was injured to a point where I needed medical assistance. I was physically fine and safe. So… I said no.' (Sofia)**

It is likely that forensic evidence was lost here, as according to the *FAMSAC Guide of Collection of Forensic Samples* (2020), supplied to the researchers by ACTP, the 'cut off' time for collecting the samples relevant to the disclosed offending is 12 hours where the victim has not washed.

Experiences of the initial report were positive for some people:

> **'I felt relieved. I felt glad I'd done it… They're going to check it out. They're going to let me know. And like, I've done the thing that I was supposed to do. And I can kind of like move on from this now. … It's in motion now, and I've done the right thing.' (Casey)**

This feeling did not continue for Casey though. By the end, she felt very different. When asked how she felt now, she said:

> **‘Honestly, to be honest, not a whole lot. I was kind of like... there was a period of waiting for them to get back to me. And then by the time I kind of realised that they wouldn’t, I’d moved on.’ (Casey)**

Regardless of whether the overall experience was positive or negative, many participants spoke about the kindness of the officers they spoke to. Nicole, who overall had a bad experience of that initial report as discussed before, said that the officers who eventually attended were *‘really nice, actually’*:

> **Nicole: ‘So, two police officers came – a male and a female one. The female one was really nice, actually. She was really good, quite supportive. The male one was, I mean he wasn’t nasty or anything, he was a bit inexperienced, I think.’**
> **…**
> **They were really gentle with their questions.’**
>
> **Researcher: ‘So did you feel like you were being heard and listened to during that process?’**
>
> **Nicole: ‘Yes. I didn’t get any of those like horror story, old white men telling you “Your skirts too short”, kind of thing. None of that happened.’**

Farrah expressed overall satisfaction with her communication with police. Phoebe shared that *‘the officer at SACAT was absolutely amazing’*. Others agreed:

> **‘The police officer was very caring, he told me what happened to me was not right and awful – it feels reassuring to hear that they also think that it was awful – he explained the process to me and kept me in the loop.’ (Kirra)**

> **‘The police were great … They were humane … They were gentle, it was good.’ (Maz)**

> **‘They were extremely supportive, they were understanding … They never ever made me feel like I was making things up or that I was doing the wrong thing. It was always very, very supportive. So I can’t speak highly enough of them.’ (Ash)**

Investigation

A majority of adult sexual assault matters first reported to ACTP included at least one offence that occurred within the ACT (n=158, 96.5%). The remaining cases (n=6) involved offending that exclusively occurred interstate or overseas. In one of those cases, ACTP were tasked with conducting an interview with the victim on behalf of another Australian police jurisdiction. In four cases, a referral to the appropriate Australian jurisdiction was made. Thus, in 158 adult sexual assault cases, ACTP had the sole responsibility for investigation. Six reports of child sexual assault were referred to another jurisdiction, leaving 94 cases where ACTP were the sole agency responsible for investigation.

Where an officer deems that an offence has been disclosed, PROMIS requires them to record the relevant offence. This is referred to here as 'attaching' an offence to the case. Offences are attached via a drop-down list. This list does not align with offences laid out in the *Crimes Act.* For example, in cases where the reported conduct aligned with what one might call rape (i.e. a penetrative sexual offence against an adult, capable of consenting), various offences were attached to PROMIS cases, including 'sexual intercourse – no consent', 'sexual assault – other' and 'indecent act – no consent', none of which reflect the language of the *Crimes Act*.

Although many cases included multiple discrete offences, including sexual and non-sexual offences, details of all attached offences were not always accessible to the researchers. Reporting on the 'lead' sexual offence, simply the sexual offence first listed on each PROMIS case, is sufficient to give insight into some patterns. PROMIS also revealed those matters where police did not attach any offence to the case. This may occur, for example, if police determine that no offence has occurred.

A vast majority of the cases of adult sexual assault were labelled with the offence category of 'sexual intercourse – no consent' (n=138, 85.3%). 'Sexual assault – other' was recorded against 14 cases, and another three were listed as 'sexual intercourse without consent – reckless'. Eight matters were variously labelled with an offence category denoting an indecent act, which is a non-penetrative offence. It was confirmed that no penetrative offences were otherwise attached to those cases. All of the 164 cases reported on here were carefully reviewed by the researchers, and determined to be reports of adult sexual assault. As such, there is no reason for the cases not to include at least one penetrative sexual offence.

Sexual offence	Number of cases
Sexual Intercourse – No Consent	138
Sexual Assault – Other	14
Indecent Act – No Consent	6
Sexual Intercourse Without Consent – Reckless	3
Indecent Act/Assault	2
No offence recorded	1
Total	**164**

Table 7: Offences recorded in adult sexual assault reports

As seen in Table 12, one matter, did not have an offence attached. The victim in this case (Peter Parker), alongside her mother and sister (May Parker and Ms Marvel, respectively, who supported her in reporting to police), participated in an interview for this project, and disclosed sexual offences to the lead researcher. In this case, the original incident type was recorded as 'sexual assault'. It was later confirmed by police as 'check welfare/premises'. Entries in PROMIS indicate a

lack of belief in the victim, who was aged 16 at the time of the offence and had been supplied drugs and alcohol by the suspect and another person (not recorded as a suspect). For example, the PROMIS case notes that the victim was manipulated by the suspect and the accomplice but that the *'victim stated that she was not under duress and not forced to comply'*. Peter Parker, May Parker, and Ms Marvel are all protected persons on Family Violence Orders where the suspect and accomplice are the respondents. This case was recommended by the lead researcher for reinvestigation.

For cases of child sexual assault, 52, or just over half, attached at least one offence of 'sexual intercourse – person less than 16 years'. For 39 of these, this was the only listed offence. A further 26 PROMIS cases included at least one offence of 'sexual intercourse – no consent' with 23 including this as the only attached offence. A range of other offences were listed across the child sexual assault cases. These included:

- Incest
- Sexual assault – other
- Indecent act – person less than 16 years
- Indecent act/assault
- Common assault
- Abduction for sexual intent
- Use carriage service to menace/harass/offend
- Indecent assault on female
- Carnal knowledge with girl between 10/16 years
- Maintain sexual relationship – young person

In more than half of other adult sexual offence reports (n=56), at least one of the offences related to an act of indecency without consent (including 'indecent exposure' or 'indecent act/assault'). A vast range of non-penetrative sexual offences can be captured in PROMIS, which is reflected in matters of other adult sexual offence cases.

In the cases reported on here, this included:

- Act of indecency without consent
- Indecent exposure
- Indecent exposure/act
- Indecent act no consent
- Indecent act/assault
- Act of indecency w/o consent/recklessly
- Common assault
- Non-consensual distribution of intimate images
- Intimate observations or capturing visual data etc (images)
- Internet crime (pornography)
- Non-consensual distribution of intimate images
- Sexual assault – other
- Offensive behaviour
- Chokes, suffocates, strangles, another person
- Incest

Almost 70 per cent of other child sexual offence reports (n=29) were related to an 'indecent act against a person less than 16 years of age'. Other child sexual offences also included a broad range of offence types, including:

- Non-consensual distribution of intimate image of young person
- Indecent act – person less than 16 years
- Internet crime (pornography)
- Indecent exposure/act
- Use carriage service to transmit child pornography material to self
- Indecent exposure/act
- Possess/control child abuse material using carriage service
- Indecent act no consent
- Act/indecency presence of person under 16 years
- Indecent act/assault

Forensic medical examinations

Where forensic evidence may be present, AFP policy dictates that, with the consent of the victim, collection of such evidence should be prioritised, and victims should be taken to the Canberra Hospital to the FAMSAC unit or the Child at Risk Health Unit (CARHU). FAMSAC are able to conduct a medical examination and treat victims, 15 years and older, who have been sexually assaulted in the previous five days. Victims under 15 years of age should be accompanied to CARHU by either an ACTP member or a representative from CYPS, or both (*ACTP Better Practice Guide*, 2022).

Of all reported adult sexual assaults, 46 were referred to FAMSAC. In 108 cases, no FAMSAC referral was made and in 10 matters, insufficient information was recorded in PROMIS for categorisation. Of the 118 cases that did not include a FAMSAC referral or insufficient information was recorded, 58 were identified as historical. However, 11 of those did not fit within the AFP definition of a historical sexual assault, defined as occurring more than six months ago. Historical matters and matters outside FAMSAC's shorter period of five days may not be referred to the unit, since there will be no forensic evidence that can be collected (*FAMSAC Guide of Collection of Forensic Samples*, 2020).

Thus, 60 cases that did not describe a referral to FAMSAC were recorded by police as non-historical, although 15 of these were historical reports. As such, 45 were reported adult sexual assaults that occurred within the past six months. Seven were reported within 24 hours, and eight more were reported within one week of the incident. Alex's experience illustrates. She reported sexual assault within 24 hours. She was still wearing the clothes she was wearing during the offending.

Officers immediately conducted a recorded formal interview with Alex. Despite disclosing pain as a result of the reported conduct, Police never took Alex to the hospital or to FAMSAC.

After concluding the interview, police collected her clothes. Alex, who participated in an interview for this research, recalls an officer warning her that the forensic examination of the clothing would take a while since *'there are more important cases...or more serious offences'*. After taking her clothes, police suggested that she attend Canberra Hospital, where FAMSAC is located.

Alex described feeling worried that her family may be concerned about her whereabouts, since it had now been several hours since she first attempted to report to police:

> **'They offered, they said that if I wanted, I could go to Canberra Hospital and get medical testing done. But I'd already been... with the timing and everything, I've already been away from my family for, you know, quite a while. I hadn't told them where I was … because I hadn't quite expected it to take so long. And then my friend had driven me to the police station. I didn't want to impose on her, asking her to take me to Canberra Hospital after all this had happened.' (Alex)**

For Alex then, there was no opportunity for forensic medical examination. This is similar to Sofia's experience, described above, where a request by police to 'come back tomorrow' to report is likely to have contributed to a decay of forensic medical evidence. For Sofia, who had reported that her drink had been spiked, it was later that

she realised that the failure of police to prioritise medical forensics may have impacted on her case. She initially made contact with police the day after the incident and reported her suspicions of drink spiking immediately. At interview, she said:

> **'…through my own research, particularly with spiking, it seems like [timely testing] is really quite important a lot of the time. And it wasn't done, and I don't think that they were sitting there going, "We're gonna not do [testing] so that she can't go through [with the case]" and "We're gonna make it hard". But, you know, it wasn't, it wasn't a priority. It wasn't the most important thing to them.' (Sofia)**

Another PROMIS case reveals that a victim reported to an ACTP police station within a few hours of the incident and was told *'if this matter was to proceed, she should immediately take part in a sexual assault forensic examination'*. Police did not escort her to the hospital, and the case was closed without referral to SACAT.

Of all matters of child sexual assault, 10 per cent (n=10) were referred to FAMSAC or CARHU. Two of these matters were confirmed to be historical reports. In these two PROMIS cases, a medical examination was used to determine whether there were signs of historic penetration (including whether the *'hymen was intact'*). In 90 cases, either no referral or no information about referral for a medical examination was noted. Of these cases (i.e., those where a FAMSAC/CARHU referral was not made), 70 were confirmed to be historical based on the case narrative, recorded in PROMIS. The remaining 20, however, included cases where the victim had reported within 24 hours (n=2) and within one week (n=5) of the offence occurring.

One victim-survivor spoke about her experience with the hospital at interview. Olivia shared that she attended Canberra Hospital prior to reporting to police, and immediately after the incident. She described the experience as *'a pretty awful situation'*. Upon arriving at the hospital, there was no opportunity to discretely indicate what she needed. She showed the person at reception a message typed into her phone, then sat in the waiting room for about half an hour until a doctor arrived. The doctor seemed to Olivia to have *'no idea on the processes whatsoever'.*

Olivia was unsure whether she wanted to report to police, but sharing this uncertainty with the doctor changed what happened next:

> **'I said to her, like, "I'm not sure if I want to report to police or not yet." And she said, "Well, we're not doing any swabs then or a rape kit, unless you're going to report it", and I figured that might just be the process.' (Olivia)**

The doctor told her she needed to come back in two weeks, in order to screen for sexually transmitted infections. By this point, any report to police felt futile to Olivia.

> **'I was like, well what's the point of reporting this to police now because there's no physical evidence other than the fact that I showed up and was willing to put myself through a whole lot of antibiotics.' (Olivia)**

Sexual Assault and Child Abuse Team

According to the *ACTP Better Practice Guide* (2022; 4) SACAT are responsible for investigating:

- the penetration, to any extent, of the genitalia or anus of a person by any part of the body of another person or by an object;
- the introduction of any part of the penis of a person into the mouth of another person (fellatio);
- cunnilingus;
- sexual offences committed in circumstances which suggest a serial offender; and
- child abuse (physical assaults), acts of indecency and sexual offences on children (under 12 years of age).

Further, and contrary to what has been explained to the researchers, the *ACTP Better Practice Guide* expresses that 'not all offences of a sexual nature or those that involve children are by default referred to SACAT'. Patrol level, or general duties officers, have the responsibility to investigate:

- acts of indecency of a person aged 12 years and over;
- indecent exposure offences;
- intimate observation or capturing visual data offences (e.g.: up-skirting), contrary to section 61B of the Crimes Act 1900 (ACT); and
- child abuse matters of a person aged 12 years and over (ACTP Better Practice Guide, 2022; 5).

According to this guidance, all cases of adult sexual assault and child sexual assault should be investigated by SACAT. Yet, this was not what occurred. Of reported adult sexual assaults that ACTP were responsible for investigating (n=158), 32 (20%) were not referred to SACAT and were instead investigated by general duties officers. None of the cases that remained with general duties officers proceeded to charge. The remaining majority of cases (n=126, 80%) were referred to SACAT.

Typically, cases were not referred to SACAT since the victim had stated that they did not want to make a formal, recorded statement. Some of these cases are 'information only' reports, where the victim reports so that the police are aware of the incident, often in case the suspect has a history of sexual offending or in case they sexually offend in the future. In others, the victim withdrew their engagement with the investigation early, including at report.

Case notes for one matter not referred to SACAT state that there is *'insufficient evidence to refer [the] matter to SACAT at this stage'*. It is unclear whether the general duties officer had spoken with a SACAT officer or team leader in making that determination. No operational guidance or policy made accessible to the researchers referenced a threshold for referral.

In two of the 32 adult sexual assault cases that 'stayed' with general duties, a referral to SACAT was attempted. The referrals were declined. In one of these, the case notes state that the case *'was initially referred to SACAT, however later determined to stay with patrol as the offence cannot be substantiated at this time'*. The other cites the reason simply as *'SACAT liaised with, [general duties] informed that matter does not need to be handed over at this stage'*.

Of child sexual assault reports that ACTP were responsible for investigating (n=94), 79 cases were investigated by SACAT. The remaining either stayed with general duties or patrol officers (n=13) or were referred to another team within the Criminal Investigations (CI) portfolio (n=2). Thus, 16 per cent of child sexual assault cases were not investigated by SACAT. Like with adult sexual assault, none of the cases that remained with general duties officers proceeded to charge.

Information recorded in PROMIS in relation to one case investigated by another team within CI included detail that: *'due to operational constraint matter has been sent to [other CI team] for investigation'*. In another case, a report of a historical child sexual assault, the victim was interviewed by a specialist team in relation to potential similarities between the victim's report and a long-term unsolved crime. In this case, officers viewed the victim as merely evidence in a matter they perceived to be more pressing. The victim in this case, Maree, was never treated as a victim-survivor in her own right. This meant that she also did not have access to the supports that she is entitled to, such as having someone with her when she spoke to police. Maree shared her views in an interview for this project:

'I had a [redacted] detective in my lounge room, I think 2 days later doing a formal taped interview and you know like full on, full on. The good thing was that she had worked in sexual assault before. … So, she was pretty good. However, she didn't tell me as I later found out that I could have had a support person with me or anything like that, and I'm pretty unhappy about that because it was, it was pretty…it was all very difficult.' (Maree)

Maree added that the officer did ensure that CRCC contacted her. When asked whether the police were focused on her experience of sexual violence, Maree responded:

> **'Oh no. They were gathering evidence for the cold case, definitely.' (Maree)**

In two other child sexual assault cases, the justification for not initiating a referral to SACAT was that the victim indicated they did not wish to make a formal statement. In one case, which included multiple victims, SACAT was briefed on the reported offences however it was recommended that police do not approach the victims as it may cause further trauma, and it was unknown if the victims were seeking psychological support. Notably, five cases that were not investigated by SACAT either noted that SACAT would review, would later be briefed or had been liaised with, but no referral followed.

As noted, cases that were not referred to SACAT generally stay with general duties officers for investigation. Typically, matters than are non-penetrative offences against adults will not be referred. For some victims, this felt like police did not think their experience was serious:

'They told me that, like…it would be staying with [general duties], it wouldn't be going to the sexual assault unit…because it was too minor. I felt a bit … should I not have said anything…am I making a fuss out of, like…nothing'. (Zara)

'ACT has like a sexual assault unit. My case never went to them and they never explained why. … It sort of made me feel like they didn't [it] take that seriously. That they didn't think that [it] was that serious.' (Nicole)

For Nicole, comments made by police reinforced her suspicions that police did not take her case seriously because the incident did not involve penetration. She shared:

> **'One of the things the police officer actually said to me which was a really backhanded compliment was "Oh yes, I read through your case and I'm really surprised. It's good as most people wouldn't go to the police for something like this".' (Nicole)**

Ebony's case was also not referred to SACAT and closed at report. According to PROMIS records, this was at her behest. However, Ebony who was 14 years old at the time of report, describes that her *'report got thrown out'*:

> **'And then like 10 minutes into the conversation, they decided and basically said, "We're done now". They told me to leave.' (Ebony)**

As mentioned, the *ACTP Better Practice Guide* states that patrol level, or general duties officers have responsibility to investigate 'acts of indecency of a person aged 12 years and over' and 'intimate observation or capturing visual data offences'. This means that some cases in the 'other adult sexual offences' category will remain with general duties officers. Indeed, 79 (or 94%) of cases in this category were investigated by general duties. The remaining five cases were investigated by SACAT.

Of the cases that remained under the responsibility of general duties, seven of these had SACAT input, including advice on alternative investigative avenues, or a SACAT review to endorse case finalisation. In one case, SACAT was referred the case for intel for a larger operation, but no SACAT investigative activities were recorded.

Further, the *ACTP Better Practice Guide* (2022; 4) states that the ACT Joint Anti-Child Exploitation Team (JACET) is responsible for investigating:

- offences relating to internet crime, in particular child abuse material and grooming offences;
- the dissemination of Child Abuse Material (CAM)/Child Exploitation Material (CEM) by adults over internet-based platforms; and
- the production and capture of CAM/CEM.

As such, all child exploitation-related crimes should be referred to and investigated by JACET. One exception exists. In cases where a person under the age of 18 years disseminates child abuse or child exploitation material, case facts will be reviewed to determine the appropriate investigative team.

In the category of other child sexual offences, there were eight matters with an offence type relating to child abuse material or child exploitation material. One of these cases was investigated by JACET, and one was led by SACAT. The remaining six were investigated by general duties. In three of these, PROMIS confirms that JACET were notified of the offences. JACET either reviewed the finalisation, were *'given a heads up'* but did not take *'carriage'* of the investigation. In one case, records show that JACET had *'stated they will not be able to take on the matter'*.

Seventeen of the other child sexual offence reports were investigated by SACAT. These cases primarily related to offences of indecent acts against a person less than 16 years. One was in relation to 'internet crime (pornography)' and in another, there were no offences attached.

In two cases relating to an act of indecency against a person under 16 years, a referral to SACAT was attempted, however, the matter was sent back to general duties and proceeded with *'assistance'* from SACAT. In total, general duties had the sole responsibility of nearly 40 per cent of all investigations of other child sexual offences (excluding those where SACAT or JACET were notified or assisted).

Meet and Greet

Prior to conducting an interview with a victim of a sexual offence, known as an Evidence-in-Chief Interview (EICI), ACTP practice is for SACAT officers to conduct a 'Meet and Greet' with victims. A comprehensive 'guide' supports officers in conducting these conversations, though experienced officers may conduct these meetings without the assistance of the guide. The researchers had access to the most recent version of the guide, labelled as last modified in 2023.

The *ACTP Better Practice Guide* outlines the approach to investigations of sexual offences. According to the guide, the three primary objectives of investigation are (1) lawfully gather evidence; (2) identify and charge offenders; and (3) achieve a successful prosecution. As the guide says, the 'needs and welfare of the victim are paramount'. ACTP seeks to operate under 'trauma-informed and victim-centric principles', where officers 'ought to be guided by their victim's desired outcomes and ensure victims' rights…are kept at the forefront of their minds' (*ACTP Better Practice Guide*, 2022; 4). This, however, was not always achieved; the Meet and Greet process illustrates.

As the name suggests, this practice emerged as a way to build rapport between the Case Officer and the victim. It also offers a mechanism to explain the investigative process to victims. The guide clearly states that 'an investigator can stop the Meet and Greet at any stage below to obtain an EICI, if this is the preference of the complainant/victim' (*Meet and Greet Guide*, 2023).

According to the PROMIS records, in adult sexual assault cases that ACTP was responsible for investigating (n=158), a Meet and Greet was conducted in 58 per cent of matters (n=92). In the remaining, a Meet and Greet was either not conducted or there was insufficient information to determine whether such a meeting occurred. In some of the cases (n=21), although a Meet and Greet may not have been completed, the investigation progressed and an EICI was recorded.

Similarly, of cases of child sexual assault, where ACTP were responsible for investigating (n=94), a Meet and Greet was completed in 63 matters (67%). In 31 matters, a Meet and Greet did not occur (i.e. the case did not progress to that point) or there was insufficient information recorded in PROMIS to make a determination.

Of reports of other adult sexual assaults that were either investigated by SACAT or where SACAT assisted in or consulted on the investigation (n=12), four victims participated in a Meet and Greet, including those where investigations were initiated by another police force (such as an interstate or international police agency). In eight PROMIS cases, Meet and Greets were not stated or referred to in the commentary. There were no cases investigated by general duties where a Meet and Greet was recorded.

Considering the other reported child sexual offences investigated by SACAT (n=17), eight victims participated in a Meet and Greet, two victims did not, and in seven, no information was noted. The remaining case involved no direct victim.

Police initiated case closure at or after Meet and Greet

Concerningly, there is little oversight over Meet and Greets since they are not recorded and often little information about the conversation is captured in PROMIS. However, evidence from the PROMIS cases and from the consultations identify some concerns about the practice. Of

adult sexual assault cases investigated by ACTP where a Meet and Greet occurred (n=92), 25 were closed after this meeting, but before the next stage of the investigative process, the EICI.

Eight of those cases were closed by police (see discussion of case closures in the following chapter). Four refused to participate in a formal interview (EICI). In one case, the offender was deceased. Two cases were deemed 'unfounded'. In one case, police determined during Meet and Greet, that there was *'insufficient evidence to prove [the offence] beyond reasonable doubt'*. The victim was told that the matter would be closed. The PROMIS report states:

> **'A meet and greet was conducted and a detailed explanation that the offence needs to be proved beyond reasonable doubt and the accused had to have knowledge or be reckless to that knowledge that the person had not consented.**
> **...**
> **[Case Officer] explained to victim that 'there is insufficient evidence to prove beyond reasonable doubt.'**

Yet, the Meet and Greet happens *before* any investigation. The decision in this case was made on the basis of the Meet and Greet conversation with the victim. Police notes reflect that '*she stated that "maybe if he did hear her, he would have stopped" but she is not sure because he seemed different that night' (grammar added)* and that *'he verbally said to her [that] he didn't hear anything'*. The victim was recorded as responding that *'she understands... but is sad that is how the system works'*.

A similar picture is drawn by reference to the child sexual assault reports. Of those where a Meet and Greet occurred (n=63), 21 cases were closed after this stage. They did not proceed to EICI. Seven were closed by police.

One case was closed because there was *'insufficient evidence to proceed with [the] investigation'*. The victim in that case had prepared a written statement, but otherwise declined to participate in an EICI. Three did not proceed after Meet and Greet because the victim refused a formal statement and four were deemed 'unfounded'. In one of these unfounded matters, the PROMIS case notes detail that the *'likelihood of a successful prosecution in the future is low. Police have been unable to locate any corroborating evidence which would be able to substantiate [the victim's] initial version of events.'*

Yet, no EICI or further investigation to identify any other evidence was progressed.

Victim withdrawal at Meet and Greet

Although Meet and Greets were seemingly originally conceptualised to offer a less formal initial touch point between victims and Case Officers, evidence laid out above has shown that they are not currently being used in this way by police. Alongside the cases closed by police after or during Meet and Greet, some cases were closed at this time by way of 'victim withdrawal'.

Of adult sexual assault cases, 17 matters can be categorised this way. This includes active withdrawals, where victims expressed their wish to cease engagement with police (n=11) immediately after or in the days after the Meet and Greet, and passive withdrawals, such as where cases were closed when calls or emails went unanswered and unreturned by victims (n=6).

As noted above, of the 67 cases of child sexual assault where a Meet and Greet was conducted, 21 cases did not progress to the EICI stage of the investigation. Fourteen of these cases were noted as constituting a 'victim withdrawal'. Four of those were a 'passive' withdrawal, where contact with the victim was cut-off. One of those victims was 15 years old. Eight of the fourteen cases were active

withdrawals from the victim, and one was an active withdrawal by a parent on behalf of the victim (aged 13 years). One case was withdrawn by a government service on behalf of the victim (aged 14 years).

A review of the current *Meet and Greet Guide* (2023) identifies some possible drivers of victim withdrawal at this stage. Although the guide notes that 'welfare is priority' (*Meet and Greet Guide*, 2023; 1), the language of the document itself is problematic. For example, it instructs officers to 'explain that some find [the investigation] it to be mentally and physically traumatic'. Even so, the guide does not provide meaningful information about supports that can be put in place to avoid or minimise this. For example, nowhere in the guide is it noted that the victim can have a support person present in an interview.

In the current version of the *Meet and Greet Guide*, officers are instructed only to discuss court processes if directly asked by the victim. The researchers have been advised that this is a recent amendment, owing to identified concerns about the potential for information about, for example, cross-examination to discourage victims from continuing. This aligns with what many victim-survivors in interviews shared, and some of the correspondence included in PROMIS.

In one case, a Meet and Greet was conducted via phone, and the notes indicate that the police officer advised the victim that the discussion will cover:

> **'Prosecution may or may not be the best option'**
>
> **'Intimate details will be required to prove the offence'**
>
> **'EICI process'**
>
> **'Investigation process'**
>
> **'Court process'**

The victim did not wish to proceed.

In another, the victim was told (via email) about topics that will be addressed in the upcoming Meet and Greet. This included giving evidence in court should a trial eventuate. The email stated:

> **'If it does go to court, it is highly likely you will be cross examined, that's out of our hands but we normally record your complaint on video and it is played in court.'**
>
> **Generally you will not have to take the stand and if you are required to be cross examined, it can be done from another location and you will not have to see the POI face to face.**
>
> **That is only if the matter proceeds to court. We can go over it when / if you chose to come and speak with us.'**

These two examples from PROMIS demonstrate that court processes were being discussed with victims in 2021, when these cases were reported. The latter example indicates though, that it is likely that at least some officers were also sharing information about supports that can be put in place. Even where these supports are mentioned, the language is in parts inaccessible, using operational language like 'POI'.

Further, as participants shared in consultations, the takeaway message was that their report was unlikely to progress:

> **'And then that's when I chose not [to continue with the investigation], because I was also advised that it's like, a 2% chance that there'd be a conviction, like, as it stood.' (Olivia)**

For Abigail, police were clear from the beginning that the chances of progressing were low:

> **'I think at that meeting, they were very upfront about your chance of this going to court is very low. … [it] was very, very upfront from the beginning, before I have even given the interview, before they knew much about the situation, they were very upfront of "This is probably not gonna go anywhere".' (Abigail)**

The Case Officer repeatedly spoke to the lack of forensic evidence:

> **'[Case Officer] was like, "There are three, like, crime scenes. So, [we] need to collect evidence from you in the form of a rape kit", which I never got done. And then it was like, "Your clothes", because they…collect evidence from, you know, like if you kept your clothes and stuff, which were long gone. And then, the place where it occurred, you can collect evidence from like, the sheets and stuff.**
> **…**
> **He was pretty much like right from the start, he pretty much had this mentality of, "We'll do the investigation and I want to be here and I wanna support you and believe you and make you feel seen. But without one of those three things, nothing's happening".' (Abigail)**

Sofia also felt that the information given at the Meet and Greet stage was mostly negative:

> **'They told me that people often find it difficult, and that it is a long process and that it requires time and effort … The message that I got was that it was this kind of arduous, exhaustive process and that it can be re-traumatising and triggering for a lot of people.' (Sofia)**

Police also told Sofia that *'even if [suspect] did get proved guilty…it would take years [and] that they would likely be given kind of anger management counselling or something like that as the outcome of it'*. She felt though, that the officers were *'trying to be realistic and honest and open about that'*, but continued that, *'it was driven home quite early on'*.

While Sofia felt that the officers were trying to be honest with her and did not *'think it was malicious'*, she also said she *'didn't think that was their call to make'*, and that this narrative was *'the agenda they pushed'*.

However, it is clear that victims want information about the criminal justice process (Rudolfsson, 2023; Jordan, 2001). In consultations, victim-survivors told the researcher that they were glad that police shared their assessment of the criminal justice systems, as stakeholders who see it in operation.

Like Sofia, who felt that police were being honest and open, Olivia was glad that police shared their views with her:

> **'I thought it was better that they told me because I would have, yeah, I would have had a horrible, horrible time over the years for him to get nothing.' (Olivia)**

Other victim-survivors agreed and expressed that police were clear during Meet and Greet that the victim has control over the investigation and how it progresses:

> **'He outlined basically, that I had to a large extent, control over what happens next. He was like, "We can do this and then you can pause it. You can stop".' (Wendy)**

They were also clear that at a certain point, the control is lost:

> **'He kind of said, "There's a point at which if it's happening, it's kind of happening but you'll be kept informed. You'll be giving the go ahead," which was very reassuring, because I felt it wouldn't like, gallop away without me.' (Wendy)**

Problematically though, at times, officers gave conflicting information or information that was ill-informed. Again in Aya's experience, the Case Officer told her that police *'could help [her] get a protective order'*.

Aya shared the advice police gave her about Personal Protection Orders:

> **'She also had mentioned to me that if I got a protective order, the perpetrator would be aware that I was speaking with police. So, she did say that was like, something that would happen as a result of that.' (Aya)**

Aya described that she had existing views about the challenges of a criminal sexual offence trial prior to speaking with police. She *'knew about court…and friends that had gone through with [court], and [knew] that it was going to be just an exercise in self-harm'*.

Some victim-survivors noted that they were not advised of the supports that can be put in place for victims of sexual offences. If they were told, sometimes the information was not sufficient – or perhaps not accessible enough – for the fear of the process to be mitigated. The current *Meet and Greet Guide* notes these supports and special measures exclusively in relation to the court process. Further, the guide uses largely inaccessible language about these measures, that may not be well understood by victims unfamiliar with the justice system. The guide also neglects to cover the potential for tailored supports for people with a disability, people from culturally and linguistically diverse communities or for Aboriginal and Torres Strait Islander people who have experienced violence. This aligns with the underutilisation of these supports across the dataset as a whole.

There is thus a crucial balancing act in the provision of this information. Victims are entitled to sufficient information to make informed decisions, without causing fear (Jordan, 2001). Information should be shared in a way that validates their lived experience of violence. But importantly, a lack of information and feeling uninformed undermines the victim-police relationship, which is a significant driver of victim withdrawal (Rudolfsson, 2023; see also Victorian Victim of Crime Commissioner, 2023). As such, information about the criminal justice system, even where it is unfavourable, is a protective factor against victim withdrawal.

Evidence-in-Chief Interviews

The ACT has introduced a range of 'special measures' for victims of sexual offences. One such measure allows for the victim's statement to police to be admitted in court as their evidence-in-chief if the statement is audio and video recorded (s52 *Evidence (Miscellaneous Provisions)* Act 1991, herein *'Evidence Act'*). This measure has been used in the ACT since 2008. Originally, it was limited to victims who were children at the time of the recorded interview and victims with an intellectual impairment. Since amendments made to the *Evidence Act* by the *Crimes (Domestic and Family Violence) Legislation Amendment Act 2015*, the audiovisual recording of police interview conducted with any victim of a sexual offence (or family violence) has been admissible as their evidence-in-chief. That is, it is played in court in a criminal trial before a jury. The prosecution is able to ask further questions of the victim as supplementary evidence-in-chief. In the ACT, this pre-recorded formal statement for use in court is referred to as an Evidence-in-Chief Interview (EICI).

An EICI was conducted in just over half (n=88, 56%) of all adult sexual assault cases that were investigated by ACTP. Where a Meet and Greet was conducted in these matters (n=92), 73 per cent of victims (n=67) also participated in an EICI. Thus, 21 victims recorded an EICI without a clear Meet and Greet process. As noted, 25 matters where a Meet and Greet was conducted were closed after the meeting, and as such no EICI was recorded. In some cases, insufficient information was noted in PROMIS to identify whether an EICI was completed.

Across all child sexual assault cases, 51 EICIs were recorded. Five of these were conducted either on behalf of another jurisdiction, or the case was referred to another jurisdiction for investigation after EICI. Thus 46 EICIs were recorded for cases where ACTP were the sole policing agency responsible for investigation.

In 35 cases, no EICI took place, and the matters were closed. In three cases, insufficient information was stored in PROMIS to determine if an EICI had been completed, although it is likely that some type of formal statement was taken in one of these cases, as it progressed to charge. Of cases solely within the jurisdiction of ACTP where a Meet and Greet was conducted (n=63), a third of cases did not proceed to EICI (n=21).

In the 12 reports relating to other adult sexual offences where SACAT investigated (including those where SACAT assisted in the investigation or were consulted with during investigative activities), eight victims participated in an EICI. In the remaining cases, one formal statement was obtained in another jurisdiction, two case finalisations stated that there was insufficient evidence to progress the investigation, and one remains open (inactive). Only seven of the 72 cases that were investigated by general duties proceeded to an EICI.

In the 19 reports of other child sexual offences investigated by SACAT (including those where a referral to SACAT was attempted but declined with assistance instead), nine victims participated in an EICI. In the remaining 10, SACAT did not conduct an EICI, but one included an interstate agency conducting a formal interview. Six of the 10 cases without an EICI were withdrawn by the victim, and one declined a formal statement. Of the remaining cases where an EICI was not completed, the case was either 'unfounded', finalised with insufficient evidence to proceed, or no offences were identified during the investigation prior to EICI.

Failure to investigate without an Evidence-in-Chief Interview

Some victims in the dataset declined to participate in an EICI. Of adult sexual assault reports, 10 cases were finalised due to the victim not wishing to participate in an EICI. This includes the four cases, noted above, where the victim expressed this at Meet and Greet, five cases that were closed at other points prior to Meet and Greet and one case that included a partial EICI, which the victim was unable to complete. In child sexual assault cases, nine victims expressed not wanting to give a formal report (EICI).

Concerningly, in cases where the victim refused to participate in an EICI, police advised victims that no further action could be taken, and the cases were closed.

The current AFP governance document, *Standard Operating Procedure on Interviewing Vulnerable Witnesses* (AFP, 2023; herein, the *'Standard Operating Procedure'*), outlines the EICI process to be followed in sexual offence matters. The governance states that officers should 'assess whether or not an EICI should be carried out' with the victim (AFP, 2023; 7). It continues:

> **Members should ensure a prescribed person (a police officer qualified to undertake EICIs) obtains an EICI as the primary form of a complainant or witnesses evidence in every instance where it is authorised... This is to ensure the complainant or witness can be afforded relevant protections under the [Evidence Act], including the ability for the EICI to displace the need for the complainant/witness to give evidence-in-chief testimony in court (AFP, 2023; 7).**

It also outlines protocol for electing not to conduct an EICI:

> **Circumstances may arise where an investigating member and their Team Leader determine that it is not appropriate to conduct an EICI. In such instances, the member should ensure they record …:**
>
> - **the rationale for any decision to not use a prescribed person; and**
> - **any attempts undertaken to locate a prescribed person.**
>
> **If a prescribed person is not required then a record of conversation or a witness statement can still be obtained.**
>
> **If a prescribed person is not available, consideration should be given to delaying any interview pending the availability of a prescribed person to conduct the interview in accordance with the [*Evidence Act*] (AFP, 2023; 7).**

The *Standard Operating Procedure* thus gives somewhat conflicting advice, open to misinterpretation. In some instances, the *Standard Operating Procedure* implies indeterminacy: a decision 'should be made' about whether an EICI is conducted, provisions exist for when they are not. At other times, the certainty of a fixed provision is expressed: Police 'should ensure' an EICI is obtained so that 'complainant[s]…can be afforded relevant protections' (AFP, 2023; 7). Importantly, the *Standard Operating Procedure* states that a record of conversation or a witness statement can still be taken in the absence of an EICI.

The document's points of indeterminacy align with the provision as set out in section 52(1) of the *Evidence Act*:

> **An audiovisual recording may—**
>
> **a. be played at the hearing of a relevant proceeding for the offence the subject of the proceeding; and**
>
> **b. if the recording is played at the hearing—be admitted as the witness's evidence in chief in the proceeding as if the witness gave the evidence at the hearing in person (emphasis added).**

In plain terms, according to the law, whether a recorded police interview is used as evidence-in-chief, is undetermined. It is allowed but it is not required. Despite this, the elements of determinacy of the *Standard Operating Procedure* are reinforced by the *Meet and Greet Guide*.

Under the subheading 'Welfare is the priority', the *Meet and Greet Guide* (2023; 1) states that officers should:

> **'Explain it is the complainant/victim's decision to make a formal statement or not, however investigators require a formal statement to pursue an investigation.'**

It reiterates, under the subheading 'Investigation process' that officers must:

> **'Remind them that a formal statement (EICI) is required to enable investigators to pursue an investigation' (*Meet and Greet Guide*, 2023; 2).**

This prompt is accompanied by a note to:

> **'Explain if the complainant/victim chooses not to make a formal statement (EICI) at the Meet & Greet stage, there is the potential to lose perishable evidence, for example forensics/ CCTV, etc.' (*Meet and Greet Guide*, 2023; 2).**

This further reiterates that investigations, including the collection of evidence that officers are aware is easily lost to time, will not commence until after the victim agrees to, and completes, an EICI. In other words, these documents indicate that ACTP have determined that victim participation in a recorded EICI is required for a reported sexual offence to be investigated. Officers will not gather evidence, including taking any steps to secure perishable evidence, until after an EICI with the victim is complete.

This was also evidenced in the PROMIS cases. In every case where the victim declined an EICI, the case was closed. EICIs were declined for a range of reasons. Some victims expressed that they did not want to participate in an EICI because they were struggling with their mental health or were concerned about the impact of the formal interview on their health. In one case, the officer noted that the victim was, *'not willing to provide an EICI at this time as her mental health is not in a good place and doesn't want to make it worse'*.

In another, the victim participated in a Meet and Greet and shared with officers that she had *'a number of issues to manage at this time'*. The victim in this case had reported sexual assault in the context of family violence, and so the *'issues'* she was dealing with related to resultant matters, such as housing and separation. The investigation ceased: *'She will co-ordinate with [officer] for EICI when she is in a better position mentally and emotionally. Investigation to be re-activated when complainant chooses to participate in EICI'*.

In another family violence-related report, police closed the matter citing:

> **'Until such time that further information is provided, such as a formal statement by the complainant, no further action to be taken by Police.'**

Police advised the victim to pursue a Family Violence Order and referred her to services. Yet, despite already giving an initial statement of facts to police, no investigation was commenced.

The victim in one case was deemed unable to participate in an EICI by the Case Officer. The notes reflect difficulty in communicating with the victim, and a Witness Intermediary was involved in identifying the best ways to facilitate this. Yet, no EICI was conducted seemingly owing to the ongoing difficulties. The case was closed, despite the fact that the victim had already disclosed details of the report, which were recorded in PROMIS. This included a partial identification of the suspect, including a phone number. There are no notes to suggest these leads were followed.

The notes in PROMIS state that *'Police observed [victim] to be intellectually disabled',* and later, she is referred to as displaying *'delusional behaviour'*. The Case Officer deduced that:

> **'Given this information and that the complainant has chosen not to participate in an EICI on three separate occasion[s] Case Officer is of the opinion the complainant is not ready to disclose to police the circumstances of this incident.'**

The case was recorded as 'complaint withdrawn by the victim'. Other cases include case notes that demonstrate that EICI is a mandatory starting point for investigation:

> **'No other avenues of enquiry to be followed up until after the EICI has taken place.'**

In some cases, this case closure occurred so early in the process that it was the basis for a lack of referral to SACAT. For example, one case noted:

> **'Given that [victim] did not wish to provide a statement therefore the matter was not referred to SACAT.'**

In this case, the victim told the officer, who recorded that note, that the reason that she did not want to make a statement was because she did not feel comfortable. The victim later contacted police again for support in dealing with the family violence that characterised her report.

Similarly, in another case, the victim was *'highly distressed and would not/could not provide further information to Police in regards to the incidents'*. Yet, the victim fully identified the suspect and reported multiple incidents of sexual assault. Instead of contacting specialist officers more equipped to respond to victims experiencing trauma, general duties officers resolved the matter and did not refer the report to SACAT.

One victim's reported sexual assault was discontinued because, after police handcuffed the victim when multiple attempts to transport her for mental health treatment failed, police determined that she was *'Anti-Police'* and thus they could not get a statement from her on the night. No further contact was made directly with the victim.

In another case, the victim originally told officers that she did not want to pursue the matter. A couple of months later, the victim presented at a police station and advised that she was ready to participate in an interview. The matter was referred to SACAT. However, it was not allocated to an officer for nearly two months. A Meet and Greet was conducted and again, the victim raised concerns about participating in an EICI. PROMIS notes that she was *'unable to commit to a decision'*.

This requirement for victims to undertake an EICI in order for an investigation to commence is problematic. Provisions in the law allowing for recorded police interviews to be used as a victim's evidence-in-chief, first introduced in 2008, aimed to ensure trials are 'less stressful and traumatic for victims of sexual offences' and to 'minimise the potential re-victimisation that [victims] can experience' (Hansard, 3 July 2008; 2667). When the law was broadened to include all victims of sexual offences, it was intended to 'reduce trauma to the victim caused by testifying in court' (Hansard, 24 September 2015; 3482).

Yet, as the review of PROMIS cases reveals, for some victims, this requirement to participate in a recorded interview with police early in the process was in itself, traumatic. And, for police, 'no EICI' means 'no investigation'. This was not the intention of the law. The impact is that victims who report to police, often overcoming barriers to do so, are faced with another prohibitor, this time to investigation. This is also despite that the ability for recorded police interviews to be introduced into a trial is a special measure. It is not a mandatory new element of sexual offence investigations. In reality though, victims in the

ACT are now given less choice about how they would like to give evidence, or what is best for them as an individual in their own circumstances.

This is not to condemn the use of EICI interviews. Hohl and Stanko (2015; 337) found that victims were less likely to withdraw from investigation, and cases were more likely to progress to charge, when they had an audiovisual recording of their statement taken to 'spare them giving live evidence-in-chief'. What is critical here is choice, and to be led by the needs of victims. Importantly, simply because a victim does not want to participate in an EICI, does not mean they do not want their report investigated at all.

Insufficient evidence to proceed beyond Evidence-in-Chief Interviews

Another cited aim of EICIs, to capture the 'best evidence' at the earliest possible point (McCulloch et al., 2020) is similarly unmet by current practice. In these cases, it was not uncommon that the first time that officers heard all the details of the report was during the EICI. This was particularly true for the details – victims had never been asked follow-up questions before that point. Since the EICI is also the first investigative mechanism, police are using the interview to identify potential avenues of inquiry. But, where any inconsistency was identified, or officers perceived that the cases had not been proven 'beyond reasonable doubt' on the basis of the EICI alone, cases were closed.

This does not align with the intended aim of the law. Introduced after a recommendation in a 2005 joint report by the DPP and AFP, *'Responding to sexual assault: The challenge of change'*, the rationale focused on the need to address the concerns raised where children give evidence, and in recognition of the length of time between report and trial. The report cites examples where children were reluctant to repeat disclosures to numerous criminal justice actors, or where their evidence was affected by the passage of time. As such, it is not the formal, scheduled interview that EICIs have become, that was envisioned. The operation of Family Violence EICIs by ACTP also supports this conclusion. In these instances, it might be the body worn camera footage of a victim disclosing details of the incident when police are called out that form the EICI. However, even here, the process operates under the principle that 'early evidence' is 'best evidence'. Yet, impacts of trauma on memory are well established (see also, Crocker, 2022).

Of the adult sexual assault cases, 57 were finalised after an EICI was conducted. This figure excludes those that were transferred to another jurisdiction and where the suspect was deceased. Twenty-nine of these were classified as 'unfounded', nine were categorised as 'insufficient evidence to proceed' and 17 were finalised due to victim withdrawal (including passive withdrawal). Two of the remaining matters were finalised after advice was received from the DPP. As noted above, in one matter, a partial EICI was conducted, but the victim was 'unable to continue' and the matter later closed because the victim could not complete the remainder of the interview. A fuller discussion of case closure is presented below.

Twenty-eight matters were finalised after EICI in child sexual assault cases with a living suspect where the matter was the responsibility of ACTP. Nine of these matters finalised with the category of 'unfounded', seven finalised due to 'insufficient evidence to proceed', and 11 were finalised due to victim withdrawal (including withdrawal communicated through a parent or agency). Like in the adult sexual assault case above, one matter closed because the victim became 'overwhelmed and upset' during the EICI and was unable to complete the formal statement.

Police deemed that cases should be finalised, as either 'unfounded' or 'insufficient evidence to proceed', for multiple reasons. In some cases, police determined that based on the EICI, no offence had occurred:

'At this stage there is no evidence to suggest non-consensual intercourse took place.'

'The information gathered to date is insufficient in proving the complainant was not consenting.'

In one of these cases, an officer's hand-written notes from the EICI read that the victim was *'crying, mumbling "please stop"'* during the offence. Notes show that she had photos of bruising and a bite mark. No photos were included on the PROMIS case. In neither of the above cases, was any further evidence to be collected.

In another case, PROMIS notes indicate that *'Nil offences were disclosed during [EICI]'*. Despite that the victim disclosed growing up in a *'strict religious household'* officers noted that the victim *'was unable to even say the word "vagina"'* during the interview. Officers continued that *'bizarre behaviour by [victim] came to light and it appeared that she was not able to distinguish between consenting sexual acts and sexual assault'.* Due to *'her failure to disclose any offences during EICI'*, the matter was closed. Notably, the victim had been examined by FAMSAC and the doctor advised police that *'she had nil issues with her mental health and did not refer her for a psych consult'*. Yet, police relied on their own observations to determine the victim's mental health and close the case.

Other matters were closed because police determined that on the EICI evidence alone, the offence could not be proven beyond reasonable doubt. In one case, involving a teenager under 16 years old, police notes reflect that the matter closed after EICI as:

'[Case Officer] is not satisfied the elements of the offence have been established. The initial sexual act was with consent and the [Case Officer] is not satisfied [suspect] acted recklessly in knowing that the victim had withdrawn her consent. The victim said nothing or did [not do] anything [to] indicate that her consent was withdrawn.'

A more senior officer, in signing off the finalisation of the case without further action, noted:

'Just had a look and I agree with your assessment. Only thing is that Outstanding Enquiries refers to any enquiries identified that haven't been completed, even if the intention is that you aren't going to do them i.e. the disclosure witnesses. Those are outstanding enquiries and should be listed in the Outstanding Enquiries section, with a short explanation as to why they are not being done. I.e. nil offences disclosed in primary evidence (EICI).'

Though the Case Officer has indicated that an offence was disclosed since there was a consideration (though, cursory) of the elements of the offence, the senior officer determined 'no offence disclosed', and it was formally closed as 'unfounded'. Despite that there were identified lines of enquiry, none were to be actioned based on the EICI alone.

Vera shared that her young son Riley did not repeat disclosures to police. There was little in the way of rapport building ahead of the interview. She described the devastating feeling of being *'told there's not enough evidence'*:

Vera: 'My son wouldn't talk to police about it.'

Researcher: 'Did they attempt another interview with [Riley]?'

Vera: 'No.'

Researcher: 'Was that ever discussed?'

Vera: 'No, no.'

Another case was similarly closed as 'unfounded', despite agreement that:

'[Case Officer] was of the opinion that there was an offence disclosured [sic] however the elements of the offence were unable to be establised [sic].'

Victim-survivor experiences of Evidence-in-Chief Interviews

Victim-survivors described their experiences of participating in an EICI with police in consultations for this project. Matilda described the room in which such interviews are conducted as *'daunting'*. She said of the room:

> **'It was the little, small room… cameras, lights, television screens. Everything. Everywhere. Yeah, it was very daunting. I wasn't expecting that. I was expecting just to tell my story, but not to have to give a formal statement. So, I was a bit shocked.' (Matilda)**

Diana described arriving at the police station for a scheduled appointment to be told by the police officer that he had forgotten to book a meeting room:

> **'So, then we were just ushered into a room, and he goes, "Ha! This is where we interview all of the offenders".' (Diana)**

Particularly owing to the way that EICIs are used by ACTP, that is, that EICIs are required for an investigation to begin and that they must reveal *'sufficient evidence to proceed with the investigation'*, victim-survivors expressed difficulty with this process.

Malia, who participated in an interview with her mum, Scarlet, was under 16 years at the time of report and discovered that her case was closed due to *'insufficient evidence'* being identified during her EICI. She shared that she had told police that she did not feel ready to participate in the EICI:

> **'Like … it was the truth, but it wasn't explained properly. I explained that at that time it wasn't the right headspace and I was just trying to like, rush it and like, not explain it properly cause I didn't wanna do it.' (Malia)**

She described feeling the weight of the responsibility for charges not proceeding and feeling like she 'failed' in telling the police what had happened:

> **Malia: 'And I kind of just fucked it all now.'**
>
> **Researcher: 'You didn't fuck it.'**
>
> **Scarlet: 'You didn't say anything that was wrong.'**
>
> **Malia: 'Yeah, but like, I wasn't ready to go talk about it. And now it's ruined.'**

This underscores the problematic nature of the current approach of ACTP – to use EICIs as the first point of evidence gathering in relation to sexual offences, with no other options available to victims. Victims are also never given an opportunity to initiate 'follow up' interviews, where they recall details or reflect that they may have left something out. In addition, police interviews aim 'to elicit as much fine-grained detail as possible – including peripheral details', so these victims might feel overwhelmed by the amount of information to be shared (Hohl & Conway, 2017; 253). In this context, details are left out. Rudolfsson (2023) has argued that allowing victims to correct errors in earlier statements or add details that were missed (including to EICIs) is important, and that police 'should address those contradictions in the spirit of clarification rather than disbelief' (see also Horvath et al., 2011). Yet, this is generally understood as a failure of memory, which has been found to impact on the perceived credibility of victims (Jordan, 2001).

For others, like Frankie, there felt like there was a *'disconnect'* in explaining to the two men who conducted the interview what had happened:

> **'And I think another big part of it is that especially when it's men that are taking these cases, I think there's a little bit of a disconnect. I hate to kind of separate us like that but… Not all men understand that, and especially when I'm sitting down and it's two men in an**

interview room with me and I'm trying to talk about things like what a woman has to go through … And the fear as women walking home alone at night or walking past this place or dealing with men. Not all men get that because they've not had to deal with it. And especially as a girl at a young age like I don't think they… you know.. maybe they think that we're just overreacting or something because we're young and it's just, well, no. Yeah, it's just how it is for us.' (Frankie)

Frankie continued that the process of the EICI felt *'intimidating'* and *'rushed'*:

'It was all very intimidating. And for, you know, a 16 year old to be there by herself, giving up this information to them, it all felt rushed. It felt just like wrong … It didn't feel like it was police trying to look after a young person. It felt like police just trying to do their job and I hate that. They're just doing their fucking job.
…
And as I said, like just being there… you didn't really feel like they were there for me. It kind of just felt like they were there for the information and then the fact that that information that I gave them, went nowhere. It just kind of. You know even if we didn't go to the courts… like that whole process was having to bring all of that stuff up again.' (Frankie)

Frankie also reflected that:

'When you haven't fully processed what has happened it becomes hard to tell the story over and over again, especially if it's in an environment that does not feel 100% welcoming and safe.' (Frankie)

Olivia shared that she felt like she was *'going through the motions'* in the interview. Her description joins the others in casting doubt on whether this process truly supports victims to give their 'best evidence':

'So I didn't really know anyone that was in the room. I also wanted it that way because I didn't want anyone that I knew hearing all the intimate details of the whole experience. It's just something that I've always wanted to keep to myself and to the interview. Like the interview was awful. It kind of just felt like it was going through the motions, but also I was sitting there going "Are they going to do anything?". It was so stressful and then I walked out of it going I don't even know if I told them everything.' (Olivia)

Olivia also reflected that she worried about this being her only chance to tell police every detail. She spoke to the pressure of having to get it right, that echoed Malia's experience above:

'But because it was video recorded, I was super self-conscious as well. Like, that I'm going to say something wrong or I'm not going to look like I'm sad enough. Like I was super worried about how I was going to look in a video that was going to be kept forever that I don't get to watch and see if there's anything I missed.' (Olivia)

With the benefit of hindsight, she feels like she would have preferred to have done the EICI *'in stages, rather than all in one hit'*.

Others found that officers explained the process of the EICI well, and while the questions where probing, they understood why they were being asked:

'I think when I did the interview thing the police officers seemed nice. And then she, uh, she did explain to me at the start like why she was going to be asking the question which she was going to be asking and why she was doing it in a very particular kind of way. And it was due to like some evidence and … like that would be permissible and all that kind of stuff. So, then I felt like I understood what was going on …She did I think, ask a lot of very specific questions about each moment. But like, I knew why.' (Zara)

Zara's reflection supports the findings of Brown et al.'s (2010) study, that purports that a victim's feelings of self-blame and their psychological stress are decreased when officers explain why certain questions are asked. Like Zara, survivor participants in Rudolfsson's (2023; 6) study found that while interviews were still 'an ordeal', the impact was overall less negative, and they were less likely to feel like they were not believed.

Communication between victims and police

While many victim-survivors expressed that individual officers they dealt with throughout the course of reporting and where applicable, investigations, were often kind and caring, this was juxtaposed with the process of communication with officers.

As laid out in section 16A(1) of the *Victims of Crime Act 1994* (ACT), police must give the victim an update about the status of an investigation at least every six weeks, and as soon as practicable after a change in the status of the investigation. This requirement had practical challenges, likely both for officers and victims.

Some cases demonstrate that this simply did not occur. For example, some victim-survivors reported a sexual offence, only to never be contacted by police again. For Tessa, the last she saw of police was when general duties officers came to her home and took a statement. She said that the officers *'were great'* and that the presence of a police officer who was a woman *'put [her] at ease'*. However, she continued that after they left:

> **'I never heard from them again'. (Tessa)**

PROMIS cases also show this:

> **'[Victim] has not heard anything from police since making her first report. She has tried calling on many occasions (twice per week) however has not received any return contact. The direct phone number provided on the calling card was incorrect.'**

Nicole shared that getting updates from police was difficult:

> **'I mean, the worst thing about it was that I just could never get an update, ever, ever, ever, ever. Like, I would just ask and ask and ask for updates and never hear anything.' (Nicole)**

Vera agreed:

> **'I got no updates. I would be texting…like, I know, I'm not her only client.' (Vera)**

Stevie expressed that she was not kept updated either, and the power imbalance between police and her 16 year old self meant that she was not comfortable asking:

> **'Yeah, I did [want updates], but yeah. And I didn't wanna voice that as well because I didn't… at 16, you don't really stand up for yourself a lot. And so, I wanted them to give me the option, "Do you want us to update you and do you want us to do this?" … not like leave it and have that open there.' (Stevie)**

Information about the case progression, and information about *when* and *how* police will make contact, have been identified as important for victims (Davies & Bartels, 2020; Skinner & Taylor, 2009). Importantly, the provision of information about their case can be understood as a factor that protects against victim withdrawal, since it is so closely tied with the level of trust victims hold in police. It also impacts their level of satisfaction, regardless of outcome, consistent with the principles of 'procedural justice' (see Hohl et al., 2022).

While for some victim-survivors hearing from police, perhaps even where there is no update to report, is important, for others this was a reminder that little was being done in relation to their report:

> **'So, the communication at times, he would call and kind of check in and touch base to see how [I am]. Which is nice, but it's like, I don't actually care to talk with you about how I am? I'm not interested in that. I want you to go and do the job.' (Sofia)**

When asked about how she felt about how police engaged with her along the process, Zara expressed:

> **'I felt very scared. Because I felt that they were turning on me a bit.' (Zara)**

For Pepper, updates were provided in person. But this meant that she regularly had to travel to meet the Case Officer at the SACAT offices. At times, repeated requests to present at the offices were made in the same day:

> **'I only got told what was happening when I went to the station. Yeah, there weren't emails or calls or anything like that from him. It was just, when to go to the station. But sometimes I would come home, spend 10 minutes at home and you call and [he would] say "Hey, sorry, you have to come back".' (Pepper)**

A significant clash occurred due to the nature of policing hours. Policing is shift work, so officers were not consistently available during predicable times. This was compounded when officers were moved off cases or went on leave. As a result, victims were expected to bend to the schedule of officers in order to attend appoints and answer calls. Amira shared:

> **'I went [to the station] myself with [my] children on a Sunday evening at 9:30pm because we need to compromise with the police officer's shift time. He refused to come to our house getting the statement because it's including a child statement. … The children had school the following day.' (Amira)**

Further, in recording the details of a victim and officer navigating the scheduling of an EICI, notes show that the Case Officer had no weekend shifts available for the remainder of the year that would align with the victim's work schedule.

This aligns with the experience of other victim-survivors, that while for them this was the *'most important'* priority, it was just a day at work for police:

> **'And I think, yeah, a big part of the trauma that comes from it, it seems not just for me, but for other people, seems to be in that disparity of it feeling like the most important, worst thing in my life at that time and to some of the people I talked to, it was kind of administrative.' (Sofia)**

For victims, a lack of information is akin to a lack of control, characteristic of sexual violence. This contributes to the feeling described by victim-survivors as the 'second rape' of the criminal justice system. So, while victim-survivors described officers on one hand as caring and compassionate, on the other, the lack of communication made this redundant.

Collecting other evidence

Few suspects were approached by police. Few cases also progressed beyond the point of EICI. Of all adult sexual assault cases that have been finalised, where the suspect is alive and ACTP were responsible for investigation (n=126), 46 cases had no recorded investigative activities listed. Thus, 37 per cent of all those cases were closed after report with no police action. Of all child sexual assault cases categorised the same way (n=74), 35 cases had no investigative activities listed. This is 47 per cent of those cases, closed with no police action. These numbers do not include cases where an EICI was conducted with no other activities.

Some victim-survivors described having to drive investigations forward themselves or even conduct investigative activities on behalf of police and expressed that this made them feel frustrated and unimportant (see also Rudolfsson, 2023). May Parker, who participated in an interview in relation to the report made by her daughter Peter Parker, described having to drive the case forward:

> **'I was almost pushing [police officer] to even get all these statements from all these people… So it was like, come on, you know, do your job. We just sort of felt like. Well, I felt like I was sort of doing a bit of pushing for them.' (May Parker)**

Her daughter, the victim in the case, agreed:

> **'I just felt like they weren't putting in effort that they could have.' (Peter Parker)**

Diana felt the same:

> **'And apart from actually following up to have a chat with [friend], there was really mostly just radio silence, so I ended up finding that I was chasing them.' (Diana)**

When victims did not actively assist police, they were seen to be dishonest:

> **'[Victim] did not assist the investigation and did not allow her clothing to be examined in relation to the investigation or to allow police to obtain a copy of the data held on her mobile phone. This lack of assistance raises doubt in relation to the honesty and reliability of a witness. DPP have noted this lack of assistance causes significant issues in relation to cross examination of witness[es] and material effects [on] the prosecution case.'**

The victim in that case, a teenager, had requested her clothing back two months after the report. This is not uncommon, and of course, the clothing belonged to her. PROMIS notes indicate that there was no intention to test the clothing at this stage. Similarly, a request to take the phone of a young person is no small ask and shows disregard to the victim's privacy. The case was marked as 'unfounded', the code most closely associated with a lack of belief that the report is true (see discussion below). Evidence from the UK shows that a high proportion of victims say that police did not explain why they were requesting their phones (Molina & Poppleton, 2020). This perceived lack of assistance may result from a lack of information provided by the police.

That this case was closed as 'unfounded' is perhaps unsurprising in light of research findings from over recent decades. Evidence has shown that victim cooperation with the investigation is

closely linked with case outcomes (see O'Neal et al., 2015; Spohn et al., 2014). This is unlike in other cases, where the victim is not necessarily situated as the driver of the investigation. As O'Neal and Hayes (2020; 28) have said, of sexual offence cases: 'when victims stop cooperating, the criminal justice system stops trying to arrest and prosecute suspects'. The findings of this study are consistent with this literature. As discussed, where victims expressed not wanting to (or, more accurately, not being ready to) participate in an EICI, reports were marked by police as 'withdrawn'.

In addition to the cases above, where opportunities to collect forensic medical evidence were lost when victims were not sent to FAMSAC or otherwise turned away, a number of PROMIS cases demonstrated that Closed Circuit Television (CCTV) footage was also often lost. This occurred even in cases where victims reported within a short time period. In some of these cases, police did not collect footage because they had not yet decided whether cases would be investigated:

> **'Decisions made not to secure the footage at this stage, pending the outcome of an assessment regarding whether the investigation will proceed.'**

One victim was told that the CCTV footage relevant to her matter would not be collected because she declined to participate in an EICI. The victim, who reported the incident within a few days, had indicated she was not *'in the right head space'* to sit in the interview. In other cases, police delayed the collection of CCTV evidence meaning it was no longer available when it was finally sought. At times, this occurred because police were waiting to conduct the EICI, even where they had previously identified a location relevant to the incident.

For example, in one case CCTV footage was lost because the referral (and acceptance of referral) to SACAT was delayed. As such, the victim had not spoken to an investigating officer or detective about the report. According to PROMIS notes, this footage would have been available for 15 days after the report. Though, this case proceeded to charge.

Another, reported within a few days of the incident, encountered a similar problem. In this case, a request for CCTV was put through on the day of report. It was not sent directly to the venue (as per PROMIS notes). However, the CCTV footage was not followed up for weeks, and when it was, more than 30 days had passed, and the footage had been deleted.

In another case, reported a couple of weeks after the incident, a venue was identified as potentially having CCTV footage relevant to the report. The manager was willing to provide the CCTV footage. However, the victim's guardian indicated that they believed the date of the incident was incorrect. Police returned email to the venue stating:

> **'Now I must apologises [sic] for not replying with any efficiency. I'm not going to need this footage. Unfortunately I have been able to confirm this date was not the date the offence allegedly occurred but haven't been able to work out what date it did occur. Without being able to determine a day this is a wild goose chase.'**

Evidently, police agreed with the guardian's memory that this date must have been incorrect. Phone record data would have identified the correct date owing to messages between the victim and suspect, but it is unclear whether a check was completed. The case was closed.

Police notes in another case reflect that the Case Officer asked patrol officers to collect CCTV footage on their behalf. But, due to a *'miscommunication'* between patrol and the Case Officer, the *'footage [was] unable to be obtained'*.

Sofia described repeatedly asking the Case Officer about whether they had

collected the CCTV footage from a venue relevant to her case. She reflected that:

> **'Anytime I would ask about the footage, it would be, "Oh we're going to go in a few days". And then I knew that because, like, the nature of the place, they wiped footage usually after about 30 days. And it was getting towards that and they hadn't done it … He kind of had said on the phone that he would let me know when they have got it, and at about the 26 to 27 day mark, he hadn't. They never contacted to tell me that they did. As far as I know, they never did get it.' (Sofia)**

Unfortunately, in one case, evidence was lost because a licensed venue did not meet *'their obligations regarding adequate retention'* of CCTV footage. The venue destroyed it.

Interviewing suspects

In closed cases of adult sexual assault where the case did not proceed to charge, the offender was living and ACTP were responsible for investigation, (n=126) 21 suspects (17%) were approached by police in relation to the report. Of these, six or less than 5 per cent of all suspects gave a formal interview to police. Most suspects claimed the sexual contact was consensual, and one denied any knowledge of the victim.

Ten of the adult sexual assault suspects who were approached by police had a prior criminal history. Three suspects were formally interviewed as a result. Applying the same criteria – cases that did not proceed to charge, the offender was living and ACTP were responsible for investigating the report – this means that 17 suspects with a criminal history were not approached by police. At least two of those who were not approached by police had a criminal history including sexual offending, and at least five had a history of family violence related offences.

In the 43 cases finalised as 'insufficient evidence to proceed' or 'unfounded', PROMIS notes indicate that in 14 cases the suspect was approached by the police in relation to the report. Four of these suspects participated in a formal interview. The remaining suspects either evaded the police, asserted that incident was consensual, or denied all sexual contact with the victim.

Across the 81 child sexual assault matters that did not proceed to charge, that were the responsibility of ACTP, and where the suspect was able to be charged, 12 suspects were approached (15%). Of these, eight suspects participated in a formal interview (less than 10%). Applying the same criteria, three of the 14 suspects with a criminal history were approached by police in relation to the report, and two agreed to a formal interview. At least two of the 11 suspects with a criminal history, who were not approached, had a history of sexual offences, including against children.

Most PROMIS cases typically cited 'victim withdrawal' or 'insufficient evidence' as reasons not to approach suspects, despite that speaking with suspects is itself an investigative activity that may support the collection of evidence.

The notes on one case show that a decision was made not to approach the suspect to offer an interview until after various events in the suspects life had passed. In another case, the suspect attended a police station of his own accord, only hours after, according to PROMIS, the victim had withdrawn from the investigation. It is unclear whether the victim was ever told that the suspect had presented to police. Regardless, police told the suspect that the victim had *'withdrawn her complaint'.*

In a report of child sexual assault, where both victim and suspect were young people, the case finalisation document states that:

> **'Due to the alleged offender being a Young Person, consideration was made not to cause potential trauma/harm to welfare by speaking to his parents and offering him an interview when Police do not have sufficient evidence.'**

This is a problematic foundation for the decision not to approach the suspect (or in this case, the suspect's parents). It shows a disregard for the trauma and harm that has been caused to the welfare of the victim. It further misses the opportunity to intervene into the young person's use of violence and refer to services and supports so that he can cease using violence in the future. Of course, for the victim, there is no avenue to justice.

A much later review of the case notes indicates that the parents should have been interviewed, and the suspect offered a formal interview.

It was not uncommon for cases to be closed when a suspect refused to participate in a formal interview.

Suspects all denied wrongdoing, one suspect, for example told police: *'Won't be interviewing, done nothing wrong'*. In one matter, the Case Officer responded to an email from a suspect's legal representative declining a formal interview, that *'no further action would be taken and the investigation was now complete'*. The PROMIS notes confirm this email was sent in direct response to the declined interview: *'replied to [the] email, stating matter would now be finalised'*.

Some victim-survivors shared feeling like officers 'preferred' the suspect's version of events, and ceased investigation based on that:

> **'It to me, felt like something shifted after they interviewed him.' (Scarlet, mother of Malia)**

> **'Yeah, well, they seem to be too easily swayed by abusers' version of events.' (Selena)**

While so few suspects were approached in relation to the reported conduct, the notion that police often preferred the suspect's evidence over the victim's, is not ruled out by the PROMIS cases. As noted, suspects often simply denied that the incident(s) occurred without consent. One case was finalised because the suspect did not 'corroborate' the victim's version of events, despite that he had no memory of the evening due to intoxication:

> **'[Suspect] denied the incident, as he could not recall everything from the night in question.**
> **...**
> **Police are able to corroborate the timeline of the incident but are unable to corroborate any evidence to support the allegation of sexual assault.'**

In this case, despite identifying that the victim's timeline of events was reliable, a lack of other corroborating evidence (see discussion below) undermined the victim's account. Yet, the suspect's self-induced intoxication was sufficient in subverting suspicion.

Family violence

PROMIS prompts officers to record family violence matters through a 'tick box' that simply asks, 'Is this a Family Violence Case?'. Officers are thus required to 'tick the box' when they identity that an offence has occurred in the context of family violence.

Thirty-seven reports of adult sexual assault were marked as family violence. This constitutes 22 per cent of all cases of this type reported to ACTP within the dataset. Yet, 51 of the 164 cases of adult sexual assault included a familial relationship (including partner, ex-partner or other family member). Taking this figure, 31 per cent of matters were a report of sexual violence in a family context.

The inconsistencies between relationship types and the number of cases marked as family violence in adult sexual assault cases may be indicative of a narrow understanding of family violence. Thirty-six cases marked as family violence involved a current or former intimate partner relationship. One case was erroneously marked as 'known non-family – other'.

For child sexual assault, 30 (30%) cases were marked as family violence Across the reclassified relationship types, 48 cases involved a suspect who was the partner, ex-partner or family member of the victim. As such 48 per cent of all reported child sexual assault matters occurred within the family context.

Yet, only nine adult sexual assault cases recorded as family violence included an attached risk assessment or 'Family Violence Risk Assessment Tool' (FVRAT). The ACTP FVRAT is validated for use 'when responding to a reported incident of violence perpetrated by a current or former intimate partner' (Dowling & Morgan 2019). Items relating to various evidence-based risk factors are presented in the tool. These include items concerning the most recent incident of family violence, relationship factors and history of the offender. Items are weighted based on seriousness, and a 'score' calculated that represents the likelihood of repeated victimisation. A victim's self-assessed level of risk is also recorded, but not weighted.

Two risk assessments were recorded in matters not marked as family violence. In the remaining matters, there was no risk assessment attached to PROMIS, and no reference in the details of the case. Of the 30 child sexual assault matters marked as family violence, risk assessment was only conducted in two cases.

Various reasons for not assessing family violence risk were noted in case notes:

> **'Declined by affected parties.'**
>
> **'Declined to participate, insufficient information to complete.'**
>
> **'An EIC would be most appropriate for this. The case will be processed by [another police agency.]'**

In the last case, the victim resided in the ACT. Thus, important referrals may have been missed to support the victim in safely managing any ongoing family violence risk. Other matters outlined reasons that indicate a lack of understanding about the nature of family violence. For example, one case noted:

> **'Job was a sexual assault, victim does not want to proceed. Was not reported as FV.'**

Risk is not negated because a victim does not want to proceed with an investigation. Withdrawal may even indicate that a victim does not feel safe engaging with police, for fear that the violence will escalate. Statutory involvement or intervention has been identified as a family violence risk

factor (see Multi-Agency Risk Assessment and Management (MARAM) Framework, Family Safety Victoria, 2021). Other noted reasons for failing to conduct a risk assessment also demonstrate this lack of understanding:

> **'[Case Officer] did not think that an FVRAT would be appropriate to assess risk as they have not had any contact since separating [one year ago] and [Case Officer] does not hold any concerns that they will have contact in the future. Complainant also does not hold any concerns for her future safety or ongoing issues with the offender.'**

In this case, officers fail to appreciate the potential for family violence to escalate upon intervention by police. This matter was investigated by general duties officers.

In another matter, marked as a family violence offence, no risk assessment was undertaken since:

> **'At the time of the offence, the Complainant and the POI were not in an intimate relationship.'**

Yet, the victim and suspect had continued an ongoing relationship after the offending and had recently separated. The ACT's Domestic and Family Violence Death Review (ACT DFVDR, 2023), which analysed the circumstances of 12 family violence related deaths in the ACT between 2000 and 2022, reinforced that separation indicates an increased risk of death or serious harm. PROMIS case notes confirmed the separation, and that there were ongoing disputes between the victim and suspect: *'Their current communications [are] strongly argumentative.'* Other serious risk factors were identified in the written narrative in PROMIS (not referred to here for privacy reasons).

Other cases where FVRATs were not conducted similarly overlooked serious family violence risk factors, that have been identified as valid, evidence-based risk factors in Australian literature (ACT DFVDR, 2023; Family Safety Victoria, 2021) including:

- recent separation
- strangulation (in the reported incident and previously)
- pregnancy
- stalking
- recent Family Violence Orders served on suspects
- breaches of Family Violence Orders
- recent or ongoing family law proceedings, including disputes over the care of children

Though the ACTP adopts a pro-arrest policy in relation to family violence, six of the family violence adult sexual assault matters were closed because the victim declined a formal statement. In 15 cases, the victims otherwise withdrew. This emphasises the disjuncture between a pro-arrest policy for family violence matters, and a 'victim-led' approach for sexual offences. It also fails to recognise sexual violence as family violence, and as an increased lethality risk (Family Safety Victoria, 2021).

In a family violence incident involving a sexual offence, general duties officers failed to identify the primary aggressor. The victim in this case had called the police to intervene. The case was finalised with the following note:

> **'Police were unable to come to a conclusion as to who the offender was and who the victim was.'**

The notes continue by outlining that neither party believed that a Family Violence Order was necessary, and that an FVRAT could not be completed since *'Police could not differentiate between the two'*.

The findings also raise concerns about the lack of appropriate risk assessment tool for use with young people experiencing (sexual) violence in relationships, including in casual or dating contexts. In these cases, risk assessment was less likely. Sexual violence that was non-intimate partner family violence was also not recognised as family violence. For example, in this dataset, no cases of familial child sexual abuse included an assessment of risk. This is in large part owing to the lack of valid tool for use outside of adult intimate partner relationships. Without family violence risk assessment tools that capture risk factors across a range of relationship and age or developmental contexts, crucial opportunities to intervene into family violence may have been lost.

Some victim-survivors disclosed that they did not feel that Family Violence Orders were protecting them. For example, Amira shared that her Family Violence Order is *'not protecting'* her:

> **'[Police were] saying like, "We have no control over this … We have no control over [suspect]". Even though [there is] a Family Violence Order in place, and it was a fresh Family Violence Order … and I was crying and he was saying to me "We can't do anything about it".' (Amira)**

Peter Parker, May Parker and Ms Marvel also disclosed a failure of police to record breaches of Family Violence Orders, instead dismissing the breaches.

Referrals and support

A review of the PROMIS cases reveals that it was not uncommon that victims were unsupported during investigations. This included a failure to ensure access to special measures, such as witness intermediaries. Intermediaries are skilled practitioners, typically from allied health sectors, trained to ensure witnesses and victims of crime can 'communicate their best evidence' (ACT Human Rights Commission, 2020). Despite recorded communication barriers across the dataset (unrelated to language barriers), intermediaries were scarcely used. Only in nine adult sexual assault and 15 child sexual assault matters was a witness intermediary engaged. In two child sexual assault matters, the referral was declined by the victim. In another, the officer did not believe an intermediary was required.

Similarly, Victim Liaison Officers (VLOs) were scarcely used across the dataset. Though VLOs may conduct other activities, such as ensuring compliance in support related activities, very few cases documented the actual 'liaison' between the VLO and the victim. This indicates that VLOs are an under-utilised resource by SACAT officers. Aboriginal Liaison Officers were rarely drawn on to support those victims who were recorded as Aboriginal.

Officers are required to submit what is called a 'Wraparound referral' for all reported sexual offences. This occurs regardless of whether the victim consents to the referral, though, without it, the referral should be anonymised. Wraparound refers to the coordinated support response across agencies for victims who report sexual offences to ACTP. In practical terms, a group of representatives from various agencies across the ACT meet to discuss which agency or agencies are most appropriate to lead the support for individual victims. This avoids victims being contacted by multiple agencies, and aims to ensure a more holistic intervention based on the individual's circumstances.

Wraparound referrals were noted in PROMIS in 144 adult sexual assault and in 75 child sexual assault cases. Importantly though, Wraparound shifted significantly when Covid-19 hit in 2020 since face-to-face meetings were cancelled. It is not suggested that those who reported during or since Covid-19 first emerged, and were referred to Wraparound, were not offered support. However, the effectiveness of the *coordinated* response was likely impeded.

Other immediate referrals were also made. Almost all victims were, at some point in the investigation or report, referred to CRCC. This is owing to a Memorandum of Understanding (MoU) between CRCC and ACTP which states that CRCC will be contacted and will offer support services when a sexual offence is reported. The MoU further provides for CRCC to be present at EICIs. Concerningly though, like sexual assault services all across Australia, CRCC is not appropriately funded to be able to manage every reported sexual offence, and wait times for counselling are long. Thus, CRCC alone is unable to meet the demand stemming from police referrals.

This had real consequences for victim-survivors some of whom were left with no real contact with support services. For Blair, no supports were offered at all and she had to find other pathways to support:

> **'The police did not offer any support after they closed the investigation so I [sought] support through the school counsellor and legal officer. They guided me to the victims ACT online counselling and helped me get a protection order.' (Blair)**

Cora agreed:

> **'More information could have been given regarding support services available to myself after the event.' (Cora)**

PROMIS cases also demonstrate that victims, even where they reported immediately, are often simply *'given a pamphlet with CRCC information' as a means for 'referral'*.

The preference for referral to CRCC as established by the MoU, may also explain the low rates of referral to other services even where another service might be more appropriate. For example, in adult sexual assault cases, only eight matters were referred to DVCS and only six cases included a facilitated referral to VSACT. In child sexual assault cases, 20 involved no noted referrals to support. Two were referred to DVCS, six included a referral to SupportLink and in one case, a youth health service was referred.

Concerningly, VSACT, a government agency responsible for victims of crime, has no direct line of contact with SACAT, such as that established for CRCC. As such, when victims access VSACT services and request support in reporting a sexual offence, the only course of action for VSACT is through general duties officers, such as through presenting at a police station with the victim. In contrast, CRCC are able to directly contact a SACAT Team Leader and arrange an appropriate time for the victim to meet with the police.

The failure of police to refer victims of crime to the Territory's agency responsible for supporting victims undermines the 'victim-centred' approach strived for by ACTP. Victims are not being directed to services administered (and owed) by the government to people who experience crime in the ACT. For example, VSACT are able to support victims to: access financial assistance, including recouping any losses incurred due to being a victim of crime, upgrade security to their homes, or access psychologists or counsellors close to where they live. Importantly, VSACT are also able to advocate for victims of crime to ensure their rights under the *Victims of Crime Act 1994* (ACT).

Abigail spoke to the frustration of not being told about the option to access to the financial assistance scheme to cover costs that she incurred because of the incident and the criminal justice process. She shared that she had *'put her whole life on hold'*, and was frustrated to hear about this option years later, by happenstance:

> **'And I was like nobody fucking told me this and definitely like, I think when you're in a distraught situation like I'm worried about, like making it from like one day to the next.' (Abigail)**

Further, there is a tension between the role of therapeutic support and advocate. Some victims have expressed feeling like they were not advocated for in the EICI process. This is, at least in part, owing to the complexity of operating as a support person, responsible for therapeutic intervention, as opposed to a justice advocate, which might require a more rigorous intervention into systems and practice. One victim-survivor from the ACT, whose case is not part of this review, recently spoke to the media about her experiences of the criminal justice system. Reflecting on the role of CRCC in the EICI, she told *The Project*:

> **'It was like having a ghost in the room. She didn't say anything. I was on my own.'**

Olivia recalled that the support person from CRCC did not speak during her EICI. She said that she didn't feel supported, but felt that it was important that they were there, so that it did not *'feel like this formal interview'*. Another victim-survivor, Maz, reflected that CRCC did not respond (*'No, not for ages'*) to police's request to attend the EICI. The interview went ahead without a support person present.

These experiences confirm that an independent advocate is required to be an active participant 'in the room', to ensure that victims' rights are upheld.

Case closure

‘If I’m not getting the help from the law, then what am I supposed to do?’ (Malia)

Once a decision has been made to close (or to ‘finalise’) a case, a ‘clearance type’ is assigned. The clearance type is intended to record the basis upon which the case was closed. As noted, some cases within the dataset were cleared by way of charge. Charges were laid after the date determined by the Oversight Committee as the ‘cut-off date’ for the cases within the review to proceed to charge (1 May 2022). As such they remain within the dataset. These figures are not reflective of the total number of cases that proceeded to charge in 2021 in the ACT.

Of the adult sexual assault reports, involving a living suspect, where investigative responsibility was with ACTP (n=157), 17 or just shy of 11 per cent were cleared by way of a charge being laid. At least one charge of sexual penetration without consent was recorded in each of those cases.

For child sexual assault, 11 of the 91 cases (12%) investigated by ACTP with a suspect who was able to be charged, did proceed to charge. However, the offence of ‘sexual intercourse with a young person’ was charged in only nine of those cases. The remaining included charges of ‘incest’, ‘indecent act/assault’, ‘indecent act on female’, ‘maintain sexual relationship with young person’ or ‘carnal knowledge with girl between 10/16 years’. The latter few of these offences represent ACT’s sexual offence legislation at the time the offence was committed. In recent years, for example, the conduct captured in ‘maintain sexual relationship with young person’ is now referred to as ‘persistent sexual abuse’ (most recently via the *Family Violence Legislation Amendment Act 2022*), in recognition of the fact that grooming a child does not create a ‘relationship’.

Of the cases of other adult sexual assault where the investigation was the responsibility of ACTP (n=79), six either progressed to charge or finalised with a caution. Majority of these cases related to an act of indecency without consent. Of note, in one case that did not proceed to charge (or caution), the Case Officer notes that the suspect *‘made admissions’* and was *‘remorseful and embarrassed about the situation’.*

All reports of other child sexual offences were investigated by ACTP, with six resulting in charge or caution. Similar to other adult sexual offences, most of the cases that resulted in a charge or caution related to an act of indecency (against a person under 16 years). Notably, there was one matter which did not proceed to charge or result in a caution which was finalised with the suspect making full admissions to the child sexual offence and appearing *‘extremely remorseful’*.

In reviewing cases that did not proceed to charge, the PROMIS data revealed that clearance types were poorly recorded by ACTP officers, hindering analysis. For example, many cases were marked as ‘not cleared’, including where case finalisation documents were completed and signed off by senior officers, and even in cases that had progressed to charge (or trial).

Clearance types were also inconsistently used, and often did not align with the Case Officer's own written reasons for case closure including that on official documentation (such as the Sexual Offence Case Finalisation Note, an initiative introduced sometime in 2021 to support better collection of such information). The written narratives in these PROMIS documents about case closure was often descriptive of a different clearance type than was selected.

As such, clearance types proved an essentially useless analytical tool. Yet, each case that had been finalised (closed) included documents and/or other notes from Case Officers explaining the reason for the decision not to proceed. Relying on these written narratives, clearance types were reallocated by the researchers into a 'clearance code'. This assisted in an analysis of the reasons for decision-making in ceasing investigations and closing cases. These codes reflect the Case Officer's justification for case closure, not the views of the researchers.

The clearance codes assigned are as follows:

- Unfounded
- Insufficient evidence to proceed
- Victim withdrawal
- Open (active and inactive)
- Case passed to another police force
- Suspect deceased or unable to be charged
- Charged

Open cases were identified as those not marked as 'finalised', where there was no formal or informal narrative in the documents about case closure. The researchers determined active cases to be those that had some recorded update to any accessible document during the three months prior to the download of the information from PROMIS.

'Unfounded' cases are those where:

- police assigned this clearance type;
- the written narrative cast doubt on whether sexual contact occurred;
- police stated that the victim consented (and thus they believe it is a 'false' report); or
- police noted that there was not sufficient evidence that the victim was not consenting.

'Insufficient evidence to proceed' cases are those where:

- police determined that the suspect may have believed that consent was given;
- police determined that there was insufficient evidence to prove the suspect's lack of belief in consent (or recklessness to consent) or to prove this 'beyond reasonable doubt'; or
- the suspect(s) was not identified.

If conflicting information was recorded in PROMIS that included a narrative that aligned with both 'unfounded' and 'insufficient evidence to proceed', it was coded as 'insufficient evidence to proceed'. Where 'victim withdrawal' was noted alongside a justification aligning with another clearance code, the timing of the victim withdrawal was considered. Where police determined a case should close due to 'insufficient evidence' (for example) and the victim later expressed desire to withdraw, it was marked as 'insufficient evidence to proceed'. In the reverse, that is, the victim withdrew and police later determined that there was insufficient evidence, it was coded as 'victim withdrawal'.

Reasons for case closure

Of adult sexual assault reports, 17 cases were charged. Thirteen remain open, nine of these were considered to be open and inactive, and four open and active. The status of open cases may have changed since the time of data collection. In addition, eight matters were transferred to another policing agency for investigation, or the identified suspects was deceased or could otherwise not be charged. Thus, 126 cases (where ACTP was responsible for investigation, and where the suspect was able to be charged) were finalised without charge during this period. The clearance codes applied by the researchers in adult sexual assault cases are outlined in Figure 13.

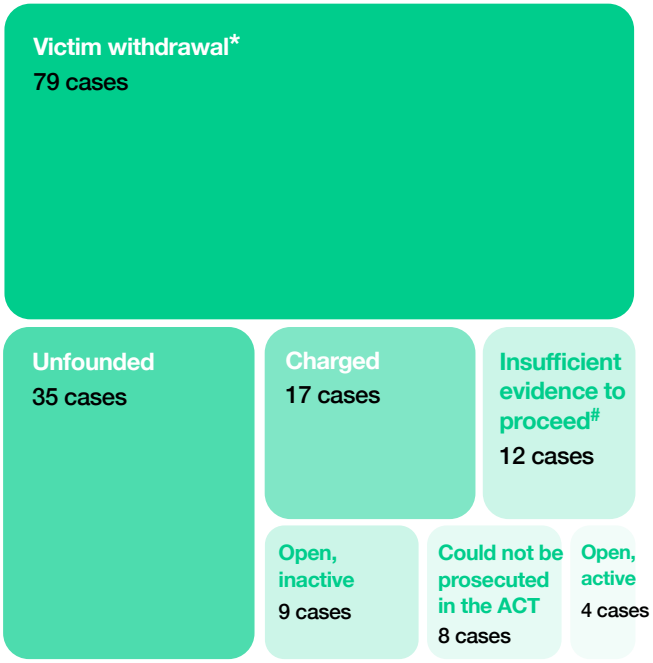


Figure 12: Clearance codes, adult sexual assault reports

*Includes 11 matters where the victim did not want to participate in an EICI

#Includes two cases which were referred to the DPP for advice. DPP advised against charges 'having determined that there are no reasonable prospects of obtaining a conviction'.

Many adult sexual assault cases were closed early in the investigation, even before a complete statement had been taken from the victim. The length of the now closed investigations demonstrates this. Of closed cases, 29 were closed within one day to one week of the report to police, accounting for 23 per cent of closed cases in the dataset. Forty-three per cent of sexual intercourse without consent reports were closed within one month of the report being made to police.

How long was the case open?	Number of cases
One day to one week	29
One week to one month	25
One month to 6 months	40
6 months to 12 months	19
12 months plus	12
Nil information in PROMIS	1
Total	126

Table 8: Length of investigation of closed cases, adult sexual assault reports

The clearance codes for child sexual assault cases are outlined in Figure 13. Once removing cases that have progressed to charge (n=11), were transferred to another policing agency for investigation or refer to a suspect that cannot be charged (n=9) and where the case remains open (n=8; four active and four inactive), 72 cases were finalised without charge. As above, the status of these open cases reflects a point in time when data was collected and may have changed.

Two cases were unable to be allocated to a code, because so few investigative activities were recorded in PROMIS. These were coded as 'no investigation (unable to assign a code)'. In

one of those cases, the report was not made by the victim (and police determined not to contact the victim) and in another the victim was interviewed as a potential witness to another crime, despite coming to the attention of police by reporting a sexual offence.

Figure 13: Clearance codes, child sexual assault reports

*Includes 9 matters where the victim did not want to participate in an EICI

#Includes one case where the offence was marked by police as 'unfounded', but case remains open (though inactive as at time of data collection).

+Unable to assign a code

Of the 72 finalised child sexual assault matters, 12 (under 17%) were closed within one day to one week of the report being made. Like with adult sexual assault, the majority of matters were closed within six months.

How long was the case open?	Number of cases
One day to one week	12
One week to one month	12
One month to 6 months	26
6 months to 12 months	17
12 months plus	5
Total	72

Table 9: Length of investigation of closed cases, child sexual assault reports

Of other adult sexual offence cases, six resulted in either a caution or charges, five matters were transferred to another jurisdiction, and three remained open at the time of data retrieval. Two cases are removed from analysis on this measure to protect anonymity. As a result, there are 68 cases finalised cases that did not result in a caution or proceed to charge. Of the 68 finalised cases (see Figure 12), 45.5 per cent of cases were closed within one day to one week of reporting to the police.

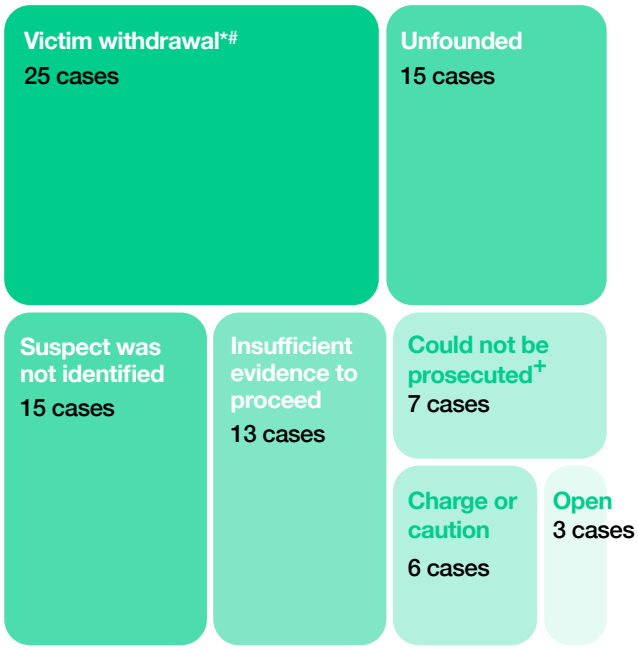


Figure 14: Clearance codes, other adult sexual offence reports

*Includes 9 cases where the victim did not want to participate in an EICI

#Includes withdrawal by another person (number redacted)

+In the ACT and redacted cases

In the other child sexual offence cases, all matters were investigated by ACTP. In total, six matters progressed to charge or caution. There was one case in the sample which was classified as open (inactive) at the time of data retrieval. Two cases are removed from analysis on this measure to protect anonymity. Accounting for this, there were 32 finalised matters that did not result in a caution or proceed to charge. Of these 32 finalised cases (see Figure 13), most (n=22) were closed within one week and six months of reporting to police (number withheld).

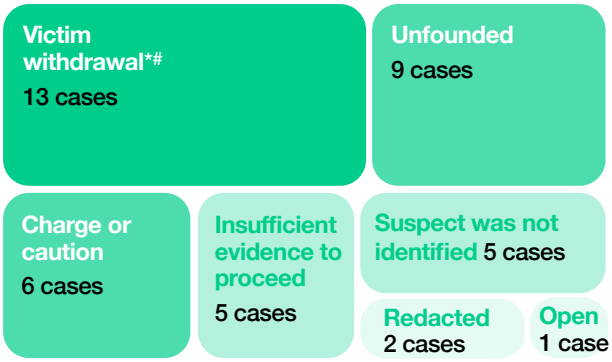


Figure 15: Clearance codes, other child sexual offence reports

*Includes 3 cases where the victim where the victim did not want to participate in an EICI or other formal statement

#Includes withdrawal by another person (number redacted)

Victim withdrawal

Existing evidence shows that victim withdrawal accounts for a significant proportion of police attrition. In a large-scale study of attrition in England, United Kingdom (UK), 17 per cent of cases reported to police that did not proceed to charge were finalised due to victim withdrawal (Kelly et al., 2005). A much earlier study by Gregory and Lees (1996) found 25 per cent of victims withdrew.

However, in our sample, the proportion is significantly higher. Victim withdrawal was the most common case closure type across both adult sexual assault and child sexual assault cases.

Across the 389 cases reported on in the Police Process Review, 42 per cent were withdrawn by the victim (or on behalf of the victim where the victim was a child or young person). Of adult sexual assaults, 79 (accounting for 48% of all reports) were closed because the victim withdrew. The same percentage (48%) was recorded for child sexual assault. This higher rate of victim withdrawal is not unprecedented in the evidence. Hohl and Stanko (2015) in reviewing reported rapes in London (UK), also recorded a 48 per cent victim withdrawal rate across the entire criminal justice process from report to trial. Their study found that 67 per cent of cases were withdrawn by the victim during the police investigation (Hohl & Stanko, 2015).

A significant predictor of victim withdrawal is the relationship between the victim and the suspect. In one third of adult sexual assault cases withdrawn by the victim, the suspect was either the partner, former partner, or casual sexual partner of the victim. In a further 44 per cent, the victim and suspects were friends or acquaintances at the time of the incident. Thus, in 77 per cent of withdrawn cases, the suspect and victim were known to each other. In the remaining matters, the victim and suspect were not known to each other. In some of these cases, the victim and suspect met on the day or night of the incident. These findings are consistent with the evidence. Hohl and Stanko (2015; 334) determined that that previous consensual sex with the suspect (in a relationship or not) ‘nearly doubles the odds of withdrawal’.

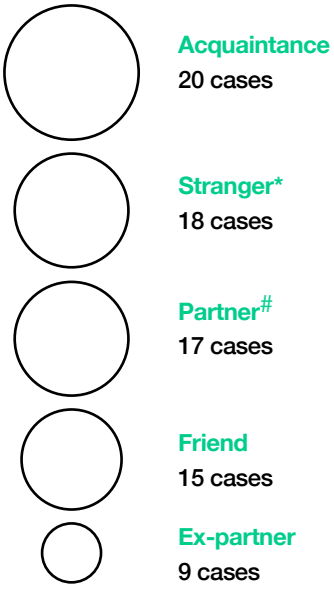


Figure 16: Relationships types in withdrawn cases, adult sexual assault reports

*Including when meeting occured sometime on the day or night of the incident

#Including casual dating relationships

In the sexual assault cases involving children under the age of 16 years (child sexual assault matters), victims were also more likely to withdraw if the suspect was known to them or to the family. There were comparatively fewer stranger cases in this case category (insufficient numbers to report), but none of them were resolved by victim withdrawal.

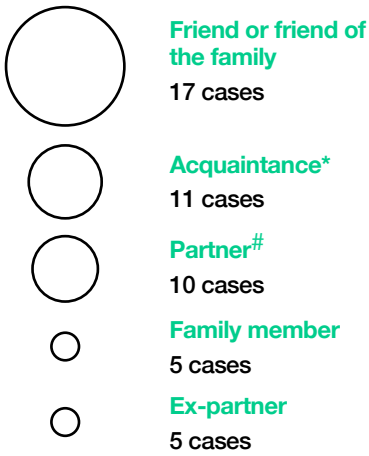


Figure 17: Relationship types in withdrawn cases, child sexual assault reports

*Including when people met on social media and strangers

#Including casual dating relationships or relationships characterised as 'partner' by police, where consent to sex could not be given

In other sexual offences against an adult, victim withdrawal accounted for 37 per cent of all case finalisations. These included active withdrawals, withdrawals on behalf of the victim by another person, and passive withdrawals. For the purposes of anonymity, the definition of family members adapted by the *Family Violence Act 2016* (ACT) is utilised in analysis. Given this, family members are categorised as former or current intimate partner, relative, a child from a domestic relationship, or a parent of a child. Of the 25 victims who withdrew from the investigation, seven (or 28%) suspects were a family member of the victim. In the remaining, six were a friend, and 12 were either an acquaintance or stranger to the victim.

Similar to those of child sexual assault, victim withdrawal accounted for 41 per cent of finalised cases of other child sexual offences. These also included active withdrawals, withdrawals on behalf of the victim by another person or agency, or passive withdrawals. Of these cases, almost half (n=6) of the suspects were a family member. In the remaining seven PROMIS matters, the relationship between the victim and suspect were either categorised as a stranger, acquaintance, or an authority figure to the young person.

Some cases were marked as withdrawn by victims where there was no evidence to support a withdrawal. In some cases, there was evidence of another basis for the decision. For example, some were marked as 'complaint withdrawn by victim', when it was described by police in their notes as 'unfounded', 'not cleared' or 'not enough evidence to proceed'. As noted above, these cases have been re-categorised in line with the written narrative outlining the basis for closing the case. As such, they are not included in the victim withdrawal figures.

The case clearance type used by police that captured these cases is called 'complaint withdrawn by victim'. This invariably fails to capture the reality of why cases are closed at the victim's request. In this dataset, victims

did not withdraw their 'complaint', but instead disengaged from the police investigation.

Victims did this for a number of reasons. For example, some victims expressed wanting it 'on the record' that the suspect had committed the offence (an 'information only' report). Others disengaged because they experienced the investigation variously as re-traumatising, slow and arduous. Victim-survivors also disengaged because they were afraid of what might happen if the case did proceed to charge, namely that they would be cross-examined and have their personal lives dissected by the court. In recognition of this, the code applied by the researchers is 'victim withdrawal', recognising the diverse drivers of disengagement across the dataset.

However, the case review identified that there were two kinds of victim withdrawal: active withdrawals where the victim contacts police to advise them that they no longer wish to pursue the case, and passive withdrawals, where cases are closed after a lack of contact from the victim. In cases involving children and young people, some cases were marked as withdrawn by the victim, when a parent, carer or guardian, or the reporting agency, closed the case on the victim's behalf.

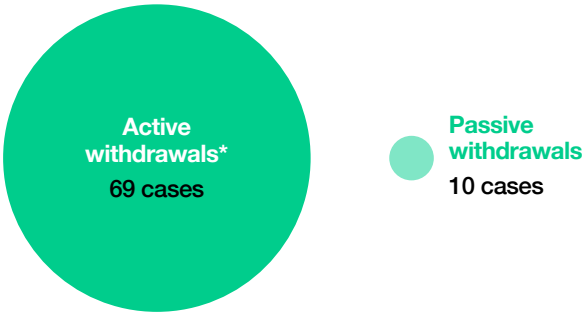


Figure 18: Victim withdrawal by type, adult sexual assault reports

*11 'active withdrawals' are cases where the victim refused EICI

Figure 19: Victim withdrawal by type, child sexual assault reports

*9 'active withdrawals' are cases where the victim refused EICI

'Passive withdrawals', that is, where the victim had not communicated disengagement to police, were recorded against sixteen matters across these two offence categories (adult and child sexual assault reports). At times, this period of 'no contact' was short, where the victim did not answer or return phone calls. For example, in one case, investigative activities are recorded on the day of and day after the report. The note made on the day after the report also states that the Case Officer has *'not received a phone call or any corresspondance [sic] from [victim]'.* Less than three weeks after the report, the case was closed.

In Alex's case, which was investigated by general duties as an indecent assault despite the reported penetrative offence, an email from Alex withdrawing from the investigation is cited as the reason for case finalisation. No email is attached to PROMIS. Alex herself indicated that while now she no longer wants to proceed, that was not the case at the time of report:

> **Alex: 'I think they said…would I be happy to repeat parts of my statement or repeat my story to a court like "Would I be happy for it to go to court?" I do remember them asking that.'**
>
> **Researcher: 'And what did you say?'**
>
> **Alex: 'I said that I would be able to.'**
>
> **…**
>
> **Researcher: 'So, there's no way they have heard that you don't want to continue?'**
>
> **Alex: 'I doubt it.'**

Cases were also closed and marked as withdrawn where victims were not willing to complete an EICI. As discussed previously, this is despite there being no obligation at law on victims to participate in an EICI. Yet ACTP procedural documents requires the formal recorded interview for investigations to continue. Accordingly, ACTP determine refusal to complete an EICI as constituting a victim's withdrawal.

In some cases where the victim expressed understanding of police when advised that there was insufficient evidence to proceed, police closed the case as withdrawn. For example, in one case, notes indicate that during a conversation with the victim, she was advised that the suspect could not be located, and that for this reason, nothing further could be done. The notes indicate the victim 'agreed' that there was no way to overcome this challenge. Since she had accepted the officer's version of events, the case was marked as 'complaint withdrawn by victim'.

As noted, where victims were under the age of 16 years, parental (or guardian) withdrawal was sufficient to close the case. A total of eight cases were withdrawn through these means (thus, 8% of the 100 reports of child sexual assault). In some of these cases, it was the victims wishes that were communicated by the parent or guardian. In others, parents expressed their view of what was in the 'best interests' of the child or young person.

For example, one case with a child victim noted that *'the family does not wish to proceed with the investigation with [victim's] best interest at heart'*. This is consistent with the literature that parents may withdraw matters on behalf of children in order to protect them from the criminal justice process, particularly a trial (Christensen et al., 2016).

In other cases though, parents withdrew on behalf of older child or young people, at times with no evidence that the young person themselves agreed with the decision. For example, in one case, the victim's parent stated that they were *'unsure'* whether the victim, who was 15 years old, would speak to police. Eventually, police spoke with the parent who advised that the victim did not want to continue.

While victim withdrawal did account for a significant proportion of case closures, victims often withdrew when presented with the outcomes of a range of other decisions made by police, over which they had little or no input, role or say. This lack of control was even more pronounced for child victims, where parents or guardians often drove engagement with police (see Skinner & Taylor, 2009).

Some victims withdrew from the police investigation because they were not confident that police would investigate the matter.

An email sent to police by a victim expressed:

> **'I do not believe that police will investigate properly as has been my experience in the past. Instead of my being supported when I report crimes committed against me, myself and my children and now grandchildren have been brutalised by police and the system. I have suffered decades of heinous abuses at the hands of police and the system and perpetrators and I have no access to justice. Until I get an apology both publicly and formally in writing from police and reassurance that my reports will be taken seriously and I will be provided appropriate support and protection then I don't feel safe enough to continue with reporting historical abuses. I have been through a lot of assaults and abuse that I have suffered in silence with. These perpetrators and abusers have destroyed my whole life and I can't find a way forward. These crimes still impact on me and my family.'**

Interviews with victim-survivors, from all crime types included in the review, revealed that some victims felt pressure to withdraw their

complaint or disengage from the investigation. This has been recorded in other studies (Jordan, 2001). ACTP have implemented what it calls 'victim-led' policies. While a noble policy initiative, it has not translated on the ground.

Selena, whose matter was closed based on a police belief that there was insufficient evidence to proceed, said the police *'actively dissuaded [her] from pursuing the investigation'*. She continued that police repeatedly asked her if she wanted to continue with the process:

> **'"Are you sure you want to proceed? Are you sure this is what you want to do? Are you sure? Are you sure?" ... Talk about putting people off. It's like they couldn't be bothered to investigate.' (Selena)**

The repeatedly asking victims whether they want to proceed is presumably designed to offer pathways out of the investigative process. But for victims, like Selena, this amounts to a pressure to withdraw. Others agreed:

> **'It felt that I was being discouraged from taking action and not in the sense of they didn't think it was bad enough or anything like that, but I felt discouraged and disappointed.' (Sofia)**

> **'They were basically encouraging me not to do anything.' (Ebony)**

Victims also felt that their decision to disengage or withdraw was otherwise impacted by the actions or attitudes of police. As others have argued, victim trust in police often declines after report (see Hohl & Stanko, 2015). A positive relationship between police and victim is therefore crucial to avoid high rates of withdrawal. Pinkie's relationship with the police was strong because she felt heard, and because of this, she never experienced the offers to withdraw as pressure:

> **'But, yes OK, it's reported. Someone's heard. And I was grateful that they were the police were actually interested in it. And they were quite probing. They said, "If there's something you don't want to say, that's fine. You're not under any pressure to have to say anything." (Pinkie)**

However, for others the relationship with police broke down early. Nicole expressed that her conversations with police gave her *'the impression that [she didn't] really matter very much'*. She described the police attitude as 'defeatist':

> **'They were, sort of, [saying], "Well, you know, this stuff doesn't really go anywhere very often". It's defeatist. It's just like, well, shouldn't [the police] want it to? And why are [the police] deciding what a jury is going to do? How do you know?' (Nicole)**

Nicole is describing what is called 'downstream orientation' (see Frohmann, 1991), or the principle that decision-making in the criminal justice system is influenced by what is perceived by the decision-maker to be the likely outcome 'later on' in the process. When this happens, focus (and priorities) shifts to perceptions of those involved in the later in the justice process. In Nicole's expression of the theory, it is the police's perception of the jury's views that is centred.

For Wendy, the experience was similar, though she felt that the officer was trying to be honest about the way sexual offences progress through the criminal justice system:

> **Wendy: 'I can't remember if it was [at Meet and Greet] or in the interview, or both. He sort of said … "Some things looks bad when you're on the stand"… and he was talking about it being a horrible process. And I was like "Aren't there rules for you know, what the prosecution [and defence] can and can't do? I thought the ACT was pretty good." And he was like, "Yeah, but they push it and it's horrible". I'm sure he thought he was being very realistic.'**
>
> **…**
>
> **Researcher: 'Did he, in that conversation, tell you about the supports that can be put in place in the…court process?'**
>
> **Wendy: 'I don't think so.'**
>
> **Researcher: 'Like, for example, did he mention about how you can give evidence from a different room?'**
>
> **Wendy: '…Maybe?...There was a vibe of, and possibly the explicit words were, "If a case like this goes to court, they get every bad thing out of your life that they can and use it against you."'**

For other victims, like Aya, the fact that she held responsibility to make the decision about whether to proceed simply was not fair. In her view, like with all other crimes, police should be the ones to make the decision

> **'I feel like, …the stigma around it is that you're vengeful. For you to seek justice, [you're] vengeful … Which is so frustrating because any other crime, why would that be the case?**
>
> **…**
>
> **I think the thing that frustrated me the most with the court process was like, it was so up to me and I was like, "Why is this my responsibility?".**
>
> **…**
>
> **If I was dead, it wouldn't be up to me. Someone else would have to, because I'm not there to talk about it. And I think that made me really frustrated because, yeah, it was so up to me and whether I wanted to press charges. So if I wanted to press charges, I was being vengeful.' (Aya)**

Aya's view reflects what the evidence base tells us that victims want and need: an active participatory role in which they 'meaningfully communicate and contribute to decision-making processes, without carrying the burden of responsibility' that accompanies decision-making (Victorian Law Reform Commission, 2016; 133, referring to prosecutorial decision-making; see also Edwards, 2004).

Unfounded

As noted, cases were coded as 'unfounded' by the researchers where police assigned the case a clearance type of unfounded, where doubt was cast on whether sexual contact occurred at all, where police asserted that the victim consented or where police stated that there was not sufficient evidence that the victim was not consenting. Cases coded as unfounded thus all drew on similar narratives, characterised by scepticism, doubt or distrust of the victims. This is in line with the phenomenon that the existing literature calls 'no criming' (Kelly et al., 2005) and as a 'culture of scepticism' that exists within police forces (Bazley 2007; Jordan 2004; Kelly 2010; Stern 2010).

Considering the 126 closed adult sexual assault cases where charges were not laid, the suspect is living and ACTP were responsible for investigating the matter, 35 cases were determined by police to be 'unfounded'. This accounts for almost 28 per cent of cleared and closed reported incidents of adult sexual assault cases across the dataset (21% of all adult sexual assaults). Of the child sexual assault cases closed in the

same way (n=72), 19 were coded as 'unfounded' (approximately, 26% of closed child sexual assault cases, and 19% of all reports of that kind).

These findings reflect the pattern identified in reviews of police sexual assault data internationally, where 'no criming' has been found to be common (Kelly et al., 2005). Hohl and Stanko's (2015) findings are similar; 19 per cent of attrition at the police level was caused by 'no-criming'.

Investigative activities on these adult sexual assault unfounded cases varied, though most cases were closed within one month to six months of report (n=15) or within six to 12 months of report (n=11). Ten matters were recorded as historical, one of them incorrectly. In five matters, an EICI was the only recorded evidence gathering. FAMSAC examined the victim in 13 cases that were deemed 'unfounded'. In 10, the victim reported physical injury that resulted from the incident. In five cases, the report was a family violence matter.

Investigative activities on unfounded child sexual assault cases also varied, some cases only an EICI had been conducted. In others, there were no activities. Some cases had various activities including a FAMSAC or CARHU examination, interviews with witnesses or other forensic testing recorded in PROMIS. Thirteen of the 19 unfounded cases were closed more than one month after the report, but within 12 months. Two were closed within one week of report. Twelve unfounded matters were historical reports (reported more than six months after the incident), and nine were family violence related, though this was not always identified by officers.

Across all other sexual offences against adults and children, 24 cases were deemed unfounded. In a majority of these cases, the suspect was known to the victim. Five were stranger offences. Further analysis is not presented here to protect anonymity.

Insufficient evidence to proceed

The clearance code 'insufficient evidence to proceed' was assigned to cases where the written narrative in PROMIS determined that the suspect may have held a belief that consent was given and where police could not identify the suspect. Cases also fell into this category if police determined that the offence could not be proven 'beyond a reasonable doubt' due to insufficient evidence relating to the suspect's state of mind. In a few cases, ACTP sought advice from the DPP, who advised against charge.

Considering 'insufficient evidence' from adult sexual assault and child sexual assault cases together (to protect anonymity given the low numbers), 15 were finalised this way. These numbers are low relative to other clearance codes. This is owing to the high number of 'victim withdrawal' cases, as noted above. Of these, seven cases from across the offence categories were historical. Injury, including resulting from strangulation, was reported by victims in five instances. Five of the cases were open for more than 12 months, and another four were closed between six months and 12 months of the report.

Rape myths in police decision-making

In line with the existing evidence base, cases reviewed indicate that adherence to rape myths played a role in police decision-making and treatment of victims (Stanko & Hohl, 2018). The term 'rape myth' refers to widespread, but objectively incorrect, beliefs and stereotypes about rape, those who experience it, and those who commit it (Burt, 1980; Lonsway & Fitzgerald, 1994). Research conducted with police officers in the UK demonstrates that officers with a greater acceptance and belief in these myths are likely to victim-blame and mitigate the legal and moral culpability of suspects (Sleath & Bull, 2012). Rape myths are also racialised (see Crenshaw, 1991; Kelley, 2023), and thus impact on minority populations in uniquely damaging ways.

Temkin and Krahé (2008) have argued that adherence to rape myths – that is, the belief in rape myths and the application of them in decision-making – is a significant contributor to the high rates of attrition of sexual offences. The findings of the present study support this claim. Across the dataset, rape myth acceptance was a significant driver of early case closure and decisions not to proceed.

Further, the application of rape myths in police decision-making indicates a lack of understanding about facts that are material in establishing the elements of the offence(s), and of consent as defined at law in the ACT.

Demonstrations of non-consent

There are many reasons that a person might not express their lack of consent to sex. First, a person may 'freeze' in response to nonconsensual sexual contact. This response, called tonic immobility, is a common involuntary defensive response to trauma (Suarez & Gallup, 1979; Mezey & Taylor, 1988; Galliano et al., 1993). A victim may 'tend and befriend' the assailant (the 'fawn' response) to mitigate the harm (Taylor et al., 2000; 2002). Or, the victim may simply make a rationale decision not to 'fight back' to avoid provoking further violence (Burgin & Crowe, 2020).

In response to these realities, law reform over the last few decades has sought to challenge these myths. The law no longer requires that victims actively 'resist' an assault. As at 2021, section 67(2) of the *Crimes Act* expressed:

> **A person who does not offer actual physical resistance to sexual intercourse shall not, by reason only of that fact, be regarded as consenting to the sexual intercourse.**

Thus, at the time there was no requirement at law for a victim to demonstrate that they did not consent. More recently, additional changes to the definition of consent in the Crimes Act sought to simplify this provision. Section 67(2) now reads:

> **A person also does not consent to an act with another person (the accused person) only because the person—**
>
> **a. does not say or do something to resist the act.**

Despite this, the PROMIS cases regularly included notes that indicate decisions were made about case closure due to the belief that victims must indicate their non-consent through actions and/or words. Such a belief hinges on the notion that consent is presumed to 'exist', unless and until it is 'revoked'.

For example, in one case, where the victim reported sexual assault by a stranger, the documentation in PROMIS notes that:

> **‘She did not verbalise to the male…that she did not want to proceed or did not provide consent.**
> **…**
> **She is unable to assess in her mind if the male knew she did not wish to participate in the sexual activity. … There was never any conversation around consent.’**

This is problematic not only because of the assumption that the victim must ‘verbalise’ her non-consent, but also because it assumes that the victim is required to make an assessment about the suspects state of mind. The case notes reflect that the victim ‘concedes’ that the chances of conviction would be low.

In another case, during EICI the victim *‘made it known to Police that she did not say no to any of the acts or substantially change her demeanour to show the [suspect] that she did not consent’*. Another states that, *‘although [victim] stated to police sexual intercourse with [suspect] occurred without consent, [victim] did not verbalise this to [suspect] until after the fact’ and ‘she has not said to [suspect] to stop or made any physical attempts to stop him’.*

This myth was reflected across other PROMIS cases:

> **‘The complainant gave evidence that the POI thought she was consenting to [the act] and that there was no conversation with the POI ever that she was not happy and did not consent.’**

> **‘She didn’t really want to, but she didn’t say no or tell him to stop.’**

> **‘EICI taken with complainant, who at no time expressed her withdrawl [sic] of her consent either verbally or physically. Police would be unable to prove that the offender was reckless in knowning [sic] that the complainant withdrew her consent, therefore unable to prove the elements of the offence.’**

> **‘[Victim] did not withdraw her consent at any time.’**

In one case, where the victim was unconscious at the beginning of the incident, and awoke to the suspect kissing her, the Case Officer noted:

> **‘However, [victim] has kissed [suspect] back for a period of time and has not made any verbal or physical attempts to withdraw her consent.’**

In the notes justifying finalisation of one matter, the *‘considerations for consent/removal of consent’* are laid out. The list stated:

> **‘Complainant said to POI, “Stop, not right now”. This indicates that the complainant was objecting to the act being conducted [at the time] specifically “not right now” as opposed to “not at all”.’**

The list continued:

> **‘Complainant said a number of excuses, “not shaving”, “false report of having her period” and “what if someone finds out” … There is insufficient information to indicate that the POI may have interpreted the excuses/concern as an indication that the complainant was not consenting.’**
> **…**
> **‘Complainant did not tell the POI that she did not want to “have sex” or that she did not want to “do any of the particular acts”.’**

This is at odds with the law, and demonstrates the double bind faced by victims. In this case, the victim did offer resistance. Yet, it was not enough. Even where victims reported injury that could ‘corroborate’ their reports of the use of force by the suspect, cases were closed as ‘unfounded’. Five cases involved strangulation, and 10 included reported injury.

The belief that women offer a ‘token resistance’ to sex (Powell et al., 2013) is evoked here. This myth situates women as ‘sexual gatekeepers’, and with persistence (and pressure), the ‘token resistance’ can be overcome. This myth is monitored in the Australian context through the regular National Community Attitudes towards Violence against Women Survey (NCAS). The most recent survey found 1 in 10 respondents agreed that women often say ‘no’ to sex when they mean ‘yes’ (NCAS 2023).

Sexual history and implied consent

Implied consent refers to the myth that consent, or free and voluntary agreement to a sexual act can be deduced from a victim's behaviour including sexual history (Burgin & Flynn, 2021; Vandervort, 2013). These narratives emerged in the PROMIS cases and were relied on to determine that the victim had in fact consented, or that in 'mistaken fact', the suspect believed that she did. Both scenarios were sufficient to see cases close and investigations cease, regardless of whether other evidence had been gathered (as also found by Hohl & Stanko, 2015).

The law across Australia has sought to reduce the circumstances in which such evidence is allowed. These are called 'rape shield laws'. In the ACT, evidence of sexual reputation is never admissible, as per section 75 of *Evidence Act* Sexual history, however, is admissible in some circumstances, with permission of the court (s76 Evidence Act). Though, there is little guidance in law about the distinction between the two (Kennedy & Easteal, 2010).

The court can only give leave to a party to introduce evidence of the 'complainant's sexual activities', if, according to section 78(1) of the Act, the evidence:

> a. **has substantial relevance to the facts in issue; or**
>
> b. **is a proper matter for cross-examination about credit.**

Section 78(2) continues that sexual history evidence that:

> **relates to, or tends to establish, the fact that the complainant was accustomed to engage in sexual activities is not to be regarded as having a substantial relevance to the facts in issue because of any inference it may raise about general disposition.**

In lay terms, any evidence about past sexual experiences is not considered to be substantially relevant (so as to be admissible) merely in order to support the claim that the victim is 'the type of person is who is more likely to have consented to the sexual activity' (s343 *Criminal Procedure Act 2009 (*Vic)).

Similarly, the evidence cannot be considered as being 'a proper matter for cross-examination about credit unless…it would be likely to substantially impair confidence in the reliability of the complainant's evidence' (s78(3) *Evidence Act*).

Accordingly, limitations on how such evidence can be adduced at trial (though criticism of the effectiveness of such provisions are abundant, see Burgin & Flynn, 2021) should limit the scope of its consideration by police. Yet, despite these protections at law, the PROMIS cases reveal that sexual reputation and sexual history continue to play a role in police decision-making. For example, in notes detailing the investigative activities undertaken in one case, the Case Officer wrote:

> **'The [Case Officer] has commenced reviewing the messages [victim's] mobile phone. The messages indicate that she meets the POI for 'rough sex' … The [Case Officer] is reviewing messages to other males from the [victim] to ascertain whether she has mentioned the incident or has had similar experiences.'**

Later, in the documentation reflecting the reasons for the case being finalised as 'insufficient evidence to proceed', the officer recorded:

> **'The [victim] appears to engage in a Dom/Sub style relationship with some males and the messages indicate that she is consensually agreeing to being physically struck or choked.'**

This was despite the victim reporting to police immediately and presenting with physical injuries. Regardless, and despite that consent to sex

cannot be given in the months, weeks or days before a sexual act, the 'rough sex' defence (Burgin & Crowe, 2022) had been activated in this case and it was therefore closed.

That case was not the only to mobilise the 'rough sex' defence. In another, the victim would fight off sexual advances from her partner, who would ignore and persist. She stated that she though he might have believed that she was *'role playing and that she wanted to have sex with him'*. She told police that *'she does not know why she continued to see [suspect]'*, demonstrating internalisation of the 'why didn't she just leave?' myth. This myth assumes that simply leaving an abusive relationship is first, easily done, and second, ends the violence. Police did not pursue any avenue of inquiry about the potential of coercive control that may characterise violent relationships. This indicates a lack of recognition of the realities of this scenario. Police drew on her language of *'role playing'* and referred to a *'sexual game'*.

In this scenario, the *'sexual game'*, which for the victim meant pushing him away and kicking him, is considered part of the 'seduction script' (Vandervort, 2013), that normalises the power and control inherent in family violence – even among young people. For police, who set aside these dynamics and normalised the violence as a *'sexual game'*, it was unclear why the victim *'did not say no'*. Instead, the *'[victim's] behaviour over the entire relationship can be questioned as it is likely to [have] contributed to [suspect's] belief about if consent was given'*. As such, according to a review by a more senior officer, *'the defence of mistake of fact can not [sic] be over come [sic]'*.

In another matter, the fact that a couple were married was used to establish that consent was implied and thus, there was *'insufficient evidence to support offences'*. The victim reported that her husband would sexually assault her often, including after recent childbirth. In finalising and closing the case with no charges, officers 'considered' that the victim and suspect were married and that they *'as a married couple [were] sharing a bed'*. For police, since any consensual acts also occurred as part of the same 'routine' that would precede sexual assault, consent could be assumed. Marital immunity to sexual intercourse without consent was abolished by *Crimes (Amendment) Ordinance (No. 5) 1985* (ACT). Yet, the NCAS (2023) found that 20 per cent of Australians did not know that, or were not sure if, rape in marriage was a crime.

The reliance on sexual history evidence to finalise cases, often without due investigation, is thus not in line with the extant law. Further, the cases discussed above demonstrate that complex relationship histories, even those that are presenting as potential repeated sexual abuse, are determined to be 'weaknesses' in the case. As such, matters are finalised and recorded as 'insufficient evidence to proceed'.

This is thus a lost opportunity to identify the broader context of power and control in which these incidents may have occurred. Recognising the impact of family and relationship violence on consent would enable meaningful referrals to intervene into violence and offer an investigative pathway for police. In particular, posing questions about coercive control in intimate or family relationships and its impact on consent would benefit investigation of these cases. Evidence of a history of family violence can be admissible in the ACT and can also be considered as tendency or relationship and context evidence.

Credibility, reliability and 'risky' behaviours

The influence of characteristics of the victim, including supposed 'risky behaviour', on police decision-making is well documented (O'Neal & Hayes, 2020). In particular, police views about 'risk-taking' behaviour by victims has been found to be closely tied to police's views about their 'credibility'

as a victim (Campbell et al., 2015; O'Neal, 2017). Victims who deviate from the 'ideal victim' stereotype are thus viewed unfavourably by police (Ricciardelli et al., 2021).

The 'ideal victim' is theorised to be those who meet the (at times conflicting) expectations about what people think a 'real' victim would do before, during and after a rape (Christie, 1986). Victims who do not meet the 'standard' do not have the harm committed against them recognised, by the justice system or by society. Central to the ideal victim stereotype is that the victim plays no role in supposedly 'contributing to their victimisation', such as by drinking alcohol, using drugs or having casual sex. The 'ideal victim' is also cisgendered, white and able-bodied. Others are '(un)victims' (see Long, 2018; Wallace et al., 2024, for discussion of race and (un)victimisation).

An undisclosed number of matters in the dataset related to sex workers. Previous studies have found that victims engaged in sex work are perceived negatively by police, who might perceive that 'sex workers make false reports of sexual assault when trying to resolve business disputes' (O'Neal & Hayes, 2020; 35). There is no evidence to support this belief, and false reporting of sexual offences is low (Ferguson & Malouff, 2016). In this dataset, the PROMIS notes demonstrate some scepticism of sex workers. For example, the language 'openly admits to being a sex worker' was adopted in one matter, where the victim was reporting historical child sexual assault.

The PROMIS cases demonstrate that the behaviour of victims, or more accurately, police perceptions of victims' behaviour, comes to bear on police decision-making. In particular, drug or alcohol consumption was tied to the credibility of victims in cases within the dataset. This is perhaps unsurprising given recent evidence of the ubiquity of the belief that if a woman is intoxicated, she is 'partly responsible if she is raped' (NCAS, 2023). Yet, this is the exact circumstance in which rape and sexual assault often occurs (see Anderson et al., 2017; Anderson et al., 2019; Finney, 2004).

An Australian study of appellate court decisions between 2010 and 2014 (McNamara et al., 2017; 163) found that a majority of decisions that focused on the intoxication of a victim related to sexual offences, and that no other offence type 'revealed such a pattern of concern for the credibility [or] reliability implications of the victim's intoxication'. Thus, the 'problem' posed by intoxication in sexual offence cases is well established.

Intoxication is often linked in criminal justice contexts to behaviour or to memory. In this study, both were identified. In the former, the victim is constructed as more likely to consent, or more likely to behave in a way that brings about a belief in consent in the suspect; in the latter, the victim becomes an unreliable witness because of intoxication (Burgin, 2019).

Cases referred to alcohol consumption and 'risk-taking' behaviour:

> **'They all drank heavily, played spin the bottle involving long passionate kissing.'**

Research argues that while an intoxicated victim is blamed for contributing to their own victimisation, an intoxicated suspect can rely on intoxication to mitigate (moral and legal) culpability (Richardson & Campbell, 1982; Stormo et al., 1997). Finch and Munro (2007; 594) have argued that this is gendered, and presents a double standard, where men's drinking behaviour is celebrated, and women are demonised and blamed because she 'appears to have violated feminine gender norms by becoming intoxicated'. For example, in one case the suspects 'level of intoxication' was cited as a barrier to charge; he was seen as too drunk to have committed the offence.

Police often referred to the interaction between drugs or alcohol and memory. For example, in one case, the officer noted:

> **'By admission [victim] was intoxicated and experienced memory loss.'**

In this example, the victim was perceived as unreliable. The same narrative continued in other cases:

> **'[Victim] does not remember any exchanges with [suspect] that occurred during the time in which she was blacked out. She did not even know his name when [she] woke up.'**

In another, the victim reported to be 'missing' memory of some parts of the night due to her level of intoxication. Instead of considering this in relation to her capacity to consent, police determined this to be sufficient to close the case:

> **'During the EICI [victim] was very vague on information as she couldn't remember the entire night and had a very patchy memory of the night...Due to the lack of detail and certainty, the incident would be difficult to establish beyond reasonable doubt.'**

Perceptions of memory are also informed by dated understandings about cognitive processing in the wake of trauma. It is generally poorly understood that victims experience changes to their functioning during a traumatic experience, that may impact their memory of the event and their ability to even take-in the external environment (Garcia-Esteve et al., 2021). For this reason, there is 'no scientific basis for assuming that a victim's later, more complete memories are less credible than earlier, less complete memories of events' (Rudolfsson, 2023; 15; Hopper et al., 2020).

Victims who had made previous reports to police were also treated with scepticism. One case included notes by police that *'there appears to be a rise in the number of alleged sexual assaults being reported'* from women related to the same location and tangentially known to each other. Instead of the potential that there is an acceptance of sexual violence against women in a certain cohort (which is borne out in the evidence base), police assumed this was indicative of an increase in false reports of sexual violence (which is not borne out in the evidence base). This is consistent with adherence to the myth that not only do women 'lie' about rape, but they lie repeatedly about it (Gekoski et al., 2024).

A motive to lie was proposed by police in other cases. In one *'police believe[d] that [suspect] did send the intimate image without consent'*, but that there were justified reasons for doing this that shifted blame onto the victim. They continued:

> **'Police are of the belief that [victim] has deliberately left out and exaggerated specific details from her version of events in an attempt to exaggerate the story.'**

Other victims were accused of having only later 'realised' that their experience was (potentially) a crime, and that this meant that they had no basis in asserting that they were not consenting. For example, in one case the victim reported following a presentation at school about respectful relationships. She reported learning about sexual assault and *'felt that her experience matched what she was told constituted sexual assault'.* Police notes state:

> **'There were times where she said, "Don't do this" or "Don't do that". [Suspect] responded that it would be fine and continued. [Victim] could not recall making further verbal objections.'**

As with cases discussed above, this shows a fundamental lack of understanding about consent. Victim's do not need to physically or verbally resist, yet in this case, where the victim did, it was still

not enough to convince police that she was not consenting. Notes in this case appear to support the contention that the doubt cast on the victim by police owing to the report being made after being educated about sexual assault, meant that any resistance was viewed through a lens of disbelief.

Police 'scepticism' was recorded in other cases too. In one matter, involving a child sexual assault that occurred in a public place, the police did not believe that a suspect would commit the act where they could possibly be seen:

> **'Given the pedestrian traffic around [location], police are sceptical of anyone engaging in sexual acts in public place that would likely be viewed by members of the public transitioning through the area on foot.'**

The victim had been physically injured in the incident, and owing to the ages of the victim and suspect, no consent could be given.

Further, not only does research suggest that persons experiencing poor mental health or living with intellectual impairment are at a higher risk of sexual violence, but negative mental health outcomes (including post-traumatic stress disorder, depression, anxiety or other psychosocial disability) are common among victims of sexual violence (see Ellison et al., 2015).

Research shows that police decision-making is negatively influenced by a victim's mental health condition or intellectual or learning disability. Hohl and Stanko (2015) found that while these victims were no more likely than others to withdraw reports, the increase attrition of these cases is explained by police decision-making (and later that of prosecutors). O'Neal (2017) similarly found that police officers were seven times more likely to question the credibility of victims experiencing mental health issues.

In adult and child sexual assault cases in the present study, 57 victims were noted as having mental health issues, two of whom were handcuffed. Of these, 14 were closed by police as 'unfounded'. That means that 26 per cent of these cases closed as 'unfounded' involved a victim with a mental health issue.

The impact of mental health on police decision-making was noted in PROMIS cases. One case recorded that the victim *'had relied on [suspect] emotionally and spiritually, claiming he was like a father, brother and lover to her'*, and outlines the victim's poor mental health, noting that the victim thought she was in a relationship with the suspect, and he did not.

In another case, the victim's desire to withdraw due to poor mental health (although communicated through her mother, victim was a young teenager) led police to determine that the case was 'unfounded'.

Victims with mental health issues in this sample were just as likely to withdraw from the investigation than have the matter deemed unfounded, and they were not necessarily more or less likely to withdraw their case than other victims. Though, there are some caveats. For example, ACTP typically assign the clearance type of 'complaint withdrawn by victim', where the victim does not want to participate in an EICI. This may mean that the cause of withdrawal is the pressure to undertake the EICI.

Further, police rely on subjective perceptions of mental health issues experienced by the victim, and then their perceptions of its 'worthiness' to be recorded. This may lead to under recording of mental health, particularly given that officers may not consider trauma responses as *'mental health issues'*. General inconsistent use of PROMIS and poor recording practices across the dataset could also explain.

Belief that children can consent

Some cases of child sexual assault referred to 'consent', where the victim was below the age of consent, and the suspect was more than two years older. A person under 16 years of age is not able to consent to sex with a person more than two years older than them. The defence of similar age is reflected in the *Crimes Act*. Section 55 states:

> **(5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that—**
>
> **a. he or she believed on reasonable grounds that the person on whom the offence is alleged to have been committed was of or above the age of 16 years; or**
>
> **b. at the time of the alleged offence—**
>
> **i. the person on whom the offence is alleged to have been committed was of or above the age of 10 years; and**
>
> **ii. the defendant was not more than 2 years older;**
>
> **and that that person consented to the sexual intercourse.**

In spite of this, PROMIS cases of child sexual assault still regularly include notes referring to children and young people's capacity to consent to sex with older men, which has been reflected in the decisions supporting case finalisation.

In one case, the victim was 15 years at the time of the offence, and the suspect was aged between 35-45 years (recalled by the victim). In this PROMIS case, police wrote:

> **'She consented to both sexual encounters.'**

Language used throughout many child sexual assault reports suggested that the sexual assault was consensual. This includes phrases such as *'maintained a sexual relationship'* (though, this reflects the language of the law at the time) and *'had intercourse with'.* In one report it is noted that the victim was 15 years old at the time of the offence and the suspect was 30 years old. In this report, the police wrote:

> **'Mutual oral sex would occur.'**

In another case, where the victim was a child (15 years) and the suspect an adult (over 30), where police recorded the victim as 'consenting', the victim became pregnant.

Some officers did correctly identify that consent is not a relevant consideration. For example, in one case the victim was 14 years old at the time of the offence, where the suspect was 21. The victim told police:

> **'He told me not to tell anyone, to keep it between us.'**

During case closure, PROMIS notes state:

> **'[Case Officer] explained to [the victim] that even though she consented he committed an offence because of the age difference.'**

Although, this does not present an understanding that the victim cannot consent. Across these cases, officers did not display an understanding of grooming. Grooming refers to a process or pattern of behaviours that aim to build emotional connections with children, preying on their vulnerability to do so, to make the child comply. In these cases, the grooming occurred to force to the child to comply with sexual abuse. Insight into this tactic of abusers appears unsophisticated.

Beyond reasonable doubt

Police make decisions about proceeding with cases based on their own understandings of broader social, cultural and legal contexts. Evidence shows that police commonly anticipate the decisions that will be made 'down the line' of the criminal justice system, such as how juries will perceive and understand a case (Munro & Kelly, 2009). This 'downstream orientation' (Frohmann, 1991) means that police are more likely to rely on myths and stereotypes about 'real rape' (first conceptualised by Estrich, 1987) in deciding whether a case should progress (or even be investigated). This may occur where an officer does not 'believe' the myth themselves, but they do believe that the 'problems' presented by the relationship between the victim and suspect, delay, intoxication, or memory, are insurmountable in the later stages of the system.

As established in the previous section, the characteristics of the so-called 'real rape', rarely reflect the reality of sexual offending. Sexual violence is more likely to be perpetrated by a person known to the victim (Estrich, 1987); victims commonly delay reporting (Cashmore et al., 2017); memory is often affected by trauma (Rudolfsson, 2023); drug or alcohol intoxication is a common feature of sexual violence (Anderson et al. 2019).

Yet, the intersection of rape myths and legal decision-making was recorded here. For example, in a case note completed after a victim's EICI was recorded, the Case Officer notes:

> **'In summary, I think there is definite criminality here, but it has occurred in the context of a very kinky (dominant / submissive) relationship so it may be hard to prove the offences beyond reasonable doubt.'**

This example demonstrates the interaction between this myth and the application of legal principles by police. Even in cases where police challenge their own subjective belief in a rape myth, and agree that a sexual offence has likely been committed by the suspect (*'definite criminality'*), the perception of the impact of the myth prevails (*'may be hard to prove beyond reasonable doubt'*).

Such 'downstream'-orientated decision-making is in itself problematic, and further compounded by a lack of understanding among police of the law and legal processes that apply in sexual offence matters. This means that the changes made to the system 'downstream' are rarely tested in the cases that those changes seek to benefit.

It was common for PROMIS records to include reference to cases being closed due to an inability to prove the charge 'beyond a reasonable doubt' or to the DPP Prosecution Guide. This indicates that police decision-making about whether to lay charges has been made, at least in some cases, with regard to the incorrect test to charge.

The likelihood of conviction, should the case proceed to trial, was cited as a reason for case closure. For example, documents in one case note that the officer drew the conclusion that the victim provided *'insufficient information to suggest that consent to intercourse was negated'*, and that, *'On that basis, there is minimal likelihood of a finding of guilt beyond all reasonable doubt and so the investigation is finalised'.* In another matter police concluded that:

> **'Police have no further lines of enquiry in relation to this matter, Police are unable to establish a Prima Facie case.'**

The reason for 'insufficient evidence to prove beyond reasonable doubt' was often cited as a lack of 'corroborative evidence'. Requirements for corroboration have been removed from the criminal law in favour of more evidence-based provisions. Historically, 'a victim must 'corroborate' her story with evidence of injury' (Burgin, 2019; 299). This has long been understood as driven by misplaced fear of the 'false allegation' (Brownmiller, 1975), and the perception that a rape allegation is easily made, and difficult to defend. In reality, the opposite is true. Evidence, including that presented here, proves that reporting sexual violence is hard, and most cases never precede beyond the initial report.

In one case, with child victims and an adult suspect, police reasoned that they *'hold suspicion but insufficient to hold belief. Agree to finalise'*. They continued that *'common proofs of this cannot be established' and 'there is no corroborating evidence identified'*. In this case, although the officers determined:

> **'There was reasonable suspicion of an offence having been disclosed, however there was insufficient evidence to warrant a reasonable belief that the accused's guilt was such that a charge was warranted in the circumstances.'**

In a case closed after the EICI with the victim, the officer recorded that:

> **'There is sufficient evidence to form suspicion that an offence has been committed on the basis of the EICI provided by the complainant. However, there is insufficient corroborative evidence available to establish the requisite recklessness of the suspect as to whether or not the complainant was or was not consenting at the time.'**

In some cases, even injury was not sufficient to meet the threshold to charge or to convince officers that the report is not 'unfounded', or includes 'insufficient evidence to proceed'. For example, in a stranger rape case where the victim reported immediately, was medically examined at FAMSAC and internal and external injuries were recorded, police resolved that:

> **'Should this matter be tested in court, police believe it would be highly unlikely to reach the threshold of beyond reasonable doubt and a failed prosecution would be the outcome. This matter cannot proceed on its own merits.'**

A review of the EICI identifies a clear narrative given by the victim of the use of force by the suspect. Other 'issues' with the case were identified as the victim's 'significant' intoxication and that 'there was never any conversation around consent'. Both of these factors could actually be considered evidence of the illegality of the incident. Yet, the case was closed after EICI and after no attempts to identify the suspect. The case notes refer to the victim as 'volatile'. There is no evidence recorded in PROMIS to support this.

In one child sexual assault case of a victim who was 14 years at the time of the offence, police note that they reviewed the victim's phone content as means to support the offences reported to the police and:

> **'Found no evidence of any offending to corroborate the assertions made by [the victim].'**

In this case, the police *'suspect[ed] parts of messages had also been deleted'* and did not view her as a credible witness, believing that *'[victim] only [wanted] to show police what she [wanted] them to see'*.

PROMIS reports often reflected a burden on victims to document offences against them or make contemporaneous disclosures to witnesses to reinforce their 'version of events' as factual (to 'corroborate'). Some cases note that there were *'nil witnesses to alleged assault or to provide corroboration of complainant's*

EICI'. In one case report, case notes emphasise the need for corroborating evidence, recording that *'[victim] did not confide in anyone, therefore there is no supporting evidence to corroborate [victim's] version of events'*.

In another, PROMIS case notes state:

> **'Despite comprehensive investigative enquiries, there is insufficient evidence to proceed with the matter. This includes, but is not limited to, Nil physical evidence, Nil forensics evidence, Nil CCTV footage, Nil telecommunications records, Nil medical records and the disclosure witnesses do not corroborate the version of events provide by the complainant.'**

ACTP did not conduct any investigation of the matter. In another adult sexual offence matter, the case notes state:

> **'No other evidence is available to prove that [victim's] version of events is true. No texts were sent and only sometime later has she supposedly told someone about the incident with [suspect]. The incident can't be corroborated by any party.'**

In these cases, officers appear to be labouring under the belief that corroboration is required to proceed and fail to recognise that most sexual assaults occur without direct witnesses, aside from the victim and the offender (Cossins & Goodman-Delahunty 2013).

Victim-survivors expressed the frustration in the police's focus on corroborating evidence, and the impact on their cases:

> **'It's as if they expect us to have our phone out moments before and during sexual violence to document what is happening, but because I don't have video or photo evidence of the minutes or seconds leading up to the incident, or evidence of me withdrawing my consent immediately prior, it doesn't count, it's our word against the perpetrators.' (Frankie)**

Yet, even where victims did provide a disclosure witness (or witnesses), police often determined that the evidence was not credible. In one case, police noted:

> **'Statement of first complaint was not a credible witness due to reporting a similar assault several weeks after the complainant's report and then attempting suicide.'**

Similarly, other matters have referred to a failure of disclosure witnesses to corroborate the victim's report stating that witness does *'not sufficiently describe any disclosures that the sexual intercourse occurred without consent'*.

Thus, even where victims met the arbitrary expectations set by police, and not by the law, cases were closed. In another case, where the victim was 15 years at the time of the offence, case notes stated:

> **'Two disclosure witnesses stated that [victim] had told them that she 'hooked up' with [suspect] and did not appear distressed by the incident, leading them to believe that the interaction was consensual.'**

Subsequently, finalisation notes state *'the details provided by the disclosure witnesses did not corroborate [victim's] version of events'*. As a result, the Case Officer on this report decided not to approach or interview the suspect in relation to the offences reported. Yet, it is not uncommon for people not to disclose sexual violence, particularly if they fear not being believed. This is particularly so for children and young people, who are typically afforded less control over what happens after they disclose violence.

These cases demonstrate some confusion about the law pertaining to sexual offences, and a range of legal tests being applied in decision-making. The legal test to charge has already been identified as an issue of contention in the ACT, and a cross-agency Working Group is currently considering the issue. The tension though was reflected in the comments of a few participants, who stated:

> **'I did ask specifically about the police applying the test that they didn't think there was a reasonable chance of conviction and that not being the test the police are supposed to apply. Their test is meant to be whether they think it happened. Um and she said that's the DPP test whether there's a reasonable chance of convictions, the police have been cutting out the middleman and using that test even when they shouldn't be.' (Nicole)**

> **'The evidence doesn't need to be beyond reasonable doubt [to charge] … That was very frustrating. So much rested on this for me. I pretty much, like, I put my whole life on hold.' (Abigail)**

Communicating case closure

Victim-survivors shared feeling unsatisfied with the decision to finalise their cases without any charges. Some also said that they never understood why their matter was not proceeding. 'Demystifying the process' is important in a trauma-informed process for investigating sexual offences (Rich, 2019; 466). This is consistent with findings from other studies that suggest victims often to not recall receiving information about why cases were not proceeding, and when they do, many report not being told 'clearly and promptly' (Molina & Poppleton, 2020;29). Police must ensure that victims are informed, understand the process and know what to expect next. Yet, for example, Megan expressed that *'[she] did not get a proper, meaningful explanation of why [her] matter would not proceed.'* Others, like Blair, felt that these explanations were accusatory:

'[Police said] there was 'insufficient' proof and that I most likely made it up as a revenge of the breakup.' (Blair)

Malia and her mum Scarlet described a change in attitude by police, between early stages of the investigation and later when they were told the matter would not be proceeding.

> **'I don't know. It's just like at first she was just really assuring. And like told me that we're gonna get it done and like I would never have to see him again. And like, she was just like guaranteeing me that like she'd help and she just.. I didn't even hear from her for ages, and then she came to me and then she told me that she can't do anything about it no more.' (Malia)**

They recall that they were told about the status of the case in the front office of a police station:

> **Malia: 'She's like towering over me with her fucking bodycam.'**
>
> **…**
>
> **Scarlet: 'What [Malia's] talking about is the most triggering part. And that was when she got told the investigation wasn't going further. So, they came out with body cams and stood in front of her. It wasn't victim informed at all.**
>
> **…**
>
> **But … I'm an adult, and I can handle my emotions. But my daughter was not treated right. So, what I wanted explained to [Malia] was a kind, compassionate, victim informed response as to why, and she never received that. She just got a police officer towering over her with the body cam.'**

Abigail recalled police telling her why her case would not proceed:

'And I remember him saying very, very clearly, we don't have evidence to support it beyond reasonable doubt.' (Abigail)

Others pleaded with police to try and get them to reconsider. In one PROMIS case, officers note that the victim asked if there was a *'rabbit she could pull out of a hat'* to change the decision. Notes reflect that police explained the *'burdens of proof'* to the victim.

Some, like Tessa, felt that police never explained why the matter was closed, since they never had any contact with police after the initial report:

> **'They told me they'd go and speak to him and if I had any questions, to call. They also advised they'd give me info [about] support services. I never heard from them again. I followed up, nothing.' (Tessa)**

Tessa only got access to support services as a result of being invited to participate in this project.

Stevie expressed a similar experience. She did not want a tough criminal justice response for the suspect, instead she felt like the police approaching the suspect to discuss the non-consensual sharing of intimate images would have been a good outcome. Mainly, she wanted the photos to be taken down. Yet, she never received any updates from police about what happened:

> **'They said "Yeah, we'll go to his house", [but] I never heard about what happened there at all. I didn't get any updates with that as well. So, it was kind of... they were really good [at the beginning]. And then afterwards, I just kind of, I was just like "Oh, well, there's that...".'**
> **…**
> **'There's a lot in this process that, that got left so in the air, that left me very confused. And that's why I never felt really satisfied with it, because I just never knew what happened.' (Stevie)**

Some victim-survivors were left confused about the decision, particularly since police had previously expressed certainty about the chances of progressing:

> **'[Case Officer] just seemed so sure that we'd take it all the way. He was talking to me about the court process and how it would be and I wouldn't be in the room as the as the abuser. I'd have my own space and have basically a zoom call to the judge and whatever. And so he was preparing me for all of that. UM. Always mentally, just prepping myself for that time and then for him to say "No, sorry, it's not going ahead." That was really, really hard.**
> **…**
> **I didn't hear anything back from them afterwards, after that call. So yeah, I didn't feel I had any closure from that experience with them. They were great to start off with, but then? There's nothing.' (Pepper)**

Others felt that police had stopped believing them, and that was why their cases closed. Some shared that the conversation about why the case was not proceeding was one of the most distressing parts of their experience. Selena understands that her matter was finalised because she *'didn't have enough evidence to substantiate [her] allegations that something had happened'*. She recalls:

> **'The interview where they told me the results, I left feeling very upset and it wasn't so much about the outcome, but the manner in which they delivered the results to me. It was very unprofessional, it was rude.' (Selena)**

PROMIS case notes from several matters reveal some of the frustration that Selena expressed. In one case, officers detailed the phone call with a victim:

> **'When explained that there was insufficient evidence, [victim] stated "So he gets away with it, that's ok". [Victim] terminated the phone call.'**

Olivia expressed frustration with the legal principles, and what she felt was their incompatibility with sexual violence, at least as understood by police:

> **'But you don't actually understand the full result of beyond reasonable doubt, until you're in this kind of situation where you go well, like if one little thing can create doubt. Then you've got no chance here … Unless you're in a room and there's a video recorder there that happens to catch everything on a recorder and sees it all and hears it all. They're going to say, we can doubt.' (Olivia)**

Frankie felt that police misinterpreted evidence in making their determination:

> **'I got told you consented in text messages when I had tried to explain to police that those consenting text messages were banter between two friends. It wasn't me saying "Here's the green light you can do whatever you want to me".' (Frankie)**

Frankie is right. The text messages should not be relevant to consent, since they are not contemporaneous to the incident. But, as she shared, consent was not relevant to the case:

> **'I was underage [and] there was the two year difference. So they were the age of consent. And I was not. It was like the trauma that I had faced wasn't taken seriously. It was kind of like I had left the interview room, absolutely hysterical because I was like, "Oh my god, I've just had to relive all of this just to be told that I consented to something".' (Frankie)**

This underscores the importance of the provision of information. Victim-survivors often did not understand the reasons for the decision made by police, and they were also not given opportunities to clarify information or ask police to reconsider. The victim-led approach then, only applied when victims wanted to withdraw their case, not when they sought to correct police's misunderstandings of the facts, 'appeal' decisions or inform decision-making. The provision of information, including about why a case is not proceeding, also improves the experience of 'procedural justice', that is, the perception of the process as respectful and trustworthy, and throughout it, the victim is given a voice and that voice is heard (Lind & Tyler, 1988).

For Ash, even though charges could not be laid, she was satisfied with the outcome largely because police kept her up to date:

> **'And he then let me he called me whenever there was an update. So, the day I think was the day of or the day after... they went to his house. [Case Officer] called me and said, "right, this is what's happened this is the situation because of his dementia, we are unable to progress any further, but at least your mother knows that we were there for that reason"'.**
> **…**
> **'It felt like you've finally understand that this is serious and you should have done something like this when it happened.'**

Her experience shows that satisfaction with the police response is not solely tied to case outcomes. Lillian felt the same way, but it was the absence of information that underscored the importance of it:

> **'Success will also … involve me understanding what then comes with that [EICI] statement. So I want to have full understanding and appreciation of why … that would go to court or won't go to court.' (Lillian)**

Pinkie also expressed that other aspects of the police process made her feel 'unburdened':

> **But yeah, I did feel unburdened at the end of it. … It was like, well, actually, I'm feeling heard and understood... I'm, you know, I'm grateful. At last, for feeling heard.' (Pinkie)**

For Pinkie then, being listened to and heard was crucial in the overall experience with police, and in her satisfaction with the outcome.

Conclusions and recommendations

‘I can accept that that might have been best practice, but it wasn’t very best practice.’ (Lillian)

The findings of this Police Process Review support the contention that not only are sexual offences rarely charged in the ACT, they are rarely investigated. The findings reinforce (and are reinforced by) those of other similar reviews internationally. Kelly and colleagues (2005) similarly found that police rarely attempted to gather evidence in sexual offence matters and observed the breakdown in trust and confidence that victims had in the police as a result. High rates of attrition, from report and through police investigations, is driven by police decision-making about the ‘strength’ of the evidence, often on the statement of the victim alone, and by victim withdrawal. Yet, victims often withdraw from the investigation in response to decisions and actions of police, and not of their own volition.

Police are referred to as the ‘gatekeepers’ of the criminal justice system. For victims of sexual offences, police are the ‘key’ to unlocking a legal response to their report of sexual violence (see White & McMillan, 2021). Police are also central to the experience of disclosure. About two thirds of adult victims of sexual assault in this dataset reported within six months of the incident. Others, who had delayed reporting, had never told anyone. In this way, the relationship between police and victims is crucial to victims’ experiences of the criminal justice system and to their experience of being heard and believed, because it might be the first person they have ever told. Yet, a culture of doubt or disbelief is understood to characterise police responses internationally, and this was borne out here. As Lonsway (2010, 1367) said, this culture of disbelief ‘may be the single most damaging factor’ for victims of sexual violence and ‘may also be the most powerful tool in the arsenal of rapists because it allows them to commit their crimes with impunity’.

As the literature shows, a breakdown in relationship between police and victims is a driver of victim withdrawal. Concerningly, these relationships broke down despite the ‘victim-centric’ processes ACTP have attempted to adopt. As the findings suggest, these policies are not meeting their objectives, and are not informed by a robust understanding of the needs and wants of victim-survivors of sexual violence. As such, a tension between the needs of victims and the policy and practice of ACTP continues to exist. At times, this tension was caused by unintended consequences of policy or by the rigid interpretation of legislation, in ways that ‘satisf[ied] the needs of the police in their role as gatekeepers to the criminal justice system more than the needs of victims’ (Holmberg et al., 2021).

The reliance on EICIs to commence investigations and produce sufficient evidence to prove an offence, exemplifies. The practice of collecting an EICI was eagerly adopted by ACTP because of the potential to capture the ‘best evidence’ early and because it reduces the number of times a victim needs to ‘tell their story’. However, its use as either the prompt for investigation or the barrier to it is problematic. Crucial evidence is lost. This occurs because ACTP practice guidance stipulates that EICIs should be used to identify investigative leads. Since EICIs may be delayed for a range of reasons, perishable evidence including forensic evidence and CCTV is often no longer available. Delays post-EICI were also recorded,

including a lack of investigative activities while police waited for results of forensic testing. This contributes to a failure to collect and preserve evidence in sexual offence matters, including that of witnesses.

Victims are put under significant and undue pressure in the EICI. As described, victims felt that the EICI was intimidating and understood that this was their one opportunity to provide all of their evidence. If they didn't, cases were closed. This was evident in the PROMIS cases, where cases were closed because the victim did not 'prove' the offence beyond a reasonable doubt in the EICI. Notably, only a prosecutor is required to 'prove' the offence beyond a reasonable doubt. Therefore, this is an *un*reasonable expectation of victims. Regardless, it was the role placed on victims. Police then act as judge and jury, applying a threshold of 'beyond reasonable doubt', even before investigative activities have been undertaken.

The low rate of attrition is not however, only caused by those unintended consequences. The evidence reveals that ACTP officers rely on legal and extralegal factors in decision-making in sexual offence cases. This included a reliance on rape myths, either due to officers' own beliefs in the myths or because of their views that a victim's credibility, reliability or character undermine the prospects of a conviction irrevocably. Cases were instead closed, marked as unfounded or with insufficient evidence to proceed, where victims did not meet the expectations of the 'ideal victim', or the circumstances challenged the 'real rape' stereotype.

A key limitation of the study is the lack of police data about victims living with disability, those who are Aboriginal and Torres Strait Islander, or come from culturally and linguistically diverse communities. Even where such information was recorded, reporting on the information here was fraught, owing to the need to ensure the anonymity of people who report sexual violence to police. Research does show, however, that victims who are marginalised are less likely to be 'recognised' as victims (Crenshaw, 1991). Anti-Black rape myths about Black women's identity (Crenshaw, 1991), such as that Black women are 'promiscuous' (see hooks, 1981), work alongside rape myths that target *behaviour.* These myths could not be adequately explored in this dataset.

Information was often lacking about how victims with diverse needs were supported, and as such, little analysis of the (in)effectiveness of these supports could be completed. A lack of information about cultural and racial identity in the dataset limited meaningful analysis in this regard. The project responds to this limitation in the recommendations, set out below, namely, recommendations about data collection (underpinned by principles of Indigenous Data Sovereignty), and on referral pathways to culturally safe, and culturally strong, supports.

The victim-survivors in this study revealed the non-linear journey of 'justice'. All reported their experience to police, but now, they differed in what they wanted to happen. This aligns with what McGlynn and Westmarland (2019) conceptualise as 'kaleidoscopic justice'; that what 'justice' means for an individual is constantly changing, shaped by new information, experiences, and understandings. For the victim-survivors who participated in the Police Process Review, perceptions of police, the law, society, and justice itself were all shaped by their experiences of report and investigation.

In light of the findings of this review, 17 recommendations are made to galvanise existing capability within ACTP, and the strengths identified by victim-survivors, and improve pathways between reporting and support. Recommendations are made on the premise that people who report sexual offences to the police 'deserve to have a thorough, bias-free, trauma-informed investigation' (Women's Law Project, 2022; 2). The recommendations adopt a trauma-informed and victim-centric foundation, with changes to be implemented at a structural, policy and individual level. This whole of organisation approach is designed to support a broader program of cultural change across ACTP in relation to sexual offences.

Recommendations

1. Establish an ongoing independent Sexual Assault Case Review

There is currently no independent oversight on the investigation of sexual offences. An ongoing, independent Sexual Assault Case Review should be established in the ACT to oversee police decision-making in sexual offence cases, and the address high rates of attrition. Adopting the principles of the Violence Against Women Advocate Case Review implemented across Canada (the 'Canadian Model'), the Sexual Assault Case Review should be community-led to offer insight from sexual violence subject matter experts.

Importantly, it should be made clear that the goal of the case review is not for other justice agencies to 'check the work' of ACTP. As such, it should not be considered appropriate for the DPP to fulfil this role. Instead, the Sexual Assault Case Review offers an opportunity for new investigative avenues to be identified through meaningful collaboration between ACTP and sexual violence experts drawn from outside of the criminal justice system. However, some mechanism for a legal review, where case reviewers and police disagree on a matter of law, should be established.

Case review should be conducted on every case that has not proceeded to charge, and a review should take place every three months. Quarterly reviews ensure that each case is reviewed without a significant delay, align with the best practice approach of the Canadian Model. Case reviewers should have access to all information reviewed by police, in order for an effective review to be conducted.

2. Establish a new role of Sexual Assault Survivor Advocates

Victim withdrawal was the main source of case attrition in the sample, in line with the existing evidence base (Hohl & Stanko, 2015). In Hohl and Stanko's (2015) study, victims who reported through a specialist referral centre for sexual violence were half as likely to withdraw from the police investigation. Considering this, and the other issues identified across the review, a new role of Sexual Assault Survivor Advocates should be established.

The role of the Sexual Assault Survivor Advocate should not be to provide therapeutic support, and thus other services should continue to be referred. Instead, the advocate should be tasked with supporting victims in accessing their rights under the Victims of Crime Act 1994 (ACT). At present, no other actor plays this role. Where required, advocates should also facilitate referrals to support. Sexual Assault Survivor Advocates should also:

- Lead the Meet and Greet process
- Be present and, where necessary, active participants in EICIs
- Support police to remain engaged with victims, including through shared responsibility for providing case updates, as required under the Victims of Crime Act 1994 (ACT) (see also Recommendation 3).

This approach has been adopted elsewhere with success. Independent Sexual Violence Advisors (ISVAs) in the UK have seen a reduction in victim withdrawal (Molina & Poppleton, 2020). Evidence shows that victims' advocates improve not only the experience of victims (Brooks & Burman, 2017) but also the treatment of victims by police (Campbell, 2006). Given the high rate of victim withdrawal in sexual offence cases in the ACT, this approach should be adopted.

Victim Support ACT should be prioritised for consideration of fulfilling this role. As an existing justice agency under the Victims of Crime Act 1994 (ACT), there is existing infrastructure to support the role which should mean that funding can be more meaningfully allocated where it is needed. Appointing VSACT to this role also addresses a number of other issues identified by the Police Process Review. If VSACT are not allocated funding to operate the Sexual Assault Survivor Advocates these issues will need to be independently addressed. Some of these are addressed in Recommendation 3. Funding for Sexual Assault Survivor Advocates must be commensurate to reporting rates, to ensure that the demand it met (George & Ferguson, 2021).

3. Develop and implement a Memorandum of Understanding between ACT Policing and Victim Support ACT

A Memorandum of Understanding (MoU) between ACTP and VSACT should be developed. This should occur regardless of whether the Sexual Assault Survivor Advocate role is staffed by VSACT (see Recommendation 2), though its content and scope may vary in that instance. However, the MoU should also extend to the work of other VSACT staff outside of the Sexual Assault Survivor Advocate.

The MoU must address three key problems in the system response to sexual offences in the ACT:

a. **Lack of referral pathway for VSACT clients reporting sexual offences**

   At present no referral pathway exists between VSACT and SACAT. As such, victims who access support and assistance to report to police through VSACT are still required to report through general duties officers. This means that victims are required to repeatedly share their experience, first to general duties officers and then to SACAT (if a referral to SACAT follows).

b. **Insufficient cross-agency information sharing to support victims in accessing their rights under the *Victims of Crime Act 1994* (ACT)**

   Victim-survivors reported difficulty in contacting Case Officers and receiving 'meaningful' and timely updates. A recent report from the Victorian Victims of Crime Commissioner (2023) found that police officers viewed workloads as a barrier to meeting statutory obligations to victims. This was borne out in some of the PROMIS cases, including where officers were moved on and off cases due to competing priorities, and gaps in investigative activities or updates to victims were recorded due to staff leave or the nature of shift work.

   Although capability also needs to be uplifted (see Recommendation 6), so too does capacity. On the latter, an information sharing mechanism between VSACT and ACTP should be developed to facilitate VSACT to support ACTP in providing timely updates and meaningful information to victims. The MoU should establish the pathway for this.

c. **Failure to refer victims to VSACT**

   Lastly, very few cases across the dataset included a referral to VSACT by ACTP. Victims are thus unable to access government assistance, including recouping losses as the result of victimisation and accessing psychological or counselling support. The MoU should mandate that referrals to VSACT are made in all sexual offence matters.

A likely outcome of this MoU is an improved relationship between ACTP and VSACT. This would benefit victims of sexual offences in the ways outlined, but also extend to victims of other crimes. ACTP will better understand the unique and important role of VSACT, including the ways that the agencies could work together to improve experiences and holistic outcomes for victims. It is anticipated that this relationship, along with embedding VSACT into police process, will reduce breaches under the Victims of Crime Act 1994 (ACT). The goal is to situate VSACT as a mechanism to support police to meet their obligations under the Act, to prevent breaches before they occur. This should see overall improvements in the experience of victims.

4. Provide victim-survivors of sexual offences a 'touch point' with a justice agency every four weeks

Section 16A *Victims of Crime Act 1994* (ACT) provides the requirement for a police officer to update victims of crime on the status or progression of their case at least every six weeks, or when there is a significant change in in the status of the investigation.

This requirement is not satisfying the needs of victims. Victim-survivors described the feeling of waiting for police to contact them, and when they did, it was at times that were inconvenient or inappropriate. Victims also described difficulty contacting police when they had a question or sought information. Thus, for victims, the six-week wait for information was extensive.

To address these concerns, victims should have the right to be updated on the status or progression of their case at least every four weeks. Further, the *Victims of Crime Act 1994* (ACT) should state that this responsibility can be shared with another justice agency, namely VSACT (and the Sexual Assault Survivor Advocate), as per Recommendation 3. This should not absolve police of their responsibility to contact victims. However, in order to provide more timely updates and information, and draw on the expertise of advocates working with victims of crime, a shared responsibility is appropriate.

5. Direct all sexual offences to the Sexual Assault and Child Abuse Team for investigation

Attrition is highest when sexual offence reports are investigated by general duties officers. Although victim-survivors identified that some general duties officers acted with compassion in dealing with reports, other significant problems were identified. This included the failure to adequately identify penetrative sexual offences and properly investigate, misunderstandings of the extant law and inappropriate 'turning away' of victims.

Given the specialisation of sexual violence work, including engagement with victims who have experienced sexual trauma, all sexual offences reported to ACTP should be investigated by SACAT.

6. Mandate an improved training program focused on challenging rape myths and educating ACT Policing officers about the dynamics of sexual violence, including grooming and coercive control, and the law related to sexual offences (including evidence law)

A recent internal review of the SACAT training offering determined that the course 'did not prepare [SACAT officers] adequately for the challenges of the role' (Tidmarsh & Barnett, 2022). A core aspect of this review was that existing training failed to educate on the misconceptions about sexual violence. Further, the PROMIS case review revealed that officers missed opportunities to interrogate the impact of coercive control and grooming on consent, and failed to recognise the patterns of behaviour that constitute family violence. Instead, cases were viewed as discrete, isolated incidents. This may be, in part, due to the prevailing belief in the community that sexual assault is a 'miscommunication'. It also fails to recognise that a family violence history is admissible evidence in sexual offence trials.

A new specialist training course should be developed by experts in the field that addresses these shortfalls. Training should at a minimum address:

- Rape myths and stereotypes
- Grooming
- Coercive control, particularly in young peoples' intimate relationships
- Sexual violence within the family, outside of intimate relationships
- Impact of trauma on memory
- Victim responses to sexual violence and disclosure
- Aboriginal culture
- Law relating to sexual offences in the ACT
- Evidence law, including admissibility of family violence evidence in sexual offence trials
- Trauma-informed practice

The training should include a focus on effective interview techniques and the 'Whole Story' approach, to support ACTP officers to understand the relationship contexts that most often characterise sexual violence (see, Tidmarsh et al., 2023).

The course should be qualifying.

There should be 'no wrong door' for reporting sexual violence, and the experience should be trauma-informed and victim-centric regardless of whether a victim reports to police directly (via general duties) or are supported through an agency (such as VSACT or CRCC). General duties officers should therefore also be trained in relation to these issues, even should Recommendation 5, that all sexual offences be investigated by SACAT, be adopted.

Importantly though, AFP and ACTP must recognise that training, even well-developed and well-executed training, is not a panacea. A broader program of work must be undertaken to challenge the structural and systematic problems that plague the response to sexual offence. This must be on ongoing project, that extends to the entire force and into (and through) the community.

7. Re-establish an improved Meet and Greet policy

The Meet and Greet policy shifts away from the original concept – to offer an opportunity for victims and Case Officers to build rapport, and to 'demystify' the process for victims through the provision of information and responses to questions. In current practice, victims appear overwhelmed with negative information about the criminal justice process. As such, this was identified as a point in the process that victims were (perhaps inadvertently) discouraged from continuing their engagement with police.

However, the provision of information for victims of sexual offences is important. The way information is given though is equally crucial. Information needs to be shared while respecting victims' lived experience of violence (Jordan, 2001), and victims should be empowered with information about special measures that exist to support their 'journey' through the justice system. Providing information in this way supports victims to make informed decisions (Skinner & Taylor, 2009).

Meet and Greet should be led by the Sexual Assault Survivor Advocate, who should 'chair' the engagement, though it should remain a more informal step. Victims should receive information about:

- Contact details of the Case Officer (in writing)
- Contact details for the Sexual Assault Survivor Advocate (in writing)
- The role of the Case Officer
- The role of the Sexual Assault Survivor Advocate
- Police processes and investigations
- Making a statement to police (which may or may not take the form of an EICI)
- Intermediaries (where relevant)
- Translators
- Liaison officers
- Having a support person present
- Special measures such as remote witness facilities, screening or EICIs
- Personal Protection Orders or Family Violence Orders (and supported to apply)

The Sexual Assault Survivor Advocate should ensure the victim is appropriately supported at the Meet and Greet, including through formal mechanisms. A support assessment should take place at this time (if one has not already been conducted), and appropriate referrals should be made. Consideration should be given the person's holistic circumstances and needs, including addressing immediate safety concerns.

Victims should, if they wish, receive information in writing about the police process. The information should be discretely presented.

8. Revise the ACT Policing approach to Evidence-in-Chief Interviews

The ACTP EICI policy is based on a rigid interpretation of the law, that is contrary to the spirit in which the reforms were made. There is no requirement at law that the EICI is conducted. As an instrument intended in part to mitigate trauma, victims should not be forced to participate in this process. Yet, when declined, officers close cases and fail to investigate.

Further, there is no requirement at law that an EICI is the first statement that a victim gives to police. EICIs can be recorded at any part of the criminal justice process, and can also be conducted by a prosecutor.

A review of the quality of EICIs should also be conducted. This review should inform further development of practice guidance, in consultation with the DPP, about when and how EICIs are conducted, and by which agency. The DPP should advise if an EICI is to be admitted, in line with the *Evidence (Miscellaneous Provisions) Act 1991*. Victims should be involved in the decision-making, and their views and wishes about how they would like to give evidence should be at the fore.

Improved training would also benefit all SACAT officers undertaking EICIs, who are currently become qualified through AFP's Interviewing Vulnerable Witnesses course. The review of the quality of EICIs should inform the training, in addition to the requirements laid out in Recommendation 6. Subject matter experts should be consulted in designing, implementing and evaluating the training.

9. Develop pathways for collaboration and co-investigation between Family Violence Unit and the Sexual Assault and Child Abuse Team

Many cases in the dataset were not recognised as family violence, even where the relationship and the offending fit the definition. Further, for some victims who report family violence and sexual violence, separate investigations are conducted, even where the violence might co-occur. In those cases, the sexual violence is investigated by SACAT (or general duties) and the other family violence by Family Violence Unit. This siloed approach undermines the investigation of sexual offences, and fails to recognise the context in which sexual violence often occurs. To improve police responses where victims do report familial sexual violence, the Family Violence Unit and SACAT should develop a framework for collaboration and co-investigation of matters. One team should lead engagement with the victim. Such an approach recognises the expertise of each team, and improve experiences of investigation for victims. Effective co-investigation could also decrease rates of victim withdrawal in relation to sexual offences.

10. Develop robust policy concerning the collection of data relating to Aboriginal and Torres Strait Islander people who experience violence, in consultation with community

Data about victims of sexual offending who are Aboriginal and Torres Strait Islander was missing or inadequate in the overwhelming majority of cases. As such, no insights could be drawn about how current ACTP policy and practice might impact uniquely on this cohort.

In consultation with community, and prioritising Data Sovereignty for First Nations people (Kukutai & Taylor, 2016), a data collection policy framework should be developed. This framework should embed planning for the development of culturally safe, and culturally strong, community-led and informed responses to sexual violence.

11. Engage victim-survivors in the development, review and monitoring of policy reform, centring children and young people, Aboriginal and Torres Strait Islanders and others from marginalised communities

Victim-survivors in this study identified numerous points in the police process that caused them harm. This reflects that the current policy and practice landscape of AFP and ACTP is failing to meet its intentions to be trauma-informed and victim-centric.

Victims described powerlessness over outcomes, yet conversely felt burdened by responsibility. For them, this hinged on provision of information and a meaningful role in informing police decision-making. They expressed that decisions had already been made and conclusions drawn (often about their character or on the issue of consent), without any meaningful involvement in the making of the decisions. Where victims were consulted, attempts by police to be 'victim-led' in pursuing investigations, translated into pressure to withdraw from the process. Others withdrew in light of the decisions made about them, without them. As such, victims continue to have little say or choice in how their report proceeds through the system.

Thus, victims were not centred in the process. As discussed throughout, some of these experiences were governed by policy that prescribed a harmful process. Others reflected a lack of insight into how victims might experience police investigations and processes. The core of this problem is that victim-survivors, who are the most affected by these policies and practices, are not involved in their design, implementation, or evaluation. Relevant procedural documents and practice guidance should be re-drafted (or developed) in consultation with victim-survivors.

A victim-survivor Advisory Panel should be developed. The Advisory Panel should represent the community, including:

- Aboriginal and Torres Strait Islander survivors, to support the development of culturally specific policy that recognises (and responds to) the unique experiences of the criminal justice system for Aboriginal and Torres Strait Islander people.
- Children who have experienced sexual violence, in recognition of their right to be involved in decision-making that affects them, under the United Nations Convention on the Rights of the Child.
- Survivors with disability, to improve police understandings of the lived experience of people with a disability of violence, and of the police and police processes.
- Survivors from across culturally and linguistically diverse communities, to advise on the experience of marginalised communities in reporting to police and of police investigations.
- Other survivors from across the community.

12. Develop practice guidance in consultation with NSW Police to support officers working either side of the border and to improve victim-survivors' experiences of reporting interstate offending

Some victim-survivors disclosed that they were turned away from NSW Police when attempting to report across the border. This caused further and unnecessary trauma and distress for both victim-survivors. Cross-border reporting of recent sexual offending is more common in the ACT/NSW, given the size and location of the Territory. For some victims, the closest police station may be in another state than which they live, or where the offending occurred.

ACTP should liaise with NSW Police colleagues working at border stations to develop practice guidance for taking reports of sexual violence which is the investigative responsibility of the other agency.

13. Improve data recording on police information systems in relation to family violence, to support identification of patterns of family violence

ACTP and AFP are currently undertaking a system migration from PROMIS to the Investigations Management Solution (IMS). IMS offers increased functionality and customisation. This presents an opportunity for ACTP to respond to the shortfalls of the PROMIS system, some of which were identified in this study.

ACTP must improve data recording of family violence. Improved data may assist in identifying patterns of behaviour that characterise coercive control. For sexual offences that occur within the family or in intimate relationships, this should assist officers in understanding how coercive control might impact on a victim consent.

Though not the focus of this review, some victim-survivors disclosed an unwillingness of police to take reports of breaches of Family Violence Orders, who dismissed them to be minor or unimportant. This demonstrates a lack of insight on the part of police about coercive control, and about who users of violence might continue to enact such control post-separation or where no contact orders are in place. ACTP should review policy relating to recording of breaches Family Violence Orders in order to ensure it reflects best practice and current knowledge about coercive control.

14. Adopt the ACT's Domestic and Family Violence Risk Assessment Framework, and develop mechanisms for family violence risk assessments to be used across a range of relationship types, and with child and young people

Across the dataset, opportunities to intervene into violence were missed, including where inadequate risk assessment, or no risk assessment, was undertaken. This leaves people at risk of further violence. The existing ACTP Family Violence Risk Assessment Tool (FVRAT) is validated for use in assessing risk of family violence against an adult intimate partner. No tool exists for use with children experiencing violence in the home or with young people experiencing violence in early relationships. As such, these victims 'fell through the cracks'.

ACTP should adopt the ACT's Domestic and Family Violence Risk Assessment Framework to ensure a robust cross-agency approach. The ACT should work with subject matter experts to develop risk assessments appropriate for use across a wider range of contexts and across age and developmental stages.

15. Offer victims survivors pathways to access legal advice at the time of report, and particularly before participating in an Evidence-in-Chief Interview

Much of the extant literature about legal representation for victims of sexual violence focuses on the prosecution stage. However, the findings of the Police Process Review point to a need for victims of sexual offences to have access to legal representation during an investigation. This is important because most reported sexual offences never proceed beyond this point, and often on the basis of extralegal factors or a misinterpretation of the law. Victims should be supported to access legal representation prior to reporting to police, where the report is facilitated through another agency, such as VSACT, CRCC or DVCS. Where it is not, ACTP should be obligated to advise victims that they are able to seek legal representation.

An independent legal advocate can advise victims about matters that have no probative value to the facts in issue in the case, including those which are not admissible (such as sexual reputation evidence). Legal representatives can also provide advice to victims about requests from police that infringe on their privacy, such as to access or possess victims' phones.

Victims may be advised that they are able to produce a written statement with the support of a legal representative in a protected environment. A review of jury directions should be undertaken, and consideration given to whether it is appropriate to include a direction that specifies that this does not speak to the credibility of the victim. Police training should prepare officers for reports that are made with the support of a legal representative.

16. Review case finalisation codes

Case finalisation codes were inconsistently used across the dataset and offered little insight into the reasons for case closure. Codes should be reviewed, and due consideration should be given to removing the code of 'unfounded'.

17. Ensure adequate resourcing of agencies to respond to sexual violence reports, including support services

Appropriate resourcing should be allocated to agencies to support the services needed to respond to sexual violence in the ACT. This should not be limited to ACTP, since evidence shows that very few victims ever report to the police. Resourcing of support agencies, including VSACT, CRCC and DVCS, is crucial to improve the system-wide response.

References

ACT Domestic and Family Violence Death Review (DFVDR), (2023), Domestic and family homicides 2000-2022: Biennial Report (2023), ACT Government.

ACT Human Rights Commission. (2020), Intermediary program procedural guidance manual.

ACT. Parliamentary Debates, Legislative Assembly for the ACT (Hansard), (2008, July 3).

ACT. Parliamentary Debates, Legislative Assembly for the ACT (Hansard), (2015, September 24).

Anderson, L. J., Flynn, A., & Pilgrim, J. L. (2017), 'A global epidemiological perspective on the toxicology of drug-facilitated sexual assault: A systematic review', Journal of Forensic and Legal Medicine, 47, 46-54.

Anderson, L. J., Flynn, A., Drummer, O., Gerostamoulos, D., & Schumann, J. L. (2019), 'The role of voluntary and involuntary drug and alcohol consumption and premorbid mental health factors in drug-facilitated sexual assault', Forensic Science, Medicine and Pathology, 15, 382-391.

Australian Bureau of Statistics (ABS), (2022), Table 14 - Victims, Outcome of investigation at 30 days by selected offences, States and territories, 2020, Recorded Crime – Victims.

Australian Bureau of Statistics (ABS), (2023a), Partner violence, 2021-22 financial year.

Australian Bureau of Statistics (ABS), (2023b), Estimates of Aboriginal and Torres Strait Islander Australians, Final 2021 Census-based estimated resident population of Aboriginal and Torres Strait Islander and non-Indigenous Australians for various geographies.

Australian Human Rights Commission. (2020), Wiyi Yani U Thangani (Women's voices): Securing our rights, securing our future report, Australian Human Rights Commission, Sydney.

Bazley, M. (2007), Report of the commission of inquiry into police conduct, Commission of Inquiry into Police Conduct.

Brooks, O., & Burman, M. (2017), 'Reporting rape: Victim perspectives on advocacy support in the criminal justice process', Criminology & Criminal Justice, 17(2), 209-225.

Brooks-Hay, O. (2020), 'Doing the 'right thing'? Understanding why rape victim-survivors report to the police', Feminist Criminology, 15(2), 174-195.

Brown, J., Horvath, M., Kelly, L., & Westmarland, N. (2010), Connections and disconnections: Assessing evidence, knowledge and practice in responses to rape, Government Equalities Office.

Brownmiller, S. (1975), Against our will, New York: Simon and Schuster.

Burgin, R. (2019), 'Persistent narratives of force and resistance: Affirmative consent as law reform', The British Journal of Criminology, 59(2), 296-314.

Burgin, R., & Crowe, J. (2020), 'The New South Wales Law Reform Commission draft proposals on consent in sexual offences: A missed opportunity?', Current Issues in Criminal Justice, 32(3), 346-358.

Burgin, R., & Crowe, J. (2022), 'A Critique of the 'Rough Sex Defence' in Australian Rape Law', Bows, H. and Herring, J. (Ed.) 'Rough Sex' and the criminal law: Global perspectives, Emerald Publishing Limited, Leeds, pp. 117-132.

Burgin, R., & Flynn, A. (2021), 'Women's behavior as implied consent: Male 'reasonableness' in Australian rape law', Criminology & Criminal Justice, 21(3), 334-352.

Burt, M. R. (1980), 'Cultural Myths and Supports for Rape', Journal of Personality and Social Psychology, 38(2), 217–230.

Campbell, B. A., Menaker, T. A., & King, W. R. (2015), 'The determination of victim credibility by adult and juvenile sexual assault investigators', Journal of Criminal Justice, 43(1), 29-39.

Campbell, R. (2006), 'Rape survivors' experiences with the legal and medical systems: Do rape victim advocates make a difference?', Violence Against Women, 12(1), 30-45.

Canadian Framework for Collaborative Police Response on Sexual Violence. (2019), Retrieved from: https://www.cacp.ca/crime-prevention-committee.html?asst_id=2059

Cashmore, J., Taylor, A., & Parkinson, P. (2017), 'The characteristics of reports to the police of child sexual abuse and the likelihood of cases proceeding to prosecution after delays in reporting', Child Abuse & Neglect, 74, 49-61.

Christensen, L. S., Sharman, S. J., & Powell, M. B. (2016), 'Identifying the characteristics of child sexual abuse cases associated with the child or child's parents withdrawing the complaint', Child Abuse & Neglect, 57, 53-60.

Christie, N. (1986), 'The ideal victim', In From crime policy to victim policy: Reorienting the justice system (pp. 17-30), London: Palgrave Macmillan UK.

Cossins, A., & Goodman-Delahunty, J. (2013), 'Misconceptions or expert evidence in child sexual assault trials: Enhancing justice and jurors 'common sense'', Journal of Judicial Administration, 22(4), 171-190.

Coumarelos, C., Weeks, N., Bernstein, S., Roberts, N., Honey, N., Minter, K., & Carlisle, E. (2023), Attitudes matter: The 2021 national community attitudes towards violence against women survey (NCAS), findings for Australia. (Research report 02/2023). ANROWS.

Crenshaw, K. (1991), 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', Stanford Law Review, 43(6), 1241–1299.

Crocker, G. (2022), 'The dangers of pre-recorded evidence: As soon as practicable?', Alternative Law Journal, 47(2), 107-111.

Daly, K., & Bouhours, B. (2010), 'Rape and attrition in the legal process: A comparative analysis of five countries', Crime and Justice, 39(1), 565–650.

Davies, R., & Bartels, L. (2020), 'Challenges of effective communication in the criminal justice process: findings from interviews with victims of sexual offences in Australia', Laws, 9(4), 31.

Dowling, C., & Morgan, A. (2019), 'Predicting repeat domestic violence: Improving police risk assessment', Trends and Issues in Crime and Criminal Justice, (581), 1-16.

Edwards, I. (2004), 'An ambiguous participant: The crime victim and criminal justice decision-making', British Journal of Criminology, 44(6), 967-982.

Ellison, L., Munro, V. E., Hohl, K., & Wallang, P. (2015), 'Challenging criminal justice? Psychosocial disability and rape victimization', Criminology & Criminal Justice, 15(2), 225-244.

Estrich, S. (1987), Real Rape, Harvard University Press.

Family Safety Victoria. (2021), Multi-Agency Risk Assessment and Management (MARAM) practice guides: Foundation knowledge guide, State of Victoria, Australia. Retrieved from: https://www.vic.gov.au/maram-practice-guides-and-resources

Stern B, V. (2010). Stern review of rape reporting. England and Wales.

Ferguson, C. E., & Malouff, J. M. (2016), 'Assessing police classifications of sexual assault reports: A meta-analysis of false reporting rates', Archives of Sexual Behavior, 45, 1185-1193.

Finch, E., & Munro, V. E. (2007), 'The demon drink and the demonized woman: Socio-sexual stereotypes and responsibility attribution in rape trials involving intoxicants', Social & Legal Studies, 16(4), 591-614.

Finney, A. (2004), Alcohol and sexual violence: Key findings from the research [Home Office findings 215], London: Home Office.

Fitzgerald, J. (2006), The attrition of sexual offences from the New South Wales criminal justice system, Sydney: NSW Bureau of Crime Statistics and Research.

Fitzgerald, J. (2021), Why did sexual assault reports spike in March 2021?, Bureau Brief no. 155. Sydney: New South Wales Bureau of Crime Statistics and Research. https://www.bocsar.nsw.gov.au/Pages/ bocsar_publication/Pub_Summary/BB/BB155-Summary-Why-did-sexual-assault-reports-spike-inMarch-2021.aspx

Frohmann, L. (1991), 'Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections', Social Problems, 38(2), 213-226.

Galliano, G., Noble, L. M., Travis, L. A., & Puechl, C. (1993), 'Victim reactions during rape/ sexual assault: A preliminary study of the immobility response and its correlates', Journal of Interpersonal Violence, 8(1), 109-114.

Garcia-Esteve, L., Torres-Gimenez, A., Canto, M., Roca-Lecumberri, A., Roda, E., Velasco, E. R., ... & Subirà, S. (2021), 'Prevalence and risk factors for acute stress disorder in female victims of sexual assault', Psychiatry Research, 306 (114240).

Gavey, N. (2005), Just sex?: The cultural scaffolding of rape, Routledge.

Gekoski, A., Massey, K., Allen, K., Ferreira, J., Dalton, C. T., Horvath, M., & Davies, K. (2024), 'A lot of the time it's dealing with victims who don't want to know, it's all made up, or they've got mental health: Rape myths in a large English police force', International Review of Victimology, 30(1), 3-24.

George, R., & Ferguson, S. (2021), Review into the criminal justice system response to adult rape and serious sexual offences across England and Wales, London: HM Government.

Goodman-Brown, T. B., Edelstein, R. S., Goodman, G. S., Jones, D. P., & Gordon, D. S. (2003), 'Why children tell: A model of children's disclosure of sexual abuse', Child Abuse & Neglect, 27(5), 525-540.

Gregory, J., & Lees, S. (1996), 'Attrition in rape and sexual assault cases', The British Journal of Criminology, 36(1), 1-17.

Hohl, K., & Conway, M. A. (2017), 'Memory as evidence: How normal features of victim memory lead to the attrition of rape complaints', Criminology & Criminal Justice, 17(3), 248-265.

Hohl, K., & Stanko, E. A. (2015), 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', European Journal of Criminology, 12(3), 324-341.

Hohl, K., Johnson, K., & Molisso, S. (2022), 'A procedural justice theory approach to police engagement with victim-survivors of rape and sexual assault: Initial findings of the 'Project Bluestone' pilot study', International Criminology, 2(3), 253-261.

Holmberg, L., Johansen, L. V., Asmussen, I. H., Birkmose, S. M., & Adrian, L. (2021), 'Victims' rights: Serving victims or the criminal justice system? An empirical study on victims of violent crime and their experiences with the Danish police', International Journal of Comparative and Applied Criminal Justice, 45(1), 89-104.

hooks, b. (1981), Ain't I a woman: Black women and feminism, Routledge.

Hopper, J., Lonsway, K. A., & Archambault, J. (2020), Important things to get right about the 'Neurobiology of Trauma.' Part 3: Memory Processes, End Violence Against Women International.

Horvath, M., Tong, S., & Williams, E. (2011), 'Critical issues in rape investigation: An overview of reform in England and Wales', The Journal of Criminal Justice Research, 1(2).

Jordan, J. (2001), 'Worlds apart? Women, rape and the police reporting process', British Journal of Criminology, 41(4), 679-706.

Jordan, J. (2004), The word of a woman?: Police, Rape and Belief, Springer.

Kelley, S. M. (2023), 'Post-sexual assault decision making: Centering Black women's experiences', Feminist Criminology, 18(2), 133-155.

Kelly, L. (2010), 'The (in) credible words of women: False allegations in European rape research', Violence Against Women, 16(12), 1345-1355.

Kelly, L., Lovett, J., & Regan, L. (2005), A gap or a chasm? Attrition in Reported Rape Cases, (Home Office Research Study No. 293), London: Home Office.

Kennedy, J., & Easteal, P. (2010), 'The rights (boxing) ring: Australian rape trials', In Sex, Drugs and Rock & Roll: Psychological, Legal and Cultural Examinations of Sex and Sexuality, Inter-Disciplinary Press, Oxford, 131-45.

Kukutai, T., & Taylor, J. (2016), 'Data sovereignty for Indigenous peoples: current practice and future needs', In Indigenous Data Sovereignty: Toward an Agenda, ANU Press.

Larcombe, W. (2002), 'The 'ideal' victim v. successful rape complainants: Not what you would expect', Feminist Legal Studies, 10(2): 131-148.

Larcombe, W. (2005), Compelling engagements: Feminism, rape law and romance fiction, The Federation Press.

Lievore, D. (2003), Non-reporting and hidden recording of sexual assault: An international literature review, Commonwealth Office of the Status of Women: Canberra.

Lind, E. A., & Tyler, T. R. (1988), The social psychology of procedural justice, Springer Science & Business Media.

Loney-Howes, R., Heydon, G., & O'Neill, T. (2022), 'Connecting survivors to therapeutic support and criminal justice through informal reporting options: an analysis of sexual violence reports made to a digital reporting tool in Australia', Current Issues in Criminal Justice, 34(1), 20-37.

Long, L. J. (2018), Perpetual suspects: A critical race theory of black and mixed-race experiences of policing, Springer International Publishing.

Lonsway, K. A. (2010), 'Trying to move the elephant in the living room: Responding to the challenge of false rape reports', Violence Against Women, 16(12), 1356-1371.

Lonsway, K. A. & Fitzgerald, L. F. (1994), 'Rape myths in review', Psychology of Women Quarterly, 18(2): 133-164.

McCulloch, J., Pfitzner, N., Maher, J., Fitz-Gibbon, K., & Segrave, M. (2020), Victoria police trial of digitally recorded evidence in chief–family violence: Final evaluation report, Monash Gender and Family Violence Prevention Centre, Monash University.

McGlynn, C., & Westmarland, N. (2019), 'Kaleidoscopic justice: Sexual violence and victim-survivors' perceptions of justice', Social & Legal Studies, 28(2), 179-201.

McKibbin, G., & Humphreys, C. (2020), 'Future directions in child sexual abuse prevention: An Australian perspective', Child Abuse & Neglect, 105, https://doi.org/10.1016/j.chiabu.2020.104422

McNamara, L., Quilter, J., Seear, K., & Room, R. (2017), 'Evidence of intoxication in Australian criminal courts: A complex variable with multiple effects', Monash University Law Review, 43(1), 148-194.

Mezey, G. C., & Taylor, P. J. (1988), 'Psychological reactions of women who have been raped: A descriptive and comparative study', The British Journal of Psychiatry, 152(3), 330-339.

Molina, J., & Poppleton, S. (2020), Rape survivors and the criminal justice system, Victims Commissioner for England and Wales.

Munro, V., & Kelly, L. (2009). A vicious cycle? Attrition and conviction patterns in reported rape cases in England and Wales, In M. Horvath & J. Brown (Eds.), Rape: Challenging contemporary thinking (pp. 281-300). Cullompton, UK: Willan.

O'Neal, E. N. (2017), "Victim is not credible': The influence of rape culture on police perceptions of sexual assault complainants', Justice Quarterly, 1–34.

O'Neal, E. N., & Hayes, B. E. (2020), "A rape is a rape, regardless of what the victim was doing at the time': Detective views on how 'problematic' victims affect sexual assault case processing', Criminal Justice Review, 45(1), 26-44.

O'Neal, E. N., Tellis, K., & Spohn, C. (2015), 'Prosecuting intimate partner sexual assault: Legal and extra-legal factors that influence charging decisions', Violence Against Women, 21, 1237–1258.

Office of the Director of Public Prosecutions (DPP) and Australian Federal Police (AFP). (2005), Responding to sexual assault: the challenge of change, Australian Capital Territory, Canberra.

Powell, A., Henry, N., Flynn, A. & Henderson, E. (2013), 'Meanings of 'sex' and 'consent': The persistence of myths in Victorian rape law', Griffith Law Review, 22(2): 456-480.

Ricciardelli, R., Spencer, D. C., & Dodge, A. (2021), "Society wants to see a true victim': Police interpretations of victims of sexual violence', Feminist Criminology, 16(2), 216-235.

Rich, K. (2019), 'Trauma-informed police responses to rape victims', Journal of Aggression, Maltreatment & Trauma, 28(4), 463-480.

Richardson, D., & Campbell, J. L. (1982), 'Alcohol and rape: The effect of alcohol on attributions of blame for rape', Personality and Social Psychology Bulletin, 8(3), 468-476.

Rudolfsson, L. (2023), "I want to be heard': Rape victims' encounters with Swedish police', Violence Against Women, 1-24.

Saunders, C. L. (2018), 'Rape as 'one person's word against another's' challenging the conventional wisdom', The International Journal of Evidence & Proof, 22(2), 161-181.

Sexual Assault Prevention and Response Steering Committee (SAPR). (2021), Listen. Take action to prevent, believe and heal. ACT Government

Skinner, T., & Taylor, H. (2009), 'Being shut out in the dark' young survivors' experiences of reporting a sexual offence', Feminist Criminology, 4(2), 130-150.

Sleath, E., & Bull, R. (2012), 'Comparing rape victim and perpetrator blaming in a police officer sample: Differences between police officers with and without special training', Criminal Justice and Behavior, 39(5), 646-665.

Spohn, C., Tellis, K., & O'Neal, E. N. (2014), 'Policing and prosecuting sexual assault: Assessing the pathways to justice', In Critical Issues on Violence Against Women (pp. 93-103), Routledge.

Stanko OBE, E. A., & Hohl, K. (2018), 'Why training is not improving the police response to sexual violence against women: A glimpse into the 'black box' of police training', Women and the Criminal Justice System: Failing Victims and Offenders?, 167-186.

Stokbæk, S., Kristensen, C. L., & Astrup, B. S. (2021), 'Police reporting in cases of sexual assault–a 10-year study of reported cases, unreported cases, and cases with delayed reporting', Forensic Science, Medicine and Pathology, 17, 395-402.

Stormo, K. J., Lang, A. R., & Stritzke, W. G. (1997), 'Attributions about acquaintance rape: The role of alcohol and individual differences', Journal of Applied Social Psychology, 27(4), 279-305.

Suarez, S. D., & Gallup, G. G. (1979), 'Tonic immobility as a response to rape in humans a theoretical note', The Psychological Record, 29, 315-320.

Taylor, S. E., Klein, L. C., Lewis, B. P., Gruenewald, T. L., Gurung, R. A., & Updegraff, J. A. (2000), 'Female responses to stress: Tend and befriend, not fight or flight', Psychological Review, 107(3), 411-429.

Taylor, S. E., Klein, L. C., Lewis, B. P., Gruenewald, T. L., Gurung, R. A., & Updegraff, J. A. (2002), 'Biobehavioral responses to stress in females: Tend-and-befriend, not fight-or-flight', Psychological Review, 107, 411-429.

Temkin, J., & Krahé, B. (2008), Sexual assault and the justice gap: A question of attitude (Vol. 5), Bloomsbury Publishing.

The Project: 'Survivor's Mission to Make Sure Rapists Are given Jail Sentences.' 10 Play, Retrieved from: 10play.com.au/theproject/news/2023/survivors-mission-to-make-sure-rapists-are-given-jail-sentences/tpv230521tzqiw.

Tidmarsh, P., Sharman, S., & Hamilton, G. (2023), 'The effect of specialist training on sexual assault investigators' questioning and use of relationship evidence', Journal of Police and Criminal Psychology, 38(2), 318-327.

United Nations (UN). (1989), Convention on the Rights of the Child, United Nations Treaty Series, 1577, pp. 3-178.

Vandervort, L. (2013), 'Sexual consent as voluntary agreement: Tales of 'seduction' or questions of law?', New Criminal Law Review: An International and Interdisciplinary Journal, 16(1): 143-201.

Victim of Crime Commissioner, (2023), Silenced and sidelined: Systematic inquiry into victim participation in the justice system, Victims of Crime Commissioner: Victoria.

Victorian Law Reform Commission, (2016), The Role of Victims of Crime in the Criminal Trial Process, Report 34.

Wallace, P. S., Miller, K., Myers, K., Ingram, C., & Civilus, T. (2024), 'Framed as (un) victims of sexual violence: An intersectional model', Feminist Criminology, 15570851241227937.

White, D., & McMillan, L. (2021), '[De]-Centering the victim: police perceptions of victims of sexual violence through a comparative lens of evidence collection and processing', Feminist Criminology, 16(5), 680-700.

Women's Law Project. (2022), Annual advocate sex crime case review guidebook: The Philadelphia model, Women's Law Project: Pennsylvania.

Legislation

Crimes (Amendment) Ordinance (No. 5) 1985 (ACT)

Crimes Act 1900 (ACT)

Crimes (Domestic and Family Violence) Legislation Amendment Act 2015 (ACT)

Criminal Procedure Act 2009 (Vic)

Evidence (Miscellaneous Provisions) Act 1991 (ACT)

Family Violence Act 2016 (ACT)

Family Violence Legislation Amendment Act 2022 (ACT)

Mental Health Act 2015 (ACT)

Victims of Crime Act 1994 (ACT)

Documents supplied by ACT Policing

Better Practice Guide on Sexual Offence and Child Abuse Investigations and First Response (2022)

Family Violence Risk Assessment Tool

FAMSAC Guide of Collection of Forensic Samples (2020)

Meet and Greet Guide (2023)

Review and redevelopment of the ACT/AFP SACAT Course, (Tidmarsh, P. & Barnett, M., 2022)

Standard Operating Procedure on Interviewing Vulnerable Witnesses (2023)

List of tables

List of figures