

Australian Law Reform Commission  
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## **JUSTICE RESPONSES TO SEXUAL VIOLENCE: ISSUES PAPER (2024)**

Thank you for the opportunity to provide a submission in response to the *Justice Responses to Sexual Violence: Issues Paper (2024)* [Issues Paper].

National Legal Aid represents the eight CEOs of the State and Territory Legal Aid Commissions and provides advice to the Federal Government on law reform and policies and the delivery of legal assistance services.

We note the Issues Paper is seeking detail about state and territory justice responses to sexual violence and consequently, Legal Aid Commissions will be providing individual submissions to inform the Inquiry.

We acknowledge that victim-survivors consistently experience being retraumatised by the criminal justice system, and support measures that would make the criminal justice system less traumatic and easier for them to navigate. We also note the Issues Paper acknowledges that people who perpetrate sexual violence are guilty of serious criminal offences and that the right to a fair trial needs to be preserved. Preserving the right to a fair trial is critical to any consideration of changing processes and procedures in the criminal justice system.

This submission details national approaches that should be embedded across the justice response of all jurisdictions to sexual violence. Development of these approaches has been guided by a range of research and other reports on sexual violence, including the Victorian Law Reform Commission Report. It has also been informed by the expertise of Legal Aid Commissions in providing legal assistance to each of victim survivors and alleged perpetrators in matters involving sexual violence.

We are of the view that the following issues should be considered nationally:

*1. Cultural considerations should be prioritised when addressing justice processes such as interaction with the prosecution, trial procedure and restorative justice.*

First Nations women and children are disproportionately victim-survivors of sexual violence. Any justice response that involves First Nations victim-survivors should be provided in a way that prioritises cultural safety. First Nations communities and community-controlled organisations, including Family Violence Prevention Legal Services, should co- design justice responses. Services should be funded to ensure appropriate capacity in relation to co-design and service delivery.

*2. Trauma informed practice should be implemented throughout the justice system.*

A range of emerging evidence supports the importance of providing a trauma informed approach within the justice system generally, but particularly with regarding to sexual violence.

Trauma informed practices should be implemented within the judiciary, police, court staff and the legal profession. All systems and processes should be reviewed to ensure they are trauma informed.

The National Legal Aid *With You* project has undertaken initial work on trauma-informed lawyering within the legal assistance sector. This project ends in June 2025. Ongoing funding for this project and investment in trauma informed practice across the justice system would support implementation of this approach throughout the justice system.

*3. A specialised response to sexual offending to improve the experience of victim-survivors should be implemented.*

A specialised response to sexual offending should include specialist training, particularly in trauma-informed practice (as outlined in recommendation 2) and steps to expedite and prioritise sexual offence matters in courts to reduce delays.

*4. There should be investment in legal assistance for victim-survivors.*

There is a lack of legal services for victim-survivors of sexual violence. Several reviews and inquiries have found that victim-survivors often have a range of unmet legal needs beyond the criminal justice process, which could escalate if not addressed, and have recommended the need for specialist victims legal services. These should work alongside enhanced non-legal support such as advocates or navigators. The legal assistance sector is well-placed to provide these specialist services, including Family Violence Prevention Legal Services, Women's Legal Services and Legal Aid Commissions. Victoria, NSW, and Queensland operate services of this type that could be more comprehensive.

*5. Implementing restorative justice approaches should be considered.*

The use of criminal justice processes as the primary response to sexual offending has clear limitations. Victim survivors have different justice needs that should be met through an expanded range of options, based on their needs and preferences. These processes and practices can provide additional pathways for accountability and healing.

Restorative and problem-solving approaches can create better outcomes for both victim-survivors and people accused of offending. Restorative pathways can facilitate accountability for people who caused harm and healing for those who have been harmed. However, any restorative justice approach should be carefully implemented so that it can be actively monitored and evaluated. Any restorative process

should not cause any harm for the participants in the process and should embed safeguards in the model.

*6. Community education campaigns to address gendered and discriminatory attitudes should be implemented.*

Attitudes, systems, and structures in society interact to create inequality, including racism, homophobia, ableism and stigma. Addressing sexual violence must include steps to target widely held gendered and discriminatory attitudes which lead to sexual violence, including through community education in schools and the broader community.

*7. The availability of programs and services as sentencing options for people who use sexual violence should be considered.*

The Inquiry should consider the availability of programs and services to support adult and young offenders to learn from and change their behaviour.

We can provide further information on the above as required. Please do not hesitate to contact Katherine McKernan, Executive Director, National Legal Aid [REDACTED] to arrange this.

Yours sincerely,

**LOUISE GLANVILLE**

Chair, National Legal Aid  
CEO, Victoria Legal Aid