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The Hon Justice Mordecai Bromberg, President
The Hon Marcia Neave AO, Commissioner
Her Honour Judge Liesl Kudelka, Commissioner
Inquiry into Justice System Responses to Sexual Violence
Australian Law Reform Commission
PO Box 209
Flinders Lane
Melbourne VIC 8009

Via Email: jrsv@alrc.gov.au

9 July 2024

Dear Commissioners,

Re: Submission to Australian Law Reform Commission Inquiry into Justice Responses to Sexual Violence from Violet Co Legal & Consulting

Violet Co Legal & Consulting ('**Violet Co**') welcomes the opportunity to contribute to the Australian Law Reform Commission Inquiry into Justice Responses to Sexual Violence (the '**Inquiry**'). With reference to the Issues Paper, our submission (below) proposes recommendations in accordance with your framework: disclosure & reporting, criminal justice responses, and other issues for consideration.

Violet Co focuses on the rights of women, gender diverse and First Nations peoples. We regularly advise and represent women, particularly Aboriginal and Torres Strait Islander women, in matters relating to sexual assault and sexual harassment. Violet Co is a private practice, certified as a social enterprise and Indigenous business.

We are one of the few practices in Australia that represent victim/survivors attempting to access the justice system to seek remedy and redress for the sexual assaults perpetrated against them. While there are firms that represent victim/survivors in civil matters, community legal services (e.g. knowmore legal service) supporting victim/survivors to access the National Redress Scheme, there are few legal practices that do the work of supporting victim/survivors in their interactions with Police and other parts of the justice system. We





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are a victim/survivor and Indigenous led practice – a rarity in the profession. Most of our representation of victim/survivors is provided on a pro bono basis.

We believe that by encouraging the **representation of victim/survivors by lawyers** we can assist to reduce the exacerbation of trauma that many victim/survivors experience through their interactions with the “justice system”, namely police, courts, police integrity commissions / bodies, victims’ services and compensation schemes, workplaces, insurance companies and others in society. Lawyers, and good representation, can also assist the justice system to administer justice well.

In addition to representing victim/survivors I am a member of the Expert Advisory Group to this Inquiry. I am a recognised practitioner in the area of sexual assault with relevant awards and appointments including:

- Winner Private Practitioner Award, Women Lawyers Association NSW and Finalist Women Lawyer of the Year (2023)
- Winner Inaugural Pro Bono Service Award, Law Society of NSW (2022)
- Non-Executive Director, Our Watch (Commonwealth appointment)
- Non-Executive Director, The National Justice Project
- General Editor, First Nations Law Bulletin (Lexis Nexis)
- Member Sexual Assault Advisory Group, National Women’s Safety Alliance
- Advisory Board member, Sydney Women’s Fund
- Advisory Board member, Teach Us Consent (former appointment)

We welcome reforms to court processes to better support victim/survivors – and in doing so improve the administration of justice. A court process that provides better support victim/survivors is simply attempting to somewhat balance up the court processes that are so evidently stacked against victim/survivors – this has been demonstrated in much of the academic literature as well as high profile cases in Australia and abroad.

We welcome legislation to improve and harmonise laws regarding sexual assault. This national approach can only benefit public education campaigns and community understanding of our laws. My evidence, and

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our submission, to the Inquiry into the Sexual Consent Laws is **attached** for your reference and inclusion in this submission.

However, the effectiveness of any justice system is dependent on its enforceability. There is an overwhelming gap in what our laws, politicians and society say about sexual assault – compared to what is done by police in law enforcement. **Laws prohibiting sexual assault are limited without enforcement by police.** This “say do gap” of police left unaddressed, prevents access to the very laws, court reforms and other justice system reforms the Inquiry is examining. Police are the gatekeepers of our justice system. When they do not respond appropriately to reports of rape and sexual assault they prevent victim/survivors accessing the justice system. They prevent perpetrators being held accountable.

Sexual assault is extremely underreported. 13% of victim/survivors choose to report to Police. 87% of victim/survivors do not have confidence in police, and the courts, to appropriately respond. Alarmingly, Aboriginal women, migrant and trafficked women, sex workers and many others express concern on being misidentified by police as perpetrators, or charged with an unrelated offence themselves, if they attend a police station to report a rape or sexual assault. This must change. **We must have a police system that victim/survivors have confidence in. For this we need reforms to inspire predictability and confidence in police.** Requiring police, removing discretion to urgently shake up anti-victim (sexist, racist and misogynist) cultures within police, to conduct themselves to a consistent standard of conduct and practice is key. A duty of care owed by police to victim/survivors, minimum standards of investigation, specialist police, independent police complaints mechanisms can go some way to providing confidence. Including lawyers in the process of making reports to police can increase a sense of security, and offer safety against misidentification or other charges, with victim/survivors.

Approximately 1 in 5 girls and women (aged over 15 years), 1 in 6 children, 1 in 20 men and an unknown number of gender diverse people, are raped and sexually assaulted in their lifetime.

We do not have data on the percentage of Australian men and boys¹ who rape and sexually assault. Presumably – it is a comparable number to those who are raped and sexually assaulted. Yet less than 1% of those who rape and sexually assault ever face any kind of legal consequence.

¹ While some women perpetrate rape and sexual assault it is reported to be less than 5%. The overwhelming majority of rape and sexual assault in Australia is perpetrated by men and boys.



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Our submission focuses on other important areas that we believe can inspire a tipping point.

- Harmonisation of all **victim compensation schemes** to mirror the National Redress Scheme to ensure that all victim/survivors are able to access the same support, no matter who rapes and/or sexually assaults them, and in what context.
- Inclusion of sexual assault **victim/survivor as a “status” protected by anti-discrimination, human rights and workplace laws.**
- The importance of investing in, and creating, **public education campaigns** to myth-bust stereotypes and bias against victim/survivors.
- Embedding victim/survivor experts within all reforms; the design, implementation and evaluation.
- Reforms to Victims Rights Charters to provide protection, support and remedy.

Bold measures are required to change this situation, to reach a tipping point prompted by our justice system where rape and sexual assault begin to be eliminated in our society. This is the vision to aim for – we need bold reforms from the Inquiry.

Our campaign Make Police Investigate covers many of the issues in this letter and our submission. You can view the campaign materials, asks, media coverage, petition and opinion polling data at www.makepoliceinvestigate.org

Thank you in advance for your support. **I am available to meet to discuss this submission.**

Kind regards,



Karen Iles
Director and Principal Solicitor

Violet Co Legal & Consulting

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Submission to the Australian Law Reform Commission Inquiry into Justice Responses to Sexual Violence

Violet Co Legal & Consulting



MEMBER OF
THE LAW SOCIETY
OF NEW SOUTH WALES





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Background

Approximately 1 in 5 girls and women (aged over 15 years), 1 in 6 children, 1 in 20 men and an unknown number of gender diverse people, are raped and sexually assaulted in their lifetime.

- 2 in 3 sexual assaults occurred **outside** of a family or domestic context².
- The largest single age groups where people were sexually assaulted were girls and women aged between 15 and 19 years and, for males, boys aged between 10 and 14 years³.
- For Aboriginal and Torres Strait Islander victims of sexual assault the majority were female (78–95%) with approximately one third were aged between 10 and 14 years and most knew the perpetrator (62–84%)⁴.

We do not have data on the percentage of Australian men and boys⁵ who rape and sexually assault. Presumably – it is a comparable number to those who are raped and sexually assaulted.

Sexual assault is the only crime in Australia that is rising year on year⁶.

Sexual assault is extremely underreported. 13% of victim/survivors choose to report to Police. 87% of victim/survivors do not have confidence in police, and the courts, to appropriately respond. It can be said there is low, to no, confidence in the system by the vast majority. Shame or embarrassment is also cited by victim/survivors as barrier to reporting – emphasising the critical role that public and community attitudes have on the experience of victims of crime⁷.

While the motivation of the majority who do report is to prevent their rapists/perpetrators harming others the reality is that less than 1% of those who rape and sexually assault ever face any kind of legal consequence.

² ABS, 'Recorded Crime - Victims Australia', July 2020 <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2019#key-statistics>

³ ABS, Victims of sexual assault: time to report and age at incident <https://www.abs.gov.au/articles/victims-sexual-assault-time-report-and-age-incident>

⁴ ABS, 'Recorded Crime - Victims Australia', July 2020 <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2019#aboriginal-and-torres-strait-islander-victims-of-crime>

⁵ While some women perpetrate rape and sexual assault it is reported to be less than 5%. The overwhelming majority of rape and sexual assault in Australia is perpetrated by men and boys.

⁶ ABS, 'Recorded Crime - Victims Australia', July 2020, op cit

⁷ ABS, 'Personal Safety Survey, 2021-22', March 2023, <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2021-22>>.



With such low reporting rates, low rates of investigation by police⁸, low rates of prosecution and a conviction rate of between 30-40% the ability of our society to hold men, boys and others accountable for sexual violence is exceptionally fraught. The justice system is responding so poorly that some say our society has almost “decriminalised” sexual assault. This is a dangerous state for any society that espouses the human rights of women and girls, and in fact all, to live lives free of violence, equality and non-discrimination.

About Violet Co & Our Clients

Violet Co focuses on the rights of women, gender diverse and First Nations peoples. We regularly advise and represent women, particularly Aboriginal and Torres Strait Islander women, in matters relating to sexual assault and sexual harassment.

Violet Co is a private practice, certified as a social enterprise (the majority of our profits go back into community and for purpose initiatives) and an Indigenous business. We are a victim/survivor and Indigenous led practice – a rarity in the profession.

Violet Co has been representing victim/survivors of sexual assault since 2020. Typical matters include:

- Sexual assault and harassment in a workplace context
- Representing victim/survivors in interactions with police and complaints against police
- Representing and advising victim/survivors in administrative matters including victims compensation schemes, complaints to government and insurance
- Civil litigation in collaboration with other firms
- Advising victim/survivors of their options in navigating the justice system

Some of our advocacy work in relation to sexual assault and the justice system can be viewed on our website or our dedicated campaign website www.makepoliceinvestigate.org

⁸ Burgin, Rachael; Tassone, Jacqui (2024). Beyond Reasonable Doubt? Understanding police attrition of reported sexual offences in the ACT. Swinburne. Report. <https://doi.org/10.25916/sut.26282185.v1>



About Karen Iles

Karen Iles is a lawyer, consultant, board director, sexual assault survivor and Dharug Aboriginal woman.

Karen is a member of the Expert Advisory Group for this Inquiry, following her involvement in the Attorney-General's Roundtable on sexual assault law reform. Karen has given evidence at the Parliamentary Inquiry into Current and Proposed Sexual Consent Laws in Australia (2023)⁹ and the Parliamentary Inquiry into Missing and Murdered First Nations Women and Children (2024)¹⁰

Karen is a recognised practitioner in the area of sexual assault with relevant awards and appointments including:

- Winner Private Practitioner Award, Women Lawyers Association NSW and Finalist Women Lawyer of the Year (2023)
- Winner Inaugural Pro Bono Service Award, Law Society of NSW (2022)
- Non-Executive Director, Our Watch (Commonwealth appointment)
- Non-Executive Director, The National Justice Project
- General Editor, First Nations Law Bulletin (Lexis Nexis)
- Member Sexual Assault Advisory Group, National Women's Safety Alliance
- Advisory Board member, Sydney Women's Fund
- Advisory Board member, Teach Us Consent (former appointment)

Karen's experience of reporting sexual assault to police and her experience of the justice system has been covered extensively in the media¹¹.

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualco ntentlaws

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNati onswomenchildren

¹¹ <https://www.theguardian.com/australia-news/2022/oct/04/unspeakable-trauma-police-in-queensland-and-nsw-failed-to-investigate-alleged-gang-of-14-year-old-girl-records-show> and full media list at www.makepoliceinvestigate.org

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Make Police Investigate Campaign

The Make Police Investigate campaign was launched in 2022 in response to the significant number of cases of rape and sexual assault failing to achieve justice across the nation.¹²

From Karen's own experience, as well as that of many Australian women, police have been failing to conduct sufficient, if any, investigations into sexual violence and are not being held accountable. The campaign targets three main points of reform (also reflected in our submission):

1. A legally enforceable Duty of Care owed by police to victim/survivors
2. Legally mandated minimum standards of investigation
3. Independent and transparent police accountability mechanisms - no more police investigating police.

In addition, the campaign has called for:

- Legal representation for victim/survivors
- Multi-jurisdictional matters involving at a minimum the alleged, aggravated sexual assault of children, to be handled by the Australian Federal Police
- National principles to ensure consistency across all States and Territories

The campaign has over 50,000 signatures. Essential Research opinion polling (2023) revealed that 70% of Australians believe our governments should introduce a set of legal minimum requirements for police to investigate reports of aggravated sexual assault.

¹² www.makepoliceinvestigate.org

Disclosure & Reporting

Disclosure about, and reporting of, sexual assault is reportedly difficult for victim/survivors of sexual assault. The following opportunities are proposed to strengthen the criminal justice system response to disclosures and reports of sexual violence:

- Giving confidence to victim/survivors that they will not be harmed in the process of reporting to police
- Supporting victim/survivors with access to lawyers to minimise re-traumatisation by the justice system itself
- Providing alternative disclosure and reporting opportunities to encourage more victim/survivors to trust and engage with the justice system

1. Giving confidence to victim/survivors that they will not be harmed in the process of reporting to police

Proposed recommendation 1: Legislation in all States and Territories to provide for a duty of care owed by police to victim/survivors of sexual assault who make a report to police.

Proposed recommendation 2: Legislation in all States and Territories to ensure that the following is contained in police practice: On presentation at a police station any person seeking to make a report of sexual violence be provided information and a referral to a specialist counselling service and information about the benefits of being supported to make a report by a lawyer and/or support person. That the person is supported, if they would like to do so, to arrange a convenient time to make a report with the supports (counselling, lawyer and/or support person) present, otherwise the report is taken in the ordinary way.

Proposed recommendation 3: Victims' Rights Charters in all States and Territories be updated to contain recommendations 1, 2 & 4.

Proposed recommendation 4: Complaint making and remedy available to victim/survivors who have been harmed by police in the disclosure, reporting and engagement process.

Proposed recommendation 5: Specialised police units to be involved in overseeing all sexual assault matters

Proposed recommendation 6: Specialised training for all general duties and specialist police in unconscious bias, rape myth/stereotypes, and trauma informed practice.

A duty of care is considered as an opportunity for police to minimise the re-traumatising nature of disclosure, reporting and engagement with the justice system. A duty of care would be narrow and limited to the following:

- to refer and connect victim/survivors to counsellors before making a report to police – e.g. a rape crisis hotline or 1800 RESPECT. In practice this could involve providing a victim/survivor with a safe, comfortable and private space within the police station for a phone call prior to making the report.
- to provide information about the benefits of having a lawyer and/or support person present to assist provide advice and support during the reporting process. In practice this could be the provision of a leaflet and giving a person the opportunity to arrange for themselves those supports prior to making a report.

We afford those being questioned about crimes the opportunity to have a lawyer present. Those who are detained by police have a right not to be harmed by police.

Reporting sexual violence can have legal (e.g. family law, child protection etc) and psychological impacts for victim survivors. Having advice prior will strengthen victim/survivors decision making, which will benefit the justice system, and support/representation during engagement with the justice system will provide a “buffer” to the re-traumatisation contained in the system itself.

Ensuring that an independent complaint mechanism, and accompanying remedy, is available to victim/survivors who have been harmed in their engagement with police, is critical to building confidence in police.

2. Supporting victim/survivors with access to lawyers to minimise re-traumatisation by the justice system itself

Proposed recommendation 7: All States and Territories to undertake internal communications to encourage police to welcome the involvement lawyers supporting victim/survivors

Proposed recommendation 8: Federal, State and Territory governments to support the provision of lawyers for victim/survivors in the Community who cannot afford legal representation

Proposed recommendation 9: Government support to increase access to interpreters in First Nations and other languages is important to ensure access to, and engagement with, the justice system

Proposed recommendation 10: Bodies involved in the training of current and future lawyers develop an accreditation and training scheme for lawyers wishing to practice in the area of sexual assault law

First Nations women, sex workers, trafficked women, migrant women (particularly those on temporary protection and partner visas) and many others fear potential misidentification as perpetrators, or a fear of potential charge on an unrelated crime, on presentation at a police station to report sexual assault. Ensuring women vulnerable to misidentification are aware of the opportunity to be represented by a lawyer, and have access to a lawyer, is critical in building confidence in reporting sexual violence. This is consistent with proposed recommendation 2 and 3 in the section above.

Other supports such as interpreters or translators should be readily available from the time of reporting through to after the case has closed. A lack of accessible community support, interpretation and health services for these individuals, combined with cultural factors which may preclude disclosure, results in further access difficulties.¹³

It is our experience in representing our clients that Police often become hostile towards our client after engaging a lawyer in the reporting / investigation process. While our client's intention may be to engage legal representation to "buffer" the re-traumatisation involved in what is often the case of simultaneously having to deal with police, victims compensation schemes, family and/or civil proceedings, and other areas of law (e.g. workplace, insurance etc), this can be viewed with suspicion and hostility by police. Lawyers play a critical role in the smooth running of our justice system. A internal communications and change management approach should be deployed in all States and Territories to clarify the positive role that lawyers

¹³ AIHW, 'Family, Domestic and Sexual Violence: People from culturally and linguistically diverse backgrounds', April 2024, <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/cald>>.

can play in supporting and representing victim/survivors in their engagement with any/all parts of the justice system.

Additionally, Lawyers representing victim/survivors should be afforded the rights, with Court procedures amended accordingly, to represent their clients in criminal proceedings in the following:

- Ground rules hearings
- Sexual counselling communication applications
- Other applications relating to access to other confidential communications / information that may be personal in nature
- Liaison with prosecutors and other court personnel¹⁴

Supporting the legal profession, and those involved in the continuing professional education and tertiary education of future lawyers, to create relevant training and accreditation programs for lawyers wishing to practice in the area of sexual assault law is important to provide high quality legal services to victim/survivors and predictability within the justice system.

3. Providing alternative disclosure and reporting opportunities to encourage more victim/survivors to trust and engage with the justice system

Proposed recommendation 11: Police in each State and Territory review, informed by victim/survivor advisors, the way that they collect witness statements and evidence from victim/survivors with a view to make reporting more accessible

Ensuring that victim/survivors have options is important to ensure victim-centric, trauma informed, reporting. Consideration by Police as to how they can most effectively, and minimising the re-traumatisation, collect reports of sexual assault is needed.

¹⁴ NWSA, 'Submission to Crimes Amendment (Strengthening the Criminal Justice Responses to Sexual Violence) Bill 2024', <<https://nwsa.org.au/wp-content/uploads/DRAFT-NWSA-Submission-Strengthening-the-Criminal-Justice-Responses-to-Sexual-Violence-Bill-2024-002.pdf>>.

Opportunities to codesign new, or amend existing, reporting mechanisms with victim/survivors may include aspects such as online and in person reporting of crimes. Considerations may include:¹⁵

- Trauma-informed design
- Prioritising cultural safety and accessibility
- Clear, accessible information regarding the processes, and usage, storage and security of evidence and statements provided to Police
- Integrated referral schemes to sexual assault support, health, and legal services
- The ability to submit a written statement to Police on presentation at a Police station rather than provide an oral statement
- Physical spaces

The involvement of specialist police in alternative reporting mechanisms would be important. This is consistent with proposed recommendation 5 in the section above.

¹⁵ Criminology Research Grant, 'Alternative reporting options for sexual assault: Investigating their use, purpose and potential', *Report to the Criminology Research Advisory Council*
<https://www.aic.gov.au/sites/default/files/2023-11/crg_25_19_20_alternative_reporting_v4.pdf>.

Criminal Justice Responses

Investigation & Police Responses

Police investigation and responses are poor.

Of the 13% of victim/survivors who report to police – approximately 80-90% have “no outcome” or “nothing done”. A multitude of inquiries have found systemic bias in police forces, as well as individual bias, impede proper police investigations.

Police are the gatekeepers to our justice system. When police deter victim/survivors from reporting (as is frequently the case in many of our client’s experience), fail to document reports, fail to investigate, fail to carry out the most basic community expectations of an investigation, police hinder access to justice (and the healing it can provide) to victim/survivors. In amongst these failures perpetrators are left unaccountable for the sexual violence they perpetrate.

The following opportunities are proposed to strengthen police investigation and responses to reports of sexual violence:

- Giving confidence to victim/survivors that police will “do something” through minimum standards of investigation including an exceptional clearance model
- Increasing the expertise of police, and capacity to respond, by strengthening specialist police units
- Providing victim/survivors and our community confidence in policing through an independent police complaints mechanism – no more police investigating police
- Reassuring the most vulnerable victim/survivors they will only have to deal with one police force in relation to the crimes committed against them – an approach to handling multi-jurisdictional aggravated child sexual assault

The reforms to legislate a police duty of care, police duty to investigate to a set of minimum standards, and independent transparent police accountability mechanisms we submit will have the following benefits:

- Confidence in the police to handle sexual violence investigations - increase reporting and ability for the justice system to respond to alleged sexual violence
- Establishing predictability in police responses will give greater confidence in police and the justice system
- Supporting police to understand their duty to “do no harm” to victim/survivors and how they can best investigate serious crimes
- Support culture change within police
- Provide redress for victim/survivors who have been grossly harmed by police failings in their duty of care and duty to investigate to a minimum standard
- Reduction in re-traumatisation, and minimising of complex post-traumatic stress, of victim/survivors as a result of inappropriate justice responses. This has a far reaching impact into health, economic participation, wellbeing, educational attainment, addiction, re-victimisation aspects of victim/survivor’s, and their families
- Increase charges and prosecutions of accused perpetrators of sexual violence and serious crime
- increasing access to justice in our community and creating equality and fairness in the application of the law

4. Giving confidence to victim/survivors that police will “do something” through minimum standards of investigation including an exceptional clearance model

Proposed recommendation 12: National principles for investigating sexual assault

Proposed recommendation 13: Legislation in all States and Territories to provide for a minimum standard of investigation of sexual assault

Proposed recommendation 14: Police guidelines and practice be amended to include a model of exceptional clearance, involving independent members, prior to the closing or “hold” of any sexual assault investigation.

Our Community expects that when a victim/survivor of sexual assault makes a report to police, that “something is done”, that police investigate the alleged crime.

Unfortunately, this rarely happens.

The Burgin Report¹⁶ and others prior¹⁷ demonstrate the lack of police investigation of reports of sexual violence, and homicide. The recent NSW Coronial Inquest into the sexual assault and deaths of Cindy and Mona Smith¹⁸ (2024) and the Special Commission of Inquiry into LGBTIQ hate crimes (NSW 2023)¹⁹ reinforce the Burgin, ABC, BOSCAR and other reports.

It is our submission that police guidelines and operational procedures, and the general discretionary nature of policing, leave police forces vulnerable to bias, unconscious bias in policing. The 2022 Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence²⁰ finds that “misogyny, sexism and racism” is systemic in the Queensland Police Force. We submit that this culture exists in every State and Territory Police force.

“Despite the initial protestations of the Commissioner of police and the President of the police Union of Employees, the Commission has found clear evidence of a culture where attitudes of misogyny, sexism and racism are allowed to be expressed, and at times acted upon, largely unchecked. Where complaints in relation to such treatment are brushed aside or dealt with in the most minor of ways and those who complain are the ones who are shunned and punished. It is hardly surprising that these attitudes are reflected then in the way that those police who hold them respond to victim-survivors. It is a failure of the leadership of the organisation that this situation has been allowed to continue over many years unchecked.” Judge Deborah Richards

The change required goes beyond, and in addition to, training and culture change initiatives. While training, proactive positive behaviour reinforcement (e.g. promotions etc), may remove

¹⁶ Burgin, Rachael; Tassone, Jacqui (2024). Beyond Reasonable Doubt? Understanding police attrition of reported sexual offences in the ACT. Swinburne. Report. <https://doi.org/10.25916/sut.26282185.v1>

¹⁷ ABC, Rough justice: How police are failing survivors of sexual assault (2020) <https://www.abc.net.au/news/2020-01-28/how-police-are-failing-survivors-of-sexual-assault/11871364> and NSW BOSCAR, ‘Attrition of sexual assaults from the New South Wales criminal justice system’, May 2024 <<https://www.bocsar.nsw.gov.au/Publications/BB/BB170-Report-attrition-sexual-assaults.pdf>>.

¹⁸ <https://www.abc.net.au/news/2024-04-23/mona-lisa-and-jacinta-smith-inquest-findings-handed-down/103755854>

¹⁹ <https://lgbtiq.specialcommission.nsw.gov.au/>

²⁰ <https://www.qpsdfvinquiry.qld.gov.au/>

systemic and individual bias and unconscious bias, this is a generational or multi-generational change initiative.

Transformational culture change takes time. It is difficult work. To-date programs in these areas (over the past few decades) have not created lasting or widespread change. Training and culture change initiatives alone, won't drive structural and cultural change in the short or medium term. Accountability and consequences for poor policing are needed to reinforce training and culture change. Victim/survivors are being re-traumatised by poor police responses, and are prevented from accessing justice, now. We need urgent reforms.

“A systemic cultural problem exists within the Police force that has to change. This has to change through the introduction of strict rules that have to be adhered to, which are codified by senior management and real consequences that occur in the event of inaction.”

“Unfortunately, this is a national problem, one we are seeing all too frequently particularly with those who are the most vulnerable in our society. “

Glenn Davies, former Head of the Victoria Police Sexual Crimes Squad

Meanwhile perpetrators are not being held accountable. Victim/survivors have no access to justice when police bias gets in the way of investigations. Victim/survivors have a reinforcing loop of lack of confidence in the justice system.

The cyclical nature of poor investigation and the low rates of conviction for sexual crimes is clear, as only 15% of cases in NSW proceed to court, with the largest point of attrition seen to be determined by police during the investigation process.²¹ Many complainants and judicial officers identified failures in evidence gathering, timeliness, and quality of investigation as a primary cause for the lack of convictions for these crimes.²²

A legally mandated set of minimum standards for police investigation, Australia-wide, would ensure access to justice is predictable and equally available to all.

²¹ NSW BOSCAR, 'Attrition of sexual assaults from the New South Wales criminal justice system', May 2024, <<https://www.bocsar.nsw.gov.au/Publications/BB/BB170-Report-attrition-sexual-assaults.pdf>>.

²² NSW DCJ, BOSCAR, KPMG, RMIT, Centre for Innovative Justice, 'Interview study: Exploring justice system experiences of complainants in sexual offence matters', July 2023, <<https://www.bocsar.nsw.gov.au/Publications/affiliated/AP69-BOSCAR%20Interview%20study%20Exploring%20justice%20system%20experiences%20of%20complainants%20in%20sexual%20offence%20matters.pdf>>.

Investigative standards such as the US FBI's 'exceptional clearance model' are examples of successful practices which could be implemented Australia-wide. This model outlines the exceptional circumstances which warrant the clearance of a sexual violence case by police before charging and beginning proceedings, including when the offender has died, when the complainant refuses to cooperate after the offender has been identified, and when the offender has been arrested and prosecuted in a different jurisdiction.²³ These standards give victim/survivors the confidence that investigators cannot cease investigations until certain minimum thresholds / standards are achieved.

We recommend the following legally mandated standards of investigation:

- a) Require police to create an incident report for all reports of rape and sexual violence.²⁴
- b) Require police to retain and store evidence.²⁵
- c) Interview and take a statement and evidence from a victim/survivor at an appropriate time, if they choose.
- d) Interview relevant witnesses at an appropriate time.
- e) Interview perpetrators at an appropriate time.
- f) Report back, in writing, to the complainant/victim at regular intervals on the progress of the investigation and provide rationale for decisions made by police in regards to not pursuing certain lines of investigation.²⁶ This can minimise unresolved trauma and re-traumatisation.

²³ EVAWI, 'Clearance Methods for Sexual Assault', Jan 2020, <<https://evawintl.org/wp-content/uploads/TBClearanceMethodsforSA1-7Combined.pdf>>.

²⁴ LECC, 'Review of NSW Police Force responses to domestic and family violence incidents', June 2023, <https://www.lecc.nsw.gov.au/prevention/prevention-reports/review-of-nsw-police-force-responses-to-family-and-domestic-violence-incidents>

²⁵ Commissioner, The Honourable Justice John Sackar, 'Special Commission of Inquiry into LGBTIQ hate crimes', December 2023, <<https://www.nsw.gov.au/the-cabinet-office/resources/special-commissions-of-inquiry/lgbtiq-hate-crimes>>.

²⁶ Ibid.

- g) Prior to closing an investigation, or putting it 'on hold pending further information', undertake an independent review per the 'exceptional clearance model' and communicate, in writing, to the complainant/victim.

The introduction of these 'minimum' steps is seen to be the expectation of 70% of Australians, based on polling results from Essential Research (2023)²⁷ with a further 18% being neutral to the proposal.

We suggest that these standards operate generally across all police divisions, yet supplementary standards should be implemented on a case-by-case basis for vulnerable complainants, including children, First Nations people, people with disabilities, LGBTIQ+ communities, people from culturally and linguistically diverse backgrounds, migrants and refugees, sex workers, pregnant people, and older people.

These minimum standards will also assist in the enforcement of their Duty of Care as proposed in recommendation 1 (above)

5. Increasing the expertise of police, and capacity to respond, by strengthening specialist police units

See Proposed recommendation 5: Specialised police units to be involved in overseeing all sexual assault matters

Proposed recommendation 15: Resourcing of specialist sexual assault police units be increased through a reallocation and specialist training of general duties police

We submit that specialist police divisions should be implemented to investigate reports of sexual assault.

The 2016 Royal Commission into Institutional Responses to Child Sexual Abuse found that specialist investigative units produced a more effective justice response for victim/survivors' in their satisfaction, outcome and investigative process.²⁸ The report suggested that these units improved the investigative process by exhibiting greater collaboration with health and support services, and improved access to these services for victim/survivors. These units also recorded

²⁷ Essential Research, March 2023, <<https://www.makepoliceinvestigate.org/>>.

²⁸ Nina Westera, Elli Darwinkel, Martine Powell, 'A Systematic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse', March 2016, <<https://research-repository.griffith.edu.au/server/api/core/bitstreams/10260909-ae69-4023-be84-903f0e2687a0/content>>.

higher arrest rates, though there was not enough evidence to attribute this outcome to specialist units alone.

This would involve specialist training to conduct interviews with complainants, engage with intermediaries, employ cultural sensitivity and ensure the unit is victim-centred and trauma-informed.

Sexual Violence Investigation Units would specialise in conducting investigations and collecting evidence in a trauma-informed manner, liaising with witness intermediaries, developing police strategies concerning sexual crime responses, providing advice to other police officers on sexual violence issues, and providing information and support to victim/survivors.²⁹ Some units across Australia also involve monitoring and reporting on the quality of investigative responses, though we submit that this would be better undertaken by an independent review body.

Existing units such as the Sex Crimes Squad in NSW are composed of multiple investigative teams focused on responding to serious sexual offences.³⁰ Yet the nature of sexual offences is always serious, and victim/survivors of sexual violence that do not meet this legislative criteria are left without specialist training and care, despite experiencing significant hardship, and subjected to the victim-blaming rhetorics contained in Australian police culture.³¹

These units should also be required to participate in cross-agency schemes like the Joint Child Protection Response Program.

The Inquiry into Police Responses to DFV in QLD examined requirements of which officers were deemed appropriate to investigate domestic and family violence. A similar framework could be put in place for the attributes of police allocated to the specialist sexual assault units.

“the Queensland police Service develop and implement a requirement that Officers in Charge must appoint Field Training Officers who possess appropriate skills and experience and standards of integrity, including having:

- at least two years of operational experience
- no pending, current or previous domestic and family violence order history
- no complaints history of concern

²⁹ *ibid.*

³⁰ https://www.police.nsw.gov.au/crime/child_abuse_and_sex_crimes/sex_crimes/sections/the_squad_includes

³¹ This article illustrates such failures as the result of victim-blaming attitudes of members of the justice system <<https://www.dailytelegraph.com.au/news/nsw/sex-assault-victims-failing-to-see-justice-done-because-of-victimblaming-attitude/news-story/cac464ce45ec5c995f695b7a18ec221d>>.

- a demonstrated capacity to respond effectively to domestic and family violence
- a proven ability to develop suitable training skills.”³²

We submit that the proposal for an increase in the number of specialist police should be drawn from the retraining and reallocation of existing police forces. As a community, we need to allocate existing resources in relation to community expectations. Our community expects that sexual assault is properly investigated. Furthermore, our legislature by placing sexual violence crimes at the most serious end of the scale (in terms of sentencing) indicates the seriousness of these crimes.

We must match police resources to the investigation of the most serious crimes – and the protection of those who experience sexual assault and are statistically likely to be vulnerable to perpetrators. Police have a role to play in the prevention of sexual assault. We must direct their attention and resources to these crimes.

6. Providing victim/survivors and our community confidence in policing through an independent police complaints mechanism – no more police investigating police

Proposed recommendation 16: National principles for independent police complaints mechanisms

Proposed recommendation 17: Legislation in all States and Territories to create truly independent police complaints mechanisms based on the Northern Ireland model

Victim/survivors who make reports of sexual violence to police should be able to make complaints regarding police conduct and/or the handling of police investigations to a fully independent police complaints mechanism – that also provides remedy.

There are several high-profile cases, and instances discussed in confidence with our practice, of victim/survivors committing suicide. Victim/survivors who have reported to police, and experienced poor treatment, a lack of interest, bias and victim blaming, and inaction can experience re-traumatisation, mental health impacts, self-harm and suicide³³.

³² Recommendation 13 A Call for Change. Report (2022) Commission of Inquiry into Queensland police service responses to domestic and family violence

³³ These articles canvass the recent failures in police investigation <<https://www.abc.net.au/news/2024-04-30/act-sexual-assault-review-limited-police-investigations/103783232>; <https://au.news.yahoo.com/more-sexual-assault-complaints-few-190000999.html>; <https://www.abc.net.au/news/2023-08-24/nsw-gay-hate-inquiry-police-scrutinised-deaths/102771056>>.

We submit that we need effective, real-time, independent complaint mechanisms to ensure that victim/survivors are not, to the extent possible, re-traumatised. These complaint mechanisms must be prompt and allow for remedy. The reinvestigation of reports and remedy for the harm caused by police responses.

A set of National Principles would assist State and Territories to legislate for independent police complaints mechanisms. The European Court of Human Rights has identified best practice principles for investigating police. Principles could include:

- Independent transparent legislated mechanism/body to receive complaints regarding police conduct, adherence of police to a duty of care for victim/survivors of serious crimes, and investigate complaints.
- Independent oversight agency means an agency that is established under law and that is independent of police, which has functions and powers to oversee, investigate and resolve complaints and public interest disclosures about police wrongdoing.
- Where police have been deficient in their duty and are harming the victim/survivor in the course of their conduct, the body should have the power to investigate the original crime. See the Northern Ireland model.

Additionally, the QLD Inquiry into police responses to DFV recommended a model for police complaints mechanisms (based on the Northern Ireland model)

Recommendation 68 A Call for Change. Report (2022) Commission of Inquiry into Queensland police service responses to domestic and family violence.

The Queensland Government establish the police Integrity Unit as an independent and separate unit of the Crime and Corruption Commission to deal with all complaints in relation to police. The police Integrity Unit must, at a minimum:

- be led by a Senior Executive Officer who is a civilian
- provide for whistleblower protections
- include a victim advocate

- include identified positions for First Nations staff in the intake and victim advocacy teams include civilian investigators, and transition to a predominately civilianised model as soon as possible
- implement an adequate complaints management system, including fit for purpose data collection and reporting, including providing for aggregate trends analysis
- publicly report annually on activities and outcomes.

Recommendation 69-72, Inquiry into Queensland police responses to DFV, provide further recommendations as to the establishment and implementation of the mechanism. Other recent inquiries such as the Yarook Justice Commission have made similar recommendations.

Failures by police to investigate, and poor police conduct, require accountability and remedy.

The Yoorrook Justice Commission³⁴ noted that in Victoria approximately 95% of complaints to the police integrity / complaints body resulted in the same police investigating their peers. Police investigating police is a significant problem in our justice system. A 2023 review by the NSW Law Enforcement Conduct Commission³⁵ drew specific attention to the instances of police offices as perpetrators themselves, as did the QLD Inquiry and a high-profile matter in Victoria.

We urgently need independent police complaint mechanisms to ensure that victim/survivors are kept safe and have recourse. Where bodies already exist in States and Territories a review of their compatibility with international standards, and the principles contained in this submission, should be assessed. Where reform is possible through policy that is welcomed. We anticipate however that changes to existing bodies may require amendments to legislation.

³⁴ <https://yoorrookjusticecommission.org.au/>

³⁵ LECC, 'Review of NSW Police Force responses to domestic and family violence incidents', June 2023, <https://www.lecc.nsw.gov.au/prevention/prevention-reports/review-of-nsw-police-force-responses-to-family-and-domestic-violence-incidents>

7. Reassuring the most vulnerable victim/survivors they will only have to deal with one police force in relation to the crimes committed against them – an approach to handling multi-jurisdictional aggravated child sexual assault

Proposed recommendation 18: Commonwealth legislation to create a crime of aggravated sexual assault of a child in two or more jurisdictions

Proposed recommendation 19: One police force, namely the Australian Federal Police, be accountable for the investigation and liaison with the victim/survivor, of multi-jurisdictional aggravated sexual assault, and potentially all multi-jurisdictional sexual assaults

The Commonwealth has laws to prevent the exploitation and abuse of children across State, Territory and international borders where the abuse is conducted online³⁶. Victim/survivors of the most serious crimes must be supported in our justice system.

Aggravated sexual assault of children is among the most serious crimes in our State and Territory statutes. Where these crimes are committed in multiple Australian jurisdictions it is simply too much of a burden for victim/survivors (particularly when they are still children) to engage with multiple police forces. While police may have information sharing and coordination roles – we submit that the category and severity of crime is too serious to allow for a mishandling of communication or the investigation itself – especially in light of the reluctance of police (influenced by misogyny, sexism and racism) to investigate reports of sexual violence.

We submit that new measures for handling multi-jurisdictional aggravated child sexual assault, and indeed it could be extended to all sexual assault, be put in place. Consideration could be given to:

- A specific crime “aggravated sexual assault of a child in two or more jurisdictions” being created in Commonwealth legislation
- The Australian Federal Police having jurisdiction (with a specialist squad drawn from their existing resources in their child sexual abuse team) over this type of crime

³⁶ <https://www.homeaffairs.gov.au/access-and-accountability/our-commitments/child-safeguarding/child-sexual-abuse>

- Where charges need to be brought in a specific jurisdiction, the AFP specialist team retain the relationship with the victim/survivor to avoid duplication, re-traumatisation, attrition, mishandling of communication and the investigation itself.

These are some of the most egregious crimes. We must do better.

Prosecution Responses

The following opportunities are proposed to strengthen prosecution responses to sexual assault matters:

- Providing transparency and accountability for victim/survivors in decisions made by prosecutors
- Ensuring trauma informed, victim-centred approaches are embedded in prosecution approaches

8. Providing transparency and accountability for victim/survivors in decisions made by prosecutors

Proposed recommendation 20: Creation of, or strengthening of existing, guidelines and principles for prosecutors to sexual assault cases

Proposed recommendation 21: Creation of an independent review mechanism / body of decisions made by prosecutors in sexual assault cases and prosecutor conduct

Enabling victim/survivors to understand the reasons for which prosecutions did not proceed, proceeded on a limited number of charges, was conducted with a particular legal strategy, or that a plea deal was struck, can provide an increased sense of agency (in the context of a disempowering process) and minimising re-traumatisation³⁷.

Guidelines to ensure consistency of how prosecutors communicate with victim/survivors and involve them in decision making, should be reviewed, or designed in collaboration with victim/survivor experts.

³⁷ A 2023 KPMG report found that complainants experience was limited by the actions of the ODPP and its prosecutors, ranging from a lack of sufficient information and support provided, to a lack of transparency in procedure and decision-making, resulting in a loss of agency as the ODPP made decisions without effective consultation with the complainants.

Like complaints against police (recommendations 16 and 17 above) it is proposed that an independent review mechanism / body be created to enable victim/survivors to make complaints regarding decisions made by prosecutors, or their conduct. In designing a mechanism / body considerations may include:

- Prompt investigation of complaints so as not to delay / impact a matter proceeding to trial
- Trauma informed processes and trauma informed staff
- The availability for remedy where decisions about a prosecution being abandoned cannot be reversed or altered

9. Ensuring trauma informed, victim-centred approaches are embedded in prosecution approaches

Proposed recommendation 22: Embedding a victim/survivor advisory group in Departments of Prosecution to enable feedback, continued improvement and codesign of trauma informed, victim-centred approaches

Proposed recommendation 23: Ensuring prosecutors and support staff receive routine specialist training and wellbeing measures to manage trauma load in healthy ways

Consideration should be given to victim/survivors who have had matters proceed to prosecution and victim/survivors who have not had their reports proceed to prosecution. Insights from matters that were not prosecuted may prove instructive for changing prosecutor decision making and conduct. Ensuring that prosecutors are aware of wrap around supports for victim/survivors, and their ability to be represented by a lawyer themselves, can assist victim/survivors.

Trial Responses & Alternative Approaches

The following topics are noted of relevance to strengthening justice system responses:

- Specialised sexual offence courts or court lists *may* provide better justice outcomes and reduce re-traumatisation
- Specialist training and wellbeing measures for all court personnel
- ‘Special measures’ in trials

10. Specialised sexual offence courts or court lists *may* provide better justice outcomes and reduce re-traumatisation

Specialist courts, or court lists, for sexual assault crimes may offer better outcomes for complainants, by tailoring court procedures to the needs of victim/survivors and having regard to the distinct trauma they have already experienced.

Early evaluations of specialist sexual offence courts in South Africa and Aotearoa New Zealand revealed a largely improved experience for complainants.³⁸ These reviews indicated a substantial reduction in delays, improved case management, better complainant satisfaction with prosecutors, pre-trial preparation, and access to support services, reduced intimidation from defence counsel and an increased feeling of safety in court from almost all complainants.³⁹

These specialist courts implement a range of strategies to better protect victim/survivors throughout the justice process and reduce delays. However, there are risks to implementing specialist courts, including difficulties in managing caseloads, unfair distribution of resources, normative biases arising out of routine, and limited accessibility for people living far from the court.⁴⁰

While specialist courts are an effective method of improving justice responses, alternative specialised approaches to sexual assault cases in regular courts may prove a more immediate solution, if mandated nation-wide. Such approaches should accompany the elevation of serious

³⁸ Leeona Dorrian, ‘Improving the management of sexual offence cases: final report from the Lord Justice Clerk’s Review Group Report’, March 2021, <<https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>>.

³⁹ AIJA, ‘Specialist Approaches to Managing Sexual Assault Proceedings: an Integrative Review’, Aug 2023, 206, <https://aija.org.au/wp-content/uploads/2023/10/Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings-An-Integrative-Review_05.pdf>.

⁴⁰ Patrick Parkinson, ‘Specialist Prosecution Units and Courts: A Review of the Literature’, March 2016, 14, <<https://classic.austlii.edu.au/au/journals/UQLRS/2016/5.html>>.

sexual offences prosecuted on indictment to federal jurisdiction, and courts in these matters should be given jurisdiction to hear ancillary offences triable on indictment. These approaches are discussed below.

A civil standard of proof for criminal sexual assault matters is a consideration that the Inquiry should examine.

11. Specialist training and wellbeing measures for all court personnel

Specialist trauma-informed, victim-centred training should extend to prosecutors, defence counsel, judges and magistrates, court reporters, sheriff officers and all other personnel present during a sexual offence trial.

Wellbeing measures can also promote the healthy management of trauma load.

The training for judicial officers should be accompanied by the implementation of a sexual offences bench book. This would provide specialised guidance for judges and magistrates on relevant legislation, jurisprudence, and the legal procedures and standards of service of the court in sexual violence matters.

12. ‘Special measures’ in trials

Cohesive legislative standards for ‘special measures’ during trial for sexual offences would ensure greater protections for victim/survivors and witnesses, which would assist in restoring trust in the trial process. Special measures can assist with the smooth and efficient administration of justice for both the victim/survivor and the accused.

Such measures could include but are not limited to:

a) Alternative options for complainants giving evidence

Existing alternatives across Australia include closed courts while complainants give evidence, the use of a one-way shield in the courtroom, and the use of CCTV or remote communication software. Further measures that could be introduced include pre-recording of complainant evidence, and special hearings for the pre-recording of cross-examination.

b) Judge-alone or juryless trials

Jury members are not immune from the biases and unconscious biases that exist in the whole population that uphold untrue and negative stereotypes about sexual assault victim/survivors.

Reviews of judge-alone trials for sexual offences across Australia revealed higher acquittal rates in judge-alone trials in the ACT (which were used to justify the exclusion of such trials in the ACT in 2011), SA and recently in NSW. New Zealand and Northern Ireland however showed the opposite.⁴¹ This ineffectiveness in conviction rates however is not the only factor in achieving justice for victim/survivors. South Africa's juryless trials involve a judge, as well as two 'lay assessors' with specialist skills and training in sexual offence matters or justice administration. The verdict is determined by all three, which could contribute to the reduction of rape myths whilst upholding the right to a fair trial and procedural fairness.⁴² Mandating juryless trials for all sexual offences, or creating national guidelines for the circumstances which warrant judge-alone trials for these matters in all state jurisdictions, may alleviate re-traumatisation and encourage more victim/survivors to report and pursue legal accountability. However, this is an area for further exploration by the ALRC.

- c) Mandated expert evidence and jury directions regarding common myths and biases of sexual offences

Many jurisdictions have already implemented the use of expert evidence and jury directions to educate the jury on how the memory and responsive behaviour of victim/survivors of sexual violence can present in trial and to take this into account when making their decision. Standardising jury directions across Australia to address negative biases against victim/survivors may increase consistency in trial outcomes.⁴³

- d) Victim/survivor input into the design of designated facilities for complainants, such as separate entrances and waiting areas, would benefit the system.

⁴¹ NSW BOSCAR, 'The effect of judge-alone trials on criminal justice outcomes', March 2024, <<https://www.bocsar.nsw.gov.au/Publications/CJB/CJB264-Report-Effect-of-judge-alone-trials.pdf>>.

⁴² n 24.

⁴³ n 10.

Post-Trial

13. Victim Impact Statements

The sentencing process is commonly considered particularly re-traumatising for victim/survivors, due to a lack of consultation and the perceived failures to achieve a just sentence.

The experience of preparing and submitting a Victim Impact Statement is particularly difficult for complainants, as they are required to revisit the trauma of their experience in significant detail.⁴⁴ Further support should be allocated to complainants during this process, and they should be subject to the same special measures for giving evidence.

Ensuring that “good character references” do not re-traumatise victim/survivors is important. Measures to reduce “irrelevant” “good” character references in sentencing are important and should be considered by this Inquiry⁴⁵.

14. Transformative / restorative justice models which incorporate independent advocates should be enshrined in legislation

Transformative / restorative justice models for sexual offences enable those who have been affected by these crimes (including perpetrators) to have open dialogue about the impact of the offence and how this damage can be repaired.

There is a strong case for transformative / restorative justice to be implemented alongside criminal justice responses, to offer victim/survivors the chance to regain their agency and voice. Due to the current gap between instances of sexual violence and conviction rates, achieving justice for victim/survivors must extend beyond traditional legal pathways to compensate for these failures. Transformative / restorative justice may also assist in reducing recidivism by providing better opportunities for self-improvement and education, rather than only punishment. These models may also reduce re-traumatisation by allowing victim/survivors to face their perpetrators from a safe distance, rather than being forced to face them in court, as seen in Victoria’s current ‘indirect restorative process’.⁴⁶

⁴⁴ Rhiannon Davies, Lorana Bartels, ‘The Use of Victim Impact Statements in Sentencing for Sexual Offences’, 2021, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9318253/>>.

⁴⁵ <https://www.abc.net.au/news/2023-11-03/act-calls-remove-paedophile-sentencing-good-character-references/103057246>

⁴⁶ <https://www.justice.vic.gov.au/vcrl/about-victim-centred-restorative-justice>

Some victim/survivors may not desire a criminal justice outcome, but to achieve justice through other modes of reconciliation. Furthermore, those disproportionately affected by these crimes are predominantly members of particular communities, which may underpin their personal needs and desired outcomes.

Given the nature of Australia's current justice system and the inherent biases that permeate its processes, transformative / restorative justice offers an alternative pathway for victim/survivors and perpetrators of particular communities, namely First Nations and CaLD groups. The additional trauma experienced by First Nations victim/survivors of sexual violence in the justice process is well-documented and a significant contributor to the low rates of reporting.⁴⁷ Alternative justice models offer an opportunity for these victim/survivors to find recovery and healing without added re-traumatisation, in line with both the Federal Government's 'Closing the Gap' commitments and the recommendations of this Inquiry.

However, transformative / restorative justice contains some risk that ought to be explored fully by this Inquiry. Considerations include:

- Ensuring that transformative / restorative justice does not replace access to the criminal justice system if that is what victim/survivors want. There is a risk that within a community culture of victim-blaming and shaming, and a police culture of "misogyny, sexism and racism" that typically does not investigate matters, that victim/survivors may feel forced into transformative / restorative justice as the only viable option for some form of justice, recovery and healing. We must ensure that the seriousness of sexual assault crimes are not undermined by an opportunity to participate in transformative / restorative justice.
- A desire to provide non-carceral outcomes for perpetrators may increase the desirability of transformative / restorative justice.

⁴⁷ ALRC, NSWLRC, 'Family Violence – A National Legal Response Final Report', Oct 2010 (ALRC Report 114, NSWLRC Report 128), [26.174] <https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114_WholeReport.pdf>.

Other Issues for Consideration

15. Harmonisation of sexual assault legislation in relation to consent and children

Proposed recommendation 24: Legislation regarding consent, and the need for affirmative consent, should be harmonised. Legislation should emphasise that children (under the age of consent) cannot consent and circumstances that negate consent.

Proposed recommendation 25: Legislation regarding sexual assault laws should be reviewed and harmonised in so far as they treat sexual assault against children. Legislation should not impose different types of offences and/or sentences for different ages of children.

Consent laws should be harmonised across Australia to ensure a consistent approach to sexual assault offences in every jurisdiction. We rely on our submissions⁴⁸ to the Inquiry into Current and Proposed Sexual Consent Laws in Australia⁴⁹ and the transcript of evidence⁵⁰ from Karen Iles' appearance before the Inquiry on 25 July 2023. For convenience we have **attached** our submission and transcript of Karen Iles' evidence to the inquiry to this submission.

We are concerned about a potential perceived diminishing of the understanding of consent by current community campaigns. Children under the age of consent cannot consent to sex.

There is a need to re-set our community understanding, and the understanding of police. Several clients have experienced police miscategorising sexual assault (of girl children ranging in age 12 -15) as consensual – therefore not recording or investigating reports. In particular there is a need to support efforts to de-sexualise girls of colour, and in particular First Nations girls, who disproportionately are miscategorised (because of the intersection of racism and misogyny) as consenting to sexual assault.

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualconsentlaws/Submissions

49

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualconsentlaws

50

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualconsentlaws/Public_Hearings

There is a need to emphasise in legislation and public campaigns, the consent issues that exist with older women or people with a disability, especially those in care and those living with dementia. The social stigma that many sexual assault victim/survivors in these categories experience, and concerns that police won't believe them, deter victim/survivors from reporting and accessing justice.

16. Non-discrimination of sexual assault victim/survivors

Proposed recommendation 26: Commonwealth, State and Territory human rights and anti-discrimination legislation be amended to include “sexual assault victim” as an area protected from discrimination.

Proposed recommendation 26: Amendments to the Fair Work Act, Awards and other State and Territory Industrial agreements to include “sexual assault victim status” as a matter for general protections.

Proposed recommendation 27: Domestic and Family Violence Leave be extended to include sexual assault in a non-domestic/family setting.

Our clients often experience discrimination, and adverse treatment, following disclosures of sexual assault to employers, insurance providers and other businesses / organisations in our Community.

Community attitudes towards victim/survivors are negative – particularly the attitudes of men towards women who make complaints / reports of sexual assault. The ABC Australia Talks Data from 2021 clearly demonstrate the distrust of sexual/assault victim/survivors and a disproportionate distrust by men⁵¹. Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Findings for Australia⁵² demonstrates similar problematic attitudes by large segments of the population towards victim/survivors. These attitudes are then applied to decisions in the workplace – termination, bullying, sexually harassment (victim/survivors are vulnerable to re-victimisation) and other unfair treatment is common and difficult to remedy under the constraints of existing anti-discrimination and workplace law.

⁵¹ <https://www.abc.net.au/news/2020-12-10/australia-talks-data-explorer-2019/12946988#/responses/allegations-of-sexual-assault-are-almost-always-true>

⁵² Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Findings for Australia <https://ncas.au/ncas-2021-findings-for-australia>

Victim/survivors report having insurance products cancelled once a history of sexual assault is known by insurers who claim they have a pre-existing mental health condition. Many victim/survivors do not disclose their status to insurers, doctors and others in fear of consequences for their insurance coverage, or disclosure in Family Court proceedings. This re-victimises and re-traumatises victim/survivors.

Protecting victim/survivors against bias is important. This should be coupled with a nation-wide, whole of community, campaign to debunk rape myths and negative stereotypes about victim/survivors.

Currently under Fair Work legislation, awards and industrial agreements those who experience sexual assault in a domestic or family context can access leave to support their engagement in the justice system and promote healing and recovery. However, victim/survivors of sexual assault where their perpetrators are not within the family or domestic context are left unsupported by workplaces and our community. Yet – the needs are the same.

17. Missing (often sexually assaulted) and murdered First Nations women and children

First Nations Women and children who are abducted, often sexually assaulted and murdered, or those who are disappeared and never found, should be a focus of this Inquiry.

We rely on our submissions⁵³ to the Inquiry Missing and murdered First Nations women and children⁵⁴ and the transcript of evidence⁵⁵ from Karen Iles' appearance before the Inquiry in Brisbane on 20 February 2024. For convenience we have **attached** our submission and transcript of Karen Iles' evidence to the inquiry to this submission.

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Submissions

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Public_Hearings

The importance of improving police responses and investigations cannot be emphasised more strongly. Please refer to our proposed recommendations 1-17 above.

18. Victims' Rights Charters

Proposed recommendation 27: Creation of National Principles for victim's rights charters based on human rights principles

Proposed recommendation 28: Creation of National Principles for victim's rights charters based on human rights principles

A set of national principles for consideration by States and Territories in Victims' Rights Charters, or the creation of a nation-wide Charter administered by the Commonwealth, could include principles such as:

- Police owe a duty of care to provide victim/survivors information about, and access to, mental health and legal supports
- Police owe a duty of care not to harm victim/survivors in their dealings with them
- Right to equal treatment and non-discrimination if a victim/survivor is represented by a lawyer
- Victim/survivors should be updated regularly (e.g. ACT is every 6 weeks) on the process of a police investigation or prosecution
- Victim/survivors have the right to be heard and have their reports of sexual assault investigated to a minimum standard
- Victim/survivors should be given written explanations for decisions by police or prosecutors where matters are put on hold, or do not proceed
- Victim/survivors should be given access to an independent complaints mechanism to make complaints about police and/or prosecutor failures and/or conduct
- Independent complaints mechanism to investigate complaints regarding breaches of the victims' rights

- Remedy and redress where complaints regarding breaches of the Victims' Rights Charter are found
- Connection and reference to International Human Rights principles – e.g. CEDAW

19. Victims' compensation schemes

Proposed recommendation 29: Creation of National Principles for redress, healing and recovery for all sexual assault victim/survivors

Proposed recommendation 30: Commonwealth undertakes a harmonisation process with the States and Territories to bring all victims compensation schemes, for sexual assault categories of crime, in alignment with the National Redress Scheme

Proposed recommendation 31: Financial support within victims' compensation schemes for victim/survivors of sexual assault should ensure that financial support is provided at the time the victim/survivor needs it and incurs the cost/loss as opposed to at a time benchmarked to the sexual assaults.

A set of national principles for redress, healing and recovery of sexual assault victim/survivors aligns with the National Plan to Eliminate Violence Against Women and Children⁵⁶. Principles could include:

- All victim/survivors should be supported equally in their access to justice, remedy, healing and recovery no matter who perpetrated the violence
- No victim/survivor should be worse off
- No backward steps for victim/survivors. While not perfect, the National Redress Scheme should be taken as the benchmark to harmonise all victim compensation schemes to
- In lieu of a national system of redress for all victim/survivors, where sexual assault offences are perpetrated in more than one jurisdiction, a single application for support (but provided to each jurisdiction under which redress is available) should be sufficient

⁵⁶ The National Plan to End Violence against Women and Children 2022-2032 <https://www.dss.gov.au/ending-violence>

to reduce dealing with multiple jurisdictions and schemes – and the re-traumatisation of multiple re-telling and engagement with multiple agencies.

- A national body should be a one stop shop, receive applications, refer to the appropriate jurisdiction and case manage.
- Financial support (separate to recognition payments) should be de-coupled from a financial loss within a time period from the sexual assault/s. Rather financial support (up to a cap) should be available to victim/survivors at a time when they need it.

Not all victim/survivors disclose and incur loss at the time of the sexual assaults. For child victim/survivors the financial loss is only compensable for the 2-year period after turning 18 years of age. This is not when the financial loss typically occurs. This leaves many victim/survivors currently unable to be supported with financial loss.

Attachments

The following documents are provided as attachments to this submission (URL links are also provided for online access):

1. Submission from Violet Co Legal & Consulting to the Inquiry into Current and Proposed Sexual Consent Laws in Australia
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualcontentlaws/Submissions
2. Transcript of evidence, Karen Iles, Inquiry into Current and Proposed Sexual Consent Laws in Australia 25 July 2023
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualcontentlaws/Public_Hearings
3. Submission from Violet Co Legal & Consulting to the Inquiry Missing and murdered First Nations women and children
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Submissions
4. Transcript of evidence, Karen Iles, Inquiry Missing and murdered First Nations women and children 20 February 2024
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/FirstNationswomenchildren/Public_Hearings
5. 'Unspeakable trauma': police in Queensland and NSW failed to investigate alleged gang rape of 14-year-old girl, records show, Guardian Australia 4 October 2022
<https://www.theguardian.com/australia-news/2022/oct/04/unspeakable-trauma-police-in-queensland-and-nsw-failed-to-investigate-alleged-gang-of-14-year-old-girl-records-show>



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Committee Secretary

Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via Email: legcon.sen@aph.gov.au

16 March 2023

Dear Committee Secretary,

Re: Submission to Senate Inquiry into Current and Proposed Sexual Consent Laws in Australia

Violet Co Legal & Consulting (**Violet Co**) welcomes the opportunity to contribute to the Senate Inquiry into Current and Proposed Sexual Consent Laws in Australia.

Violet Co is a social enterprise (Social Traders Certified) and Indigenous business (Supply Nation certified) founded by Karen Iles, Principal Solicitor and Director. The practice focuses on the rights of women, gender diverse and First Nations peoples. We regularly advise and represent women, particularly Aboriginal and Torres Strait Islander women, in matters relating to sexual assault and sexual harassment.

Karen Iles is a member of the National Women's Safety Alliance and an Advisory Board member for Chanel Contos' Teach Us Consent, we are writing to fully support and endorse both of these groups' submissions.

In particular, we endorse the position that while the harmonisation of consent laws will be beneficial to the national scheme for sexual consent laws, it should not be the sole priority for the Australian Federal Government. Standardising consent laws will take a great deal of time and other resources to implement.

In our view, the key issue with sexual assault legislation is not its drafting; it is its application.



MEMBER OF
THE LAW SOCIETY
OF NEW SOUTH WALES





Laws are only as effective as their enforcement – currently, the operation and enforcement of every jurisdiction’s sexual consent laws is limited by Police inaction. Sexual assault is extremely underreported – around 1 in 5 women have been sexually assaulted, and only 10 percent of these women report the assault to the Police. Of these, only a select few ever see the inside of a courtroom; the ability to access justice is prevented by poor Police responses.

When Police fail in their public duty, they damage confidence in our justice system, prevent access to justice for victim/survivors and their families (in civil as well as criminal proceedings), and psychologically damage victim/survivors. The low rates of investigation and even lower rates of conviction deter victim/survivors from ever reporting their experiences in the first place.

It is our position that government resources can and should be better used towards fixing cultural issues across the Police and judiciary to enable effective reporting of and investigation into sexual assault. The government’s investment into these issues will see a greater positive impact for victim/survivors across Australia.

Violet Co urges the Australian Federal Government to give **higher** priority to fixing issues relating to enforcement of sexual consent legislation by Police and the judiciary. If the government wants to make the greatest impact for victim/survivors across Australia, it should first focus on the application of the laws before standardising the laws across different jurisdictions.

Terms of Reference: Other relevant matters

Campaign to improve police responses to sexual assault [MakePoliceInvestigate.Org](https://www.makepoliceinvestigate.org)

On 5 March 2022 we wrote to the Attorney-General and his State and Territory counterparts. We have provided a proposal to the Federal government to bring together the State and Territories to focus on police accountability in relation to sexual assault, and sexual assault laws.

At the time of writing we are still waiting on a response from Minister Dreyfus and each State and Territory Attorney-General.

We are calling on the National Cabinet and the Standing Council of Attorneys-General, to create a national framework for legislation to codify;

- a police duty of care owed by police to victims of aggravated child sexual assault;
- a duty to investigate aggravated child sexual assault to a minimum set of standards; and
- an independent transparent police integrity mechanism to hold police to their duty, and the minimum set of investigatory standards.

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Context

Karen Iles's experience (see below **Appendix: Media Reporting**) of reporting sexual assault to police and her experience of the justice system is the normal, majority experience, for women and girls reporting sexual assault in Australia. Karen is not unique or an outlier.

The ABC investigation [Rough justice: How police are failing survivors of sexual assault \(2020\)](#) has data for each State, Territory and postcode - with the exception of NT who refused to provide data to the ABC.

- More than 140,000 sexual assaults were reported to Australian police in the 10 years to 2017
- Just under 42,600 or 30 per cent of sexual assault reports led to an arrest, summons, formal caution or other legal action.
- The other 50,800 investigations – more than 35 percent of reported sexual assaults – remain unsolved.
- **In NSW, only one in 10 reports since 2009 has led to legal action.**
- In Karen Iles postcode Darlinghurst, Sydney 2010 73.8% of reports are “unsolved” and only 8.8% result in legal action.

If we take the figure that approximately only 10% of victims report to police we can assume that potentially 1,400,000 sexual assaults occurred in the 10 years to 2017. This means that of the 42,600 where legal action eventuated equate to a tiny handful of perpetrators being held accountable for rape and sexual assault. **By extrapolation this equates to only 3 percent of sexual assaults resulting in consequences for the perpetrator in the form of an arrest, summons, formal caution or other legal action. Only 1.5% of perpetrators are convicted.**

If this picture was occurring with other serious crimes there would be a nation-wide outrage.

To change our legal and justice response to sexual assault, and in doing so inspire prevention, we must create confidence, consistency, accountability and transparency, in the police and Justice responses to reports of sexual assault.

Other reforms to support victims of aggravated child sexual assault

There are a range of other reforms that are within the power of the Australian, State and Territory governments and departments. Some of these include:

- Independent Legal Representation for Victims
- Police to prompt victim to call a lawyer on presentation for a report
- Accreditation for solicitors and barristers representing victims of sexual assault

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- Court support for victims
- National Redress Scheme and State/Territory victims services schemes
- Specialised sexual assault courts
- Specialised police for sexual assault investigations
- Victim/survivor advocate and peer-led support to navigate the justice system
- Restorative justice

The impetus for change now

Approximately only 10% of the 20% of Australian women (1 in 5 Australian women have been sexually assaulted) who have been sexually assaulted report to police. Of them only a select few ever see the inside of a courtroom - their ability to access justice is prevented by poor police responses.

There are a number of recent and high profile cases that demonstrate the abject and systemic failings of our police forces to respond to, and investigate, serious crimes (see **Appendix 4**).

Police are the gatekeepers to our justice system. Police determine what they do or do not investigate and how they investigate, based on legally unenforceable operating procedures, and their own culture and unconscious biases that can be misogynist, racist and homophobic.

When police fail in their public duty, at no fault whatsoever of the victim/survivor, they damage confidence in our justice system, prevent access to justice for victim/survivors and their families (in civil as well as criminal proceedings), and psychologically damage victim/survivors.

Police failure to investigate = Perpetrators not held to account and victims unable to access justice

Statistically, men who rape and sexually assault women and girls, will not be:

- interviewed by police
- charged with an offence/s
- prosecuted
- convicted
- or if convicted, face a custodial sentence

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This sends a strong message that if you rape and/or sexually assault a child or a woman - you will get away with it. You will not go to jail. You will not be held to account. High profile cases demonstrate to our society a lack of accountability of police action and perpetrator behaviour. These cases, such as Karen's, send the message to victims "why bother".

We have to change this picture and build confidence in our police and justice system.

Training and culture change for police - can not go far enough or quickly enough

There have been reviews into police culture. Culture change is important and should occur in parallel to these proposals.

Unfortunately, police have been unable to solve this issue of their culture getting in the way of fair and even handed justice. Legislation is required to enshrine community expectations and to bring about change.

The 2022 Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence¹ report found that QLD Police

"Despite the initial protestations of the Commissioner of police and the President of the police Union of Employees, **the Commission has found clear evidence of a culture where attitudes of misogyny, sexism and racism** are allowed to be expressed, and at times acted upon, largely unchecked. Where complaints in relation to such treatment are brushed aside or dealt with in the most minor of ways and those who complain are the ones who are shunned and punished. It is hardly surprising that these attitudes are reflected then in the way that those police who hold them respond to victim-survivors. It is a failure of the leadership of the organisation that this situation has been allowed to continue over many years unchecked."²

Judge Deborah Richards

Unfortunately, we do not have contemporary and recent evidence about police responses to sexual violence or serious crimes against marginalised members of our community such as Aboriginal and Torres Strait Islander people, LGBTQI and others. As such - we extend the understanding of police culture diligently uncovered in Queensland, and in 2023 the United Kingdom³, to all jurisdictions in Australia based on the ecosystems of misogyny, racism and homophobia that exist in our Country.

The change required goes beyond, and in addition to, training and culture change initiatives.

¹ <https://www.qpsdfvinquiry.qld.gov.au/>

² A Call for Change. Report (2022) Commission of Inquiry into Queensland police Service responses to domestic and family violence at page 11.

³ <https://www.abc.net.au/news/2023-02-19/can-london-police-ever-earn-back-trust/101987434>



The change required should enable legal remedies for victim/survivors who have been denied access to justice (criminal, and often by default civil) and have suffered re-traumatisation and distress due to instances of gross police mishandling.

Transformational culture change takes time. It is difficult work. To-date programs in these areas (over the past few decades) have not created lasting or widespread change. Training and culture change initiatives alone, won't drive structural and cultural change in the short or medium term. Accountability and consequences for poor policing are needed to reinforce training and culture change. Victim/survivors are being re-traumatised by poor police responses, and are prevented from accessing justice, now. We need urgent reforms.

"A systemic cultural problem exists within the Police force that has to change. This has to change through the introduction of strict rules that have to be adhered to, which are codified by senior management and real consequences that occur in the event of inaction."

"Unfortunately, this is a national problem, one we are seeing all too frequently particularly with those who are the most vulnerable in our society. "

Glenn Davies, former Head of the Victoria Police Sexual Crimes Squad

Consent legislation and education - enforcement is needed

Legislation and education programs about consent are a good step. However, the large-scale problems with our justice system are in the area of enforcement.

90% of victims do not report to police - confidence that police will "do something" is low - and proven by countless case studies. This must be remedied if legislation regarding consent is to ever be applied.

Nation-wide and State/Territory problem

Poor and/or absent police responses, and police conduct that re-traumatises victims, is a nationwide problem. It goes beyond victims of aggravated child sexual assault and extends to other victims of sexual assault, domestic violence, murders and violence against Aboriginal and Torres Strait Islander women and children and members of our LGBTQI communities.

Benefits

The reforms to legislate a police duty of care, police duty to investigate to a set of minimum standards, and independent transparent police accountability mechanisms will have the following benefits:

- Confidence in the police to handle sexual violence investigations - increase reporting and ability for the justice system to respond to alleged sexual violence.
- Establishing predictability in police responses will give greater confidence in police and the justice system.
- Supporting police to understand their duty to “do no harm” to victim/survivors and how they can best investigate serious crimes.
- Support culture change within police.
- Provide redress for victim/survivors who have been grossly harmed by police failings in their duty of care and duty to investigate to a minimum standard.
- Reduction in re-traumatisation, and minimising of complex post-traumatic stress, of victim/survivors as a result of inappropriate justice responses. This has a far reaching impact into health, economic participation, wellbeing, educational attainment, addiction, re-victimisation aspects of victim/survivor’s, and their families.
- Increase charges and prosecutions of accused perpetrators of sexual violence and serious crime - increasing access to justice in our community and creating equality and fairness in the application of the law.

Strategic alignment with Government priorities

This submission and proposal aligns with, and compliments, Commonwealth, State and Territory agreements, plans, inquiries and aspirations. The Federal Attorney-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault includes an [Annual Environmental Scan](#).

Existing measures to strengthen criminal justice responses to sexual assault in these frameworks by and large:

- Omit police responses to reports
- Omit police duty of care to victim/survivors
- Omit legally enforceable minimum standards of investigation
- Do not focus on the “enforcement” gap - what the law is and how the police respond
- Omit independent, transparent, police integrity and conduct mechanisms

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And instead existing measures by and large focus on reforms that have not shifted the rates of sexual assault, or the consequences and accountability for perpetrators:

- Reforms in court - impacting only a very small proportion of 1 in 5 Australian women who have been sexually assaulted (who are often a particular "type" of victim)
- Increasing reporting pathways - reports which are then by and large not investigated by police
- Training and culture measures for police - for decades these initiatives have failed to produce any wide-spread or sustainable change
- **Legislation to define sexual assault - which then is by and large not enforced by police**

With all of these frameworks - there is an elephant in the room. Compelling police to investigate aggravated child sexual assault, and potentially other serious crimes, is urgently needed to:

- build confidence and predictability in the justice system response
- Hold perpetrators accountable for sexual assault
- Enable victim/survivors to have a "shot" at accessing justice by getting through the "police hurdle".

I am available to meet to discuss this submission.

Kind regards,



Karen Iles
Director and Principal Solicitor





Appendix: Media reporting (Karen Iles & Police Accountability Campaign)

The Guardian Australia - 'Unspeakable trauma': police in Queensland and NSW failed to investigate alleged gang rape of 14-year-old girl, records show (4 Oct 2022)

Change Makers Podcast - Karen Iles – ChangeMaker Chat – Police & Sexual Assault (14 March 2023)

IndigenousX - No Investigation and No Justice: An interview with solicitor Karen Iles' on her police accountability campaign (14 March 2023)

Sydney Opera House All About Women Festival - The War on Women - Rent on Demand (12 March 2023)

news.com - "Teen's Gold Coast gang rape by Aussie surfers ignored by police" (8 March 2023) also appeared in the Daily Telegraph

The Project - Full episode and interview clip (8 March 2023)

The Daily Mail (UK) - "Brave woman reveals the horror she suffered after being 'gang raped' by 15 members of a notorious surf gang when she was just 14 - and how her desperate pleas for justice went ignored by police" (8 March 2023)

NY Breaking (USA) - "Karen Iles: Brave Woman Who Was 'Gang Raped' By Notorious Surf Gang Reveals How Police Failed Her" (8 March 2023) also appeared in News Times UK

MamaMia - "Reporting sexual assault is hard enough. Then there's another layer of complexity" (26 February 2023)

A Current Affair - "Woman's fight for justice decades after alleged rape" (17 Oct 2022)

ABC Radio National Speaking Out hosted by Professor Larissa Behrendt - "The path to Justice: police accountability and systemic reform" (16 Oct 2022)

ABC 7.30 (TV and print) - "Sexual assault support services struggling to cope with record demand" (18 May 2022)

The Chaser Report - "An Unacceptable Cop-Out" (11 Oct 2022)

Women's Agenda - "Karen Iles' campaign for law reform to compel police to investigate sexual assault" (11 Oct 2022)

MamaMia - "For 18 years, I've been trying to get police to investigate my sexual assaults. I'm still waiting" (21 November 2022)

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COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES
COMMITTEE

Current and proposed sexual consent laws in Australia

Public

TUESDAY, 25 JULY 2023

CANBERRA

BY AUTHORITY OF THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Tuesday, 25 July 2023

Members in attendance: Senators Antic [by audio link], Green, McLachlan [by video link], Scarr and Waters

Terms of Reference for the Inquiry:

Current and proposed sexual consent laws in Australia, with particular reference to:

- a. inconsistencies in consent laws across different jurisdictions;
- b. the operation of consent laws in each jurisdiction;
- c. any benefits of national harmonisation;
- d. how consent laws impact survivor experience of the justice system;
- e. the efficacy of jury directions about consent;
- f. impact of consent laws on consent education;
- g. the findings of any relevant state or territory law reform commission review or other inquiry; and
- h. any other relevant matters.

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LOOBY, Ms Tosca, Creative Director, Northern Pictures and Special Broadcasting Service

Committee met at 08:30

CHAIR (Senator Scarr): I declare open this public hearing of the Legal and Constitutional Affairs References Committee inquiry into current and proposed sexual consent laws in Australia. I acknowledge the traditional custodians of the land on which we meet and pay my respects to their elders past and present. I also acknowledge and welcome other Aboriginal and Torres Strait Islander people who are participating in today's public hearing. The committee's proceedings will follow the program as circulated. These are public proceedings being broadcast live in Parliament House and via the web. For people participating remotely, I'm the chair of the committee, Senator Paul Scarr, and with me in the room today I have Senator Nita Green, from my home state of Queensland, and Senator Larissa Waters, also from my home state of Queensland. I should note the keen interest of both my fellow senators in relation to these issues over prolonged period of time. I pay respects to them. Senators Alex Antic and Andrew McLachlan are participating remotely.

I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. The committee prefers evidence be given in public, but under the Senate's resolutions witnesses have the right to request to be heard in confidence, described as being in camera. If you are a witness today and intend to request to give evidence in camera, please bring this to the attention of the secretariat as soon as possible.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground that is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. I should state that we will probably have witnesses here today who haven't necessarily given evidence before, so if there is any uncertainty as to whether you want to ask a question, please let us know and we will work through the issues.

Witnesses should speak clearly into the microphones to assist Hansard to record proceedings. Before we begin, on behalf of the committee I acknowledge that this inquiry and the matters that we are about to discuss might cause distress to people participating in or listening to today's evidence. For those attending today's hearings we have Lifeline crisis support workers and a private space available. You are welcome to speak with them at any time during today. For those listening remotely, you can contact lifeline on 131114 or 1800 RESPECT for support and advice.

I now welcome Ms Tosca Looby and also Ms Jess Hill by videoconference. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available for the secretariat. This session includes screening of material discussing and depicting sexual violence, which some people may find distressing, and viewer discretion is advised. In what capacity are you appearing today, Ms Looby?

Ms Looby: I am here in my capacity as a documentary maker. I've made a series for SBS, which we are tabling as evidence today.

CHAIR: Ms Hill?

Ms Hill: I'm a journalist, an advocate and an educator, and I worked on *Asking For It*, with Tosca Looby, and *See What You Made Me Do*, which also feeds into these issues.

CHAIR: Would you like to make a brief opening statement before we go to the presentation?

Ms Looby: I've got a three-minute statement to introduce the project.

CHAIR: Excellent. Do you have a copy of it?

Ms Looby: I do.

CHAIR: Could you make that available to the secretariat, and then we'll pass over to you? Thank you very much.

Ms Looby: Thanks so much. It's lovely to be invited to give evidence today. We understand it's the first time that the Senate committee has received video evidence, so, on behalf of myself, Jess Hill and the teams at our production company, Northern Pictures, SBS and Screen Australia, we're really honoured to be your trailblazers today. I begin by acknowledging the traditional owners and custodians of the land on which the parliament sits,

the Ngunnawal and Ngambri people, and Aboriginal and Torres Strait Islander people who are in this room or watching proceedings today.

The evidence we're submitting to the inquiry is a one-hour documentary on the subject of sexual consent. It's a three-part series called *Asking for It* that premiered in April of this year. It's now available in its entirety on SBS On Demand. It was a really tough series to research, it was really tough to make and many would argue it's really tough to watch. But it is being watched by hundreds of thousands of Australians. It's tracking today at close to 700,000 viewers, which is actually well above SBS's audience average for this slot. Perhaps most importantly, SBS has reported an 80 per cent higher viewership for young people in this slot, based on their year average. The series has also formed the basis of an education resource for use in schools, which has been developed by SBS in partnership with the eSafety Commissioner and Body Safety Australia. It's been distributed to 30,000 education contacts around the country and has had more than 10,000 views via the SBS Learn site since it launched three months ago. This will continue to grow as consent education rolls out through Australian schools this year.

SBS commissioned the series, Screen Australia helped fund it and we made it because every day in Australia around 85 sexual assaults are reported. That is a teeny fraction of the assaults which actually occur and go unreported. Ninety per cent of victims-survivors don't report their rape to police. We made it because rape is the easiest crime to get away with, and there are so many reasons why a victim-survivor chooses not to report or to prosecute. We made it because so few victims-survivors understand that it's not their fault and so few perpetrators of rape ever acknowledge what they've done. We made it because a national conversation has exploded in Australia—a passionate, powerful and painful conversation, which has been contorted by misinformation and the pervasive cultural biases that travel mostly undetected through our lives, our schools, our places of worship, our systems of justice and, indeed, our parliament. For example, one in five Australians think women who say they were abused often make up or exaggerate claims of abuse or rape. That's the highest of any Western nation.

With this series, we've worked to clarify what consent means, what happens when it's ignored or misunderstood and how we all benefit when messages around consent are delivered clearly and early to all of us. This series is in no way exhaustive on this topic. That would take many more hours of television. What we're presenting to you today are some of the vital conversations that we believe need to be had and need to be heard. It's the participants in this series who are the true heroes, and they've spoken out on behalf of thousands of others with very similar stories that will never be heard. So thank you again, and we welcome your questions after the screening.

CHAIR: Thank you. Ms Hill, do you want to make any opening remarks?

Ms Hill: I think that Tosca has covered most of it. I'd like the documentary to speak for itself, and I'll handle questions afterwards.

CHAIR: Thank you very much. We'll now move to the documentary.

A video was then shown—

CHAIR: Thank you very much. I also acknowledge the bravery of the participants in that documentary. It does make a profound difference, I think. Ms Looby and Ms Hill, do you want to make any comment directly after the screening before I pass to my colleagues and give them an opportunity to ask some questions? Ms Hill?

Ms Hill: Look, I think probably it's best to reply to some of the questions. I have so many things that I want to emphasise from the series, but I don't want to do that outside the scope of where you are going. Maybe if we go to questions, we can be a bit more focused.

CHAIR: Thank you very much. I'll pass to the deputy chair.

Senator GREEN: Thank you very much. Thank you for being here and presenting your documentary. Thank you for making the documentary. It's incredibly powerful. It's great to hear about the viewership that you've received on what is such an important topic, particularly for young people. From the very beginning, what motivated you to make this documentary? You obviously saw that there was a discussion that needed to be had and some questions that needed to be answered. Was there a catalyst or a moment in time that made you decide that this was the right time to make a documentary about consent in Australia?

Ms Looby: In 2021, we did *See What You Made Me Do* for SBS about domestic abuse. That really took SBS by surprise in that they expected it to do well, but it ended up being the highest rating factual series they had ever put to air. Obviously there was a need for it in the community even though many would argue that we all go home and want to watch easy television. People weren't going home and watching easy television. They were watching this. So they were asking us for a follow-on from that series. To be honest, consent felt like a no-brainer. It felt like the natural corollary to move on to, especially at that time; it was the end of 2021, going into 2022. Around Australia, there was so much activity around this issue, so much conversation, so much debate.

Senator GREEN: Great.

Ms Hill: I will add to that. We were really aware that this had become, as Tosca has just said, a gigantic issue. You don't need to remind anyone in Canberra what a gigantic issue it was in 2021. Like with all of these types of traumas, culture has a way of wanting to forget and wanting to bury. We were really aware that unlike what we did with *See What You Made Me Do*, which was bringing to light the issue of coercive control that wasn't well known to the public as an aspect of domestic abuse, with this series we were refocusing on what we had all become so enlivened to in 2021 to say, 'No. We can't afford to look away. It's not enough to take to the streets. That in and of itself does not effect change. That's just the beginning. Now we have to do the hard work, the boot work, of actually changing the systems that are enabling this to continue to occur and to be at epidemic proportions in increasing levels of severity across the nation.'

Senator GREEN: Thank you. I think you've captured exactly why we're here today and why, supported by the Senate colleagues I'm sitting next to, the reference was supported by the Senate; there is continued work that needs to be done. I think it would be easy to forget and to move on, but we're here today and particularly looking at some of the legal aspects. I want to ask you about media and media reporting, though, with your expertise. The media reporting about sexual violence has the capacity to be what I would refer to as an antidote to rape myths in society, but it's not always easy to do. What challenges did you come up against putting this documentary together? Were they surprising challenges, or did you expect them?

Ms Looby: I will go first, but I'm sure Jess will have interesting things to say about this as well. Look, you can never really predict what the challenges will be. They are always surprising but maybe more predictable in this case. So many people were telling us their stories off the record and not being able to speak out more publicly than that about what had happened to them. That is always a frustration, obviously, when you are creating a document like this; you are aware of all those stories, but you can't tell them. So that was a very frustrating process, because there were so many people who got quite a long way with us in terms of telling their stories and then, for all sorts of reasons that we certainly respect, they had to stop. That makes it always a very difficult process to make something like this. I guess also you are always conscious of what is not in there. We will always be criticised for that, and fair enough. There will be people whose stories aren't addressed in programs like this. That is something that we will always live with. We have to make choices about what is in and what is not. There is certainly so much content that we could have covered in this series.

CHAIR: Ms Looby, I am sorry to interrupt. We have a photographer from the AAP. I assume my colleagues are happy with the photographer being here with the usual protocols applying? Thank you.

Senator GREEN: I think you might have been cut off, or, Jess, you might want to contribute on the challenges you faced.

Ms Hill: I will add this. It is perhaps not what you expect to hear as a key challenge. We had some young men who really wanted to contribute to this series and talk about the bad sexual experiences they had at high school. They also who wanted to lift the lid on party culture in their school. They went to a very prestigious private school in Sydney. When that school caught wind of the fact that they wanted to take part in the documentary, they came down very hard and made it very clear that those boys would not be taking part in this documentary. I think that is a real shame. It is obviously a reputation management thing that the school was worried about. It reflects something broader, which is exactly what one of the young men said in the segment with Richie Hardcore, when all the boys were sitting around in a circle. It is so easy for young men to get it wrong when they are talking about this. There is almost a taboo around young men talking about sexual violence both as people who have been victimised but also as people who have perpetrated it. That's something culturally that we really need to address. At the moment, it is a lot of women talking. It's a lot of young boys and men fighting or feeling increasing levels of resentment and being drawn across to social media figures like Andrew Tate and the plethora of others whose names we don't know who show up on their TikTok feeds. It's a real risk where we're at at the moment in addressing consent and sexual violence that we end up stoking male resentment by not welcoming them into the conversation in a way that they feel comfortable instead of saying there are certain rules and regulations and if you don't obey them and become a gender studies graduate overnight, you can't be part of this.

Senator GREEN: Thank you. We are going to be speaking to legal experts and people who are really familiar with the way that the law operates across different states. It is worth noting early in the hearing that the way consent is defined and the way that it's dealt with in terms of the criminal justice system, jury directions and even the way it's talked about in different legal sections of the community is what I would call pretty confusing. What surprised you about what you found out about consent law? I particularly enjoyed the part of your documentary with the explanations of what affirmative consent is and how it is different in different parts of the country. What

sort of things were you able to draw out in part of making this documentary about just the definition of consent and why it's so complicated?

Ms Looby: I will start. It is obviously so confusing. That is part of the frustration, I guess, in making the series. There is so much confusion around consent. Even when you try and simplify it, there's obviously criticisms around what you've left out in that process. Legally, in some ways, in the making of this, that was the biggest surprise for me—there are so many disincentives for someone to go forward and take their case through to prosecution. There are a lot of people we met who said, 'After my experience, if someone asked me if I should report it and go through the police process and take it to court if that becomes an option'—obviously that's not for them to decide—I would say don't do it. I would say you're just going to be more traumatised than you are now and actually you'll come out the other side more damaged than you are now.' In my naivete, I was completely blindsided by that. I hadn't realised just how badly we dealt with sexual assault in our courts and the kind of experiences that victims-survivors were having. It's not historical. You still hear it. If you walk into any public court now and hear what juries are hearing from barristers, even though there are all sorts of protections around not victim blaming, you learn that the language hasn't really changed. What you hear in our courts is really astounding when you put yourself in the position of the victim-survivor.

Ms Hill: I would also add that my contribution and involvement in the series wasn't in analysing state by state the various definitions of consent in a legal context. What we were really trying to do was draw the lens back and come back to the human experience of what it is to go through these systems in various ways. This is not news to the Senate inquiry, but we really have to keep coming back to the fact that there is no consistent accountability. I think Jane Gilmore puts it in the starkest way possible, which is that you can fill the MCG twice over with all the women and girls raped in a single year in Australia and the men convicted of rape would fit into the members bar each time. That's the situation that we're dealing with right now. What we're teaching boys and men, regardless of whether we introduce consent education nationwide, is that if you do it, you will get away with it. The tricky thing is—Chanel Contos will probably address this in her evidence later in the week; I have just been reading her book that is forthcoming—that when we are talking about rape and sexual assault, there is such a broad spectrum of offenders and types of assault. At the moment, the way we deal with rape is that rape is one of the worst crimes you could ever commit and yet it is committed en masse across the country. So we don't have this sort of graded response to it where it's like, 'Okay, here's someone who took an opportunity who did it as a one-off. Here's someone who is a serial offender.' We put them in the same basket and then we kind of convict nobody—a very small proportion of unlucky offenders who don't get away with it.

So I think when we're talking about harmonising laws, parliaments do really well getting things on paper. But we need to go to what is going on in these courtrooms, what is going on before they even get to the courtroom and the process with police and the prosecutors. We looked at the South Africa model, which actually has the victim not just as a witness to their trial but as someone who is seen as deeply involved with prosecutors weeks out from the court date, not just the day before. They are involved in that whole process and taken through in a trauma and empathy informed way. At the moment, we brutalise people. We seem to throw up our hands as though there's no other choice.

CHAIR: Senator Green, I will share the call to Senator Waters.

Senator GREEN: I'm happy to do that. Very quickly—and maybe it will lead into what Senator Waters is going to ask; maybe you want to come back to it in some of your questions—if we have 85 sexual assaults reported every day, 90 per cent are not reported and the conviction rate is so low, do you think we're going backwards or forwards with this? I sat in the Downing Street local court with a friend who was going through a sexual assault case 15 years ago. It doesn't feel like anything is changing. If anything, it feels like the national debate sometimes takes two steps forward and three steps back. Perhaps in addressing some of the broad-ranging questions you will receive, I would be interested to understand if you think we are moving forward or whether we are really struggling and stagnating on this issue.

Ms Looby: I think we are moving forward. The fact that we're having these conversations, that this inquiry is happening and that the conversation has really made its way into every corner of Australia is progress. More people are reporting. Obviously, statistics are going to be impacted by that. But we've got a long way to go.

Ms Hill: I will add that I have observed that it is a thing where we're going both forwards and backwards. In some areas around public conversation, we're going forward. In some areas around, for example, what is happening in our courts and how schools and universities are dealing with this, I think we're regressing. You see that from people who are acting as lawyers. We've seen stories of late saying that the cross-examination of victim witnesses in trials is becoming more aggressive. It's becoming more punitive. Sometimes when things look like they are going ahead in a—

Senator WATERS: Patriarchy dies hard.

Ms Hill: broader social context, we can miss where things are starting to regress. Culturally, the sort of regression we are seeing is backgrounded a lot by things that I hope that we'll talk with Senator Waters about, such as the mass availability of violent porn and how that is influencing the culture more broadly in ways that is really hard to pin down.

CHAIR: Senator Waters, you have the call.

Senator WATERS: Thank you, Chair. I will first start by saying that was just incredible. I commend you both for your powerful work that is really helping to drive this conversation and to give people the courage to keep speaking out. Thank you so much for that. I want to acknowledge all of the survivors everywhere and the strength that they show on a daily basis. I would also like to thank Senator Green for being the initiator of this inquiry. It's really important work. There's so much to be done. This inquiry will touch on whether the laws themselves need to be harmonised and how we can better ensure that schools and universities are teaching consent. We know that the breadth of change that is required is immense. It touches the judiciary, the police, schools, parliaments, workplaces and homes. Knowing all of the changes that need to be undertaken in that task that is so vast and that it is a job for all of us, what are your key recommendations to us as representatives of the federal government? What do you think we should focus our attention and efforts on changing to help be part of that change to make people safe?

Ms Looby: The cultural change is going to lead to so many other changes. That includes cultural changes in the courts and in the parliament and in all those places where, I guess, people are going to be heard. When they are, they are not getting the reception they should. I think we need to so desperately address that cultural issue. I think we have the highest rate in any Western nation of people that believe that women lie or exaggerate reports of abuse and rape. It seems that you can find that pervasive myth everywhere. Certainly in juries you can find it. I think it has such an impact on what happens in courts. It is not helped by the process, as we explained in the film, that is the job of the court—to interrogate the only witness, who is obliged to be there. So I think that whole system needs to be looked at. It wasn't in that cut, but in the series we do look at the South African court, which is so interesting. They have specialist sexual assault courts. It does change the culture of that system.

Senator WATERS: Jess?

Ms Hill: I would re-emphasise what was in the doco, particularly points made by Michael Bradley, that there's no point having consent education in schools without a code of conduct for how schools are to respond if they have victims and perpetrators in the same school, and particularly in the same grade. We had many years of failures on bullying that led to suicides of young people. We've had many failures already in terms of schools responding to sexual assault between students. We need to have harmonisation or even just have some kind of code of conduct started and then harmonised between states as to what happens when the reports are made which are going to result from the consent education. That is to say that a lot of consent education is actually about educating people that they have been assaulted when they don't know that has occurred. Similarly, at the university level—we didn't show this as part of the cut; universities were covered in our series—many of you would have seen reported just recently in the *Saturday Paper* that a minority of vice chancellors have basically stood in the way of respectful relationships education being taught in universities. This is why a university taskforce that is being pushed by Fair Agenda, End Rape on Campus is so vital. I think universities have become much better at dealing with what happens if a teacher or a lecturer interferes with a student. They are not very good at what happens between students. Some universities are shockingly bad. Again, if consistency is the theme of the day, we really need to have an overseer. It cannot be down to the altruism or good intentions of individual vice chancellors.

The first recommendation from me is that we have to codify and harmonise a response to reports of sexual assault between students in schools. We should really be following up the idea of a university taskforce. We often talk about cultural change. We put millions and millions of dollars into it in this country. There is almost no point in pursuing this unless we look at regulating porn. I think it's really interesting the furore we've seen around the *Welcome to Sex* book in the last week. I think it shows how little adults know about the sex lives and sex education of young Australians. Almost half of Australians between the ages of nine and 16 years old are being regularly exposed to porn. The material they are viewing is increasingly violent, sexist and racist because literally that's the way you keep getting clicks—to make it more extreme and to make it more gross, where you can't look away, like a car crash. The sorts of messages transmitted in violent porn are not just violence, sexism and misogyny; it is that women who are choked, gagged and assaulted actually secretly like what is happening to them. Even though they protest, in the end they look grateful. It is hard to overstate just how damaging that is as a cultural education for young boys and men. You see this represented in the testimony of sexual violence services,

particularly of Vanita Parekh, the strangulation forensic examiner in our series. She said that she is seeing sexual engagements that start off consensual between two young people who know each other and then end up violent, where the violence is introduced halfway through in a way that is totally shocking often for the woman involved and where choking to the point of unconsciousness is not unusual.

I don't know for the senators present whether this was normal for you when you were going to school. I can say from my maybe rather sheltered experience on the northern beaches of Sydney that this was not the norm for me at parties. What I saw in those Chanel Contos testimonies and what so many of us saw is, yes, sexual assault is not new. There were historical testimonies. We are talking about groups of young women where everyone in the group has been sexually assaulted. That was not my norm growing up. I think we have to come to grips with the fact that no matter what context you put around porn in education, for starters, young kids don't want to talk to teachers or parents, let's be honest. Parents and teachers almost don't want to talk to kids about porn either. No matter how much context you put, if you are watching hours and hours of this a day and it's coming through other cultural education points such as TikTok, YouTube and others, that is going to shape the way you approach sex. It is shaping the way that you approach eroticism. It is informing the way that young men masturbate. It's what gets them off.

I know that this inquiry is particularly focused on the harmonisation of laws. I would really urge the government to take the bull by the horns and see this as a system. If we do this, then what? If we introduce consent classes all around the nation and we harmonise consent, then what? Then more reports of sexual assault. Then how are we dealing with that? We really need to think about this much more systemically. I think the eSafety Commissioner has a road map on how to regulate porn for young people that has been in the works for years. I understand that it is currently cabinet-in-confidence. It absolutely needs to be prioritised. I have a five-year-old. I go to these parties with these beautiful young kids. I feel a sense of urgency that they not be exposed regularly to the types of material that is on these porn sites freely available. It is as if we are just happy to flood ABC Kids at 8 am with X-rated content. That's the approach we take to the online world at the moment.

I could go on about this forever. They are my three priorities.

Senator WATERS: Thank you. I have strong agreement there. Chair, do I have time for one follow-up question?

CHAIR: Just one final question, Senator Waters.

Senator WATERS: Thank you. I'm glad you raised the pile-on in relation to the *Welcome to Sex* book that was just released last week by Yumi Stynes and Dr Melissa Kang. I would like to give you the opportunity in the brief time remaining to outline for us what the evidence actually says about the value of age-appropriate sex and relationships education. Could you also pass comment on the mislabelling of this book as grooming and the damage that mislabelling does?

Ms Looby: By using the term 'grooming' for a book like this, you steal away from the explanation that we are trying to help everybody understand. It's what Grace Tame has been doing for so long and really seems to have got somewhere with. To turn it around to describe a book like this feels like the work of disinformation—deliberate misinformation—that takes the power away from our efforts to help kids understand. Obviously, the work that is being done to help children understand why they are allowed to say no and why they are allowed to offer their own consent or withdraw it is vital to what we're all trying to do. I think the conversation around this book has maybe been predictable. It certainly seems to have been fired up by certain arms of the media. I don't know if anyone watched the media report last night on the ABC. They covered it. They looked at a string of the media that has been out in response to the book. It is extraordinary. It is really extraordinary. Of course, it does mean that sales have gone through the roof, which is—

Senator WATERS: Silver linings.

Ms Hill: I will only add to what Tosca is saying and re-emphasise what we just heard in the documentary, which is that comprehensive sex education for young people actually leads to them having sex later. They are more likely to use contraception and more likely to understand what the boundaries are. As has been emphasised a lot just in the last week, this is written in part by Dr Melissa Kang, who is Dolly Doctor. I remember being an 11- or 12-year-old reading Dolly Doctor and having some pretty explicit curiosity about various things. The fact is that we don't have magazines like that are read by young people any more. We don't have that kind of bible that you can go to any more. Instead, people go to Google. Kids go to Google. I think Yumi was right when she was being interviewed to say, 'We don't want kids feeling like they have to go to Google because that's the only place that they can find this information.' Put in 'anal sex' in Google and see what comes up. If you have a book that by and large is going to be purchased by parents—let's face it—unless those kids are much older, and that is probably

going to be read with the parents, I don't see how that is going to be damaging. It is precisely the opposite of grooming. Grooming occurs particularly when young children are naive and vulnerable to influence. When children are educated, they are less likely to be naive and vulnerable to influence. It is exactly the opposite. I think it is a good reminder for this inquiry that this kind of puritanical response is still broadly held in the Australian public. It is not to get too confident that we've come a long way. Certain sections of society have. Certain sections are quite happy to whip up a puritanical fervour over sex education for young people.

CHAIR: Thank you very much, Ms Hill. Thank you to both you and Ms Looby for all the work you're doing and for taking the time to appear before the committee today and, historically, showing video evidence for the first time, which is greatly appreciated by this committee. Thank you very much.

Ms Looby: Thank you.

Ms Hill: Thank you.

BERNEY, Ms Katherine, Director, National Women's Safety Alliance

CONTOS, Ms Chanel Celine, Founder and Chief Executive Officer, Teach Us Consent [by video link]

COOPER, Ms Julia, Executive Director and Head of Legal Research, Consent Labs

WAN, Ms Angelique, Chief Executive Officer and Co-Founder, Consent Labs

[10:07]

CHAIR: I now welcome representatives from the National Women's Safety Alliance, Consent Labs and the representative from Teach Us Consent, who is appearing via video conference. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. I thank the organisations for the submissions that have been made. I found them incredibly useful. The amount of work done in terms of those submissions was clearly apparent. Thank you very much for that. Would any of the witnesses like to make an opening statement? Ms Berney?

Ms Berney: Yes.

CHAIR: Could you give your opening statement to the secretariat and they will make a copy to be distributed? Do you have a spare copy?

Ms Berney: I don't know.

CHAIR: That's okay. Just read from it, and then we can distribute it. Thank you. Over to you, Ms Berney.

Ms Berney: Thank you for the opportunity to be here today. I want to begin by acknowledging the traditional owners and custodians of the land on which we meet, the Ngunnawal and Ngambri people, and pay my respects to their elders as well as acknowledging any Aboriginal or Torres Strait Islander people who are in the room with us today. I also want to extend my respect to any survivors that may be listening who have contributed to our submission. Their courage is unparalleled and I'm inspired to work with them every day. The National Women's Safety Alliance brings together over 400 individual organisational members to provide policy guidance, lived experience and frontline expertise to inform national policy and reform on women's safety. We support the work of our members and sector colleagues who are presenting in this inquiry, including but not limited to Queensland Sexual Assault Network, Full Stop Australia, No to Violence, End Rape On Campus, Consent Labs and Teach Us Consent, who are all making recommendations to these significant proposed reforms.

The NWSA welcomes the significant reform agenda of this government regarding women's safety and wellbeing. We are also, though, compelled to advise that when a discussion zeros in exclusively on legislation, there is a risk of becoming distracted from the larger issues of social reform and complementary law reform. That is going to be intrinsic to meeting the objectives of the national plan in both preventing gender based violence and responding to it. It is important that legislative amendments be enacted to support broader cultural change, not as a standalone response document piece or solution.

Sexual violence is a crisis in Australia. We have a 1.7 per cent conviction rate for sexual offences that make it to a legal outcome. Within that tiny percentage, we see sentencing outcomes of community service for convicted rapists, with the primary concern of the judiciary being that the perpetrator's life is not permanently impacted. But the longitudinal data from the ANROWS 2020 report is clear on women's health outcomes. Victims-survivors of sexual violence are up to 45 per cent more likely to have high levels of financial stress and report worse physical and mental health, including chronic conditions and mental health issues, than those who have not experienced violence. The ABS personal safety survey has found that an estimated 2.8 million people aged 18 years and over have experienced sexual violent assault and/or threat since the age of 15 years. This is reflective for deep cultural engagement and reform.

Legislation is one part of addressing what has become a growing wicked societal issue. NWSA supports the implementation of a nationally consistent statutory definition of affirmative sexual consent. We also believe that this legislative amendment must be reinforced by a comprehensive cultural change piece that informs and shifts the public understanding on affirmative consent. This also has to filter through the judicial and policing bodies, because this will help ensure that when victims do come forward, they are given fair opportunity to be heard under the legislation that has been designed to protect them and that those responsible for giving them justice understand their obligations and laws around consent. I welcome the committee's questions.

CHAIR: Thank you, Ms Berney. Before I go to the other witnesses for an opening statement, we have a photographer from AAP. We are in future sessions going to anticipate that with witnesses. Do any of the witnesses have any objections to the photographer from AAP appearing? And my fellow senators are happy?

Senator WATERS: Yes.

CHAIR: With the usual protocols to apply. Thank you very much. Ms Cooper?

Ms Cooper: Good morning, Chair and senators. I would also like to acknowledge the traditional owners of the land, the Ngunnawal people. Consent Labs is a national not-for-profit organisation that delivers consent and respectful relationships education to high school and university students, teachers, parents and carers. Our organisation exists to educate young people about consent and to equip them with the skills to be able to recognise and respond to sexual harassment and assault. By doing so, we aim to reduce the prevalence of sexual violence in Australia because, as we know, one in five women and one in 16 men over the age of 15 years will or have experienced sexual violence.

In terms of our organisation and its impact, in the last two years, we have delivered our programs to around 50,000 people in every state and territory across Australia. Feedback from participants reveals that 88 per cent of people walk away with a practical takeaway from our sessions and participants' understanding of consent improves by around 35 per cent. As consent educators and experts in this primary prevention space, we support the proposal to harmonise consent laws across Australia. Overall, we support this proposal for four key reasons.

First, sexual violence is a national issue. It requires a national approach. Harmonisation creates an opportunity to implement best practice consent laws across Australia, whereby all young people receive equal protection under the law irrespective of the state or territory they are from. Second, adopting a national consent framework would support consent education efforts which, as documented by UNESCO and as referred to in our submission, is an incredibly effective way to shift societal attitudes and lower rates of sexual violence. As educators who speak to young people on a daily basis, anecdotally we also see that the current jurisdictional inconsistencies cause confusion for young people, leaving them unnecessarily vulnerable. Third, unification serves a symbolic purpose as it allows us to powerfully articulate modern community mores and behavioural expectations in relation to consent and sexual encounters. Fourth, this proposal will support the work of national consent educators and organisations such as ourselves. This is particularly important in light of the \$65 million federal funding aimed at integrating consent specific education into the Australian school curriculum.

We also want to take this opportunity to urge the committee to consider the following issues before adopting a national consent framework. As previously stated, we do support this proposal. However, we support a proposal where the harmonised laws reflect modern community values, such as those affirmative consent laws that have already been adopted in New South Wales and Victoria. As an organisation, we do not support any regression of the consent standards.

As outlined in our submission, we also recommend that the federal government support all jurisdictions to provide anonymous and digital reporting options for victims-survivors. Whilst outside the scope of this inquiry, victims-survivors face many documented difficulties in reporting sexual violence. The benefits of an anonymous and easily accessible reporting option can be seen from the revamped New South Wales platform SARO, which saw a 500 per cent surge in the number of sexual violence complaints in the first two weeks.

Consent is only one part of comprehensive RSE. We also encourage the committee to consider international best practice frameworks for RSE, which we are also happy to speak to today, before implementing any curriculum.

Finally, and as echoed in several submissions, this proposal does not offer a silver bullet. Effecting social change requires the government to support the implementation of consistent, holistic and national education. Change will only occur if it is implemented alongside other victim-survivor-centred reforms to the criminal justice system, such as training that is trauma informed for police members and modernising jury directions. That concludes our opening statement. We would welcome any questions from the senators.

CHAIR: Thank you, Ms Cooper. I will now move to Ms Contos. Do you have an opening statement?

Ms Contos: Yes, I do. Thank you so much.

CHAIR: Over to you.

Ms Contos: Thank you. It's a pleasure to represent Teach Us Consent here today alongside the National Women's Safety Alliance. I would also like to acknowledge that I am coming from the UK at the moment. We are meeting on stolen land. I want to pledge my yes vote for the upcoming referendum. Teach Us Consent operates under the ethos that the vast majority of sexual violence is preventable through education. Teach Us Consent welcomes the idea of a harmonisation of consent legislation around the country. As an organisation, we recognise and appreciate that these reforms will be historic and send a clear message to Australia that holding accountability for sexual violence is a national priority. However, we don't think these reforms in isolation will address underlying causes of sexual violence, particularly those of a gendered nature. There is plenty of research to show

that a minority of sexual offenders commit their crimes intentionally and with malice. The laws around Australia as they stand are generally efficient at prosecuting these acts. However, current legal systems fall short in acts of sexual violence committed out of opportunity, entitlement, problematic attitudes and a misunderstanding of, or a disregard for, consent. These factors make up the vast majority of cases. Our inability to handle this has made it so that as a country we have essentially decriminalised rape. However, the fact that the majority of sexual violence is unplanned is also a good thing because it means that it is easily preventable. The unification of laws in this space provides an opportunity to communicate to Australia specifics about consent and to provide large-scale public education through awareness and media surrounding these legislative changes.

I would also like to point out that whilst the harmonisation of consent legislation in Australia would be beneficial, the legal system, even if we took it all to the top functioning of all jurisdictions and did best practice around the country, would still fail to take into account common survivor responses to sexual assault, such as fawning, which describes a trauma response where a victim is overnice to their abuser in order to survive an ordeal and get out safely. This is often weaponised against women in trials of sexual assault as their behaviour is used as misconstrual of consent.

Finally, whilst I applaud the array of initiatives surrounding the prevention of sexual violence that the federal government is currently undertaking and in many states and territories, I believe there is a large omission in this holistic policy, which is pornography, as we just heard from Jess. We're not taking into account enough how much pornography is shaping the sexual landscape of young people and distorting their understanding of consent. We can have laws, we can have conversations in classrooms and we can have all these things, but the reality is the amount of hours that young Australians spend watching violent and misogynistic depictions of explicit sex will counteract all of that. So porn literacy needs to be included in how we go forward. Thank you very much.

CHAIR: Thank you very much. I will now pass the call to Senator Green, if she would like to ask some questions.

Senator GREEN: Thank you, Chair. Thanks for the opportunity to ask you all a few questions. Thank you for your submissions, your advocacy and for the really articulate presentations today. It has framed a lot of the work we will be doing in asking questions to other witnesses. I have some direct questions for us to understand some of the work you are doing. Not everyone on the committee would be familiar with some of the work that you do. I want to start with Consent Labs. Thank you for your work. Thanks for the contribution particularly around harmonisation. Can you explain to the committee the work that you do, how you were founded and what sort of program delivery you are doing at the moment?

Ms Wan: Consent Labs' program is founded on a few core principles. The first is that we elevate the voices of young people. That was a key principle that my co-founder, Dr Joyce Yu, and I recognised ourselves as young people when we were 19 years old reflecting on the sex education that we had received in high school. It felt not relevant or in touch with what we were living through as young people. It was often delivered in a very victim blaming or fear based manner and did not address conversations around intersectionality or consent. We felt it was imperative that young people were incorporated into the design and the subsequent delivery of the education that they are on the receiving end of. The first principle that underpins our approach to consent education is including young people's voices in the design of the program.

The second key tenet is referring back to an evidence base. There's a whole host of international and local literature and research that underpins a best practice approach to comprehensive sexuality and relationships education, which I'm happy to speak to in more detail. Principles include a spiral curriculum—it's ongoing, it's not one-off—a whole-of-school approach; and educating young people and stakeholders that are important in their life, such as educators, parents and carers. Always referring back to evidence is really core for us as an organisation. Thirdly, there is the piece around intersectionality. People of different identities, be it gender, race or religiosity, will have access to conversations around consent differently and will come to conversations around consent from a different perspective. One size does not fit all. You need to create a space where you can have a really diverse conversation around consent. They are the key tenets of our program. We currently deliver to high school students and university students, as Julia mentioned, as well as to their parents, carers and to the educators in line with that best practice approach. We've delivered to around 50,000 people across Australia. Most of our work is focused in New South Wales at the moment because that is where we are based as an organisation. Of course, we see the need for this education to be delivered really comprehensively across the country.

Senator GREEN: Thank you. My next question is around education and delivering education programs to young people. It is certainly a question you can answer. Chanel, you might have a perspective on this from the work that you've done through Teach Us Consent. I accept that harmonisation of the definition or even just harmonisation in the way consent is dealt with in the criminal justice system around the country isn't a silver

bullet to all of the issues we are raising. Think of your experience in consent education and having clearer definitions. The example I always give is if you go to school in Brisbane but you go to schoolies in Byron Bay. Is it better to have more consistent definitions so that we can have consent education that is across the board and delivered at a national level?

Ms Contos: Yes. One hundred per cent I agree with that. I think it has always been very bizarre to me that we have different laws in different jurisdictions around Australia. People travel. People go places to party, to celebrate schoolies and all of these different things. I noticed it when Teach Us Consent was running a campaign on the criminalisation of stealthing unified across Australia. We had testimony from a young woman saying that she had been stealthed in a state where it wasn't a criminal act but she was from Victoria, where it was. She was confused why, when she was googling it, this mismatch was happening. Consent education is delivered in a kind of scaled form in schools. When Consent Labs goes in or a teacher teaching the curriculum delivers the content, they are often forced to be as simple as possible due to time constraints and resource constraints. Having consistent messaging around that across the country to avoid confusion I think would definitely be beneficial. I also think it can't just be about laws. When we talk about laws in this way and when we're talking about education, people continuously uphold stereotypes about specific types of sex offenders that do end up in jail or that are on crime shows. I think when we are delivering this education and giving consistent messaging around laws, we also need to give direct examples of violations of these laws that apply to normal everyday scenarios that are relevant to these children.

Senator GREEN: Thank you. Ms Wan or Ms Cooper, I think you were going to add to that.

Ms Cooper: Yes. I also agree that consistency as a framework is really important. I probably see three main reasons for that. The first is actually to protect young people. A young person may move interstate. They may have had, for instance, the terminology of rape, but they may be in a state or territory where the terminology is sexual assault and sexual touching doesn't exist. There are a whole lot of terminological differences that impact young people and their understanding of sexual offences. It has real repercussions when it comes to reporting. Another is, as Chanel said, confusion in schools. The wording is more complex in various states and territories and more nuanced and just harder to understand. I will go back to the protection point. Of the differences that exist, what comes to mind is that stealthing, age of consent and, as I said earlier, the terminology do really matter. I think legally it is really important that it is consistent.

Senator GREEN: I have one last question and then I'll hand over the call. Ms Berney, thank you for your contribution. I assume your submission pulls in all of the affiliated organisations that you represent. That's a really big task. Thank you for doing that. We are going to hear later this week from legal experts and particularly the Law Council of Australia and some of the people who oppose harmonisation. I want to be clear. When I talk about harmonisation, I'm not talking about levelling down the big wins that have been made in places such as Victoria and New South Wales. I don't think harmonisation should be reducing the laws that have been won. I think it's about bringing other states up to that affirmative consent model. That is what is essentially being proposed. I think the whole point of the Senate inquiry is to talk about the benefits and challenges with that. One of the issues that was raised by the Law Council of Australia is that young people risk being over-criminalised by the introduction of affirmative consent. I guess we're weighing that up. That's coming from a legal background. We're weighing that up with the voices of Ms Cooper, Ms Contos and Ms Wan about the benefits when it comes to educating young people. Do you have a view on not necessarily the Law Council's submissions but that pushback—that we risk criminalising people who otherwise wouldn't be criminalised?

Ms Berney: No. I don't believe so. The reason is that I think when you talk about comprehensive sexuality education, as my colleagues have and as we've heard in the previous testimony, you start to get to a situation where people are actually really understanding what these interactions are with each other. I want to be really honest. With a 1.7 per cent conviction rate nationally, we've got a long way to go before that even needs to be on a radar of concern. The reality is that we hear about the rapes that are reported. Look at some of the research that has come out on sexual violence from the United States, particularly by Dr Lisak. They are interviewing sexual offenders. His research has found that generally by the time a perpetrator has not received necessarily a formal outcome but has received communication about their behaviour and it has been acknowledged, they are up to the sixth person. So I think it's incredibly important that no-one is suggesting that the presumption of innocence is not important. Of course it is. I don't think it needs to have the kind of weight attributed to it when we're talking about the scale of the cultural issues that we're trying to work through with societal attitudes, policing attitudes and judicial attitudes. I think it's overly cautious. It is beneficial that people have the same clear and consistent language so that they can go, 'Right. This is what this is. If I go to South Australia, I'm not committing a crime because I'm a year different in terms of the age of consent. If I go here, this is a crime, and stealthing is a crime

across the board.' I think it's actually helping people work out what is a bit of a jigsaw puzzle, to be honest. Certainly I think that was a reflection of our members when we went out to them. It was also testimony from Teach Us Consent. It shows that there is so much lack of understanding of how the actual machinations of the policy works and how it is applied in a real-life context.

Senator GREEN: Thank you very much. Thanks, Chair.

Senator WATERS: Hello, everyone. Thanks so much for the effort that you put into your submissions and for appearing today. Ms Contos, can I say how impressed and grateful I am that you have taken on such a heavy load. I want to name the emotional labour that you have performed for the betterment of all of us. Thank you so very much for doing that. Well done. I hope you've got the courage to continue doing so. I've got so many questions and there is so little time. I will start with Consent Labs. I was very impressed with your submission. Thank you for doing the work that you do. I hope that you can expand beyond New South Wales. Obviously, there are many consent education providers. I am impressed with the quality of your submission. Your submission notes that a society that understands sexual violence is better able to support people who experience it. In your view, why is it critical that students develop an understanding of consent and respectful relationships early on? What do you believe is the right age for relationships and sex education to begin?

Ms Wan: I think we can really lean on, as I spoke to before, the whole host of international and local research that has been done around, more broadly, comprehensive sexuality and relationships education, of which consent is a part. That research continues to demonstrate that these conversations should be had in an age appropriate manner and that these conversations can start from as young as kindergarten and go on as a young person goes on to high school and then university. Of course, they can continue past formal education institutions. This form of education is incredibly important because research has demonstrated that it delays the initiation of sexual intercourse. It reduces risk taking. It increases the use of contraceptive methods. Beyond just improvements in sexual health realms, it also demonstrates a reduction in gender based violence. It increases gender equity and it increases capacity for building healthier relationships. There are amazing benefits both from a sexual health perspective as well as a relating perspective. I think we can really lean on the research that has been done internationally.

Senator WATERS: Ms Berney or Ms Contos, do you want to add anything? I will give you a chance to push back on the notion that somehow this is endangering our children and they are too young to learn about this sort of thing.

Ms Berney: Kids have sex. They are having sex. We know that. I think the idea of not educating people about what is happening with their bodies and about decisions they can make with their bodies is ludicrous. As my colleagues have said here, the evidence, the data, suggests that is a completely inaccurate take. People going into Big W threatening staff members because they are selling a book is hardly going to have an impact on reducing sexual violence. However, if parents are given an opportunity—and a book that facilitates it; I'm obviously talking about the uni science, as was mentioned in the last one—to facilitate these discussions with their children together, we're lowering those taboos. Again, the data speaks for itself. There are positive outcomes for the emotional health and sexual health of young people.

Senator WATERS: Ms Contos, do you want to add anything in response to the backlash to the notion that we actually inform our children about their rights and their ability to say yes or no?

Ms Contos: I think everyone has absolutely smashed it and covered it. I guess the last thing to add is that young people are learning about sex from pornography. A phrase I always use is that is basically like learning how to drive a car by watching Formula One. It's extremely unsafe. It's extremely dangerous. It's mainly young women who are being subjected to metaphorical car crashes.

Senator WATERS: That is a very powerful analogy. You are all advocates for an affirmative consent model. I personally am in strong support of that and wish we had that nationally. Hopefully, this inquiry can help propel us towards that. Have you developed resources around affirmative consent? If so, what lessons have you learned about how affirmative consent laws change the approach to sex and relationships education? I thought there was a wonderful line in the doco we saw this morning about giving people the language for how to express affirmative consent. Can you reflect on the utility of doing that?

Ms Cooper: I think the central tenet of affirmative consent is making sure that all parties to sexual encounters give and receive consent continuously. That is basically just communication: getting students, and all people, to understand that it's really important just to check in—'How you are feeling about that?' 'Does that hurt?' and those communication skills alongside that—and getting all people to understand that consent can be withdrawn at any time. It is giving people permission to say, 'Actually, I don't want to do that any more,' for whatever reason, be it

that it hurts or they are no longer into it. Those decisions need to be respected. I think there are a few things that we do in our workshops to teach people the affirmative consent laws, which is the best practice things. It is really practising good communication skills.

Ms Wan: I will also add on to Julia's statement that we have always taught affirmative consent even before it was legislated in New South Wales. It has always been best practice in our minds that the onus of consent is on all parties to be giving and receiving it and continuously. There is the expectation that consent can be withdrawn for whatever reason, and that has to be respected. I will go to the point of national harmonisation and why it is so important that we as a country move towards affirmative consent. It has been incredible since affirmative consent has been adopted in New South Wales to be able to say to students, 'This is now also the expectation of the law. It's not just a moral or an ethical expectation that we urge you to consider. It is also a legal expectation that we encourage you to consider.' That is why I think it is incredibly important that we harmonise our laws towards affirmative consent. I think the point has already been made earlier today. It is to reflect the expectations that we have in society.

Senator WATERS: I'm interested to know whether there is any evidence about the effectiveness of relationships and sex education depending on who has delivered it. There are obviously two schools of thought. You either properly train up and support and properly pay your teachers so that they have the confidence and expertise to deliver expert drafted material or you bring in external providers, such as yourselves, to do that work. I'm a proponent of having a whole-of-school approach, which I think you refer to as the spiral curriculum. It is embedded in how everything happens at the school. It's not just a one-off two-hour lesson every so often. Is there any evidence about whether the information is received differently depending on whether it is from a known teacher or whether it is from an external provider? Does the age of the person delivering that information also have any impact?

Ms Wan: I think, firstly, it's important to start by saying that comprehensive sexuality and relationships education is specialist education. It cannot be delivered by any teacher who hasn't received adequate training. It's imperative that they have been trained in order for it to be not only delivered effectively but to ensure that there is no harm done. I think that can be done in a variety of different ways. I think a diverse approach is a good approach. Firstly, educators in schools should be trained. I think Chanel can also speak to this. I know she has done a bit of work around this previously. Consent Labs would recommend that educators are given the resources or given access to specialist external providers such as ourselves to receive the adequate training to hold space or hold classes within schools to have these conversations in a safe manner. There has been research comparing teachers who have been trained and teachers who have not been trained in this education. It is much more effective when a teacher has been trained in terms of the sexual health and emotional health outcomes of students. Consent Labs uses a near-to-peer facilitator model in which our facilitators themselves are young people. They are generally around the 20- to 25-year-old age group, so near to high school students or peer to peer in a university setting. We have anecdotally found that to be incredibly successful in conveying our messages around consent, communication and respectful relationships. You are able to garner a level of relatability. We immediately overcome the barriers that I was speaking to initially around feeling that content was not relevant or relatable to the experiences that I was navigating as a young person. At Consent Labs, we've anecdotally found the near-to-peer model to be incredibly successful as a mode of delivery.

Senator WATERS: Ms Contos or Ms Berney, do you have a view on whether or not we should be properly equipping teachers to deliver the revamped curriculum? Can you also reflect on whether there is an inconsistent delivery of that material and perhaps also whether or not teachers are actually getting the education that they need to deliver that specialist material? Is there any variation—there are lots of questions in one—in delivery between public and private schools? Does it depend on the resourcing of the school? Any reflections on those issues, please?

Ms Berney: Yes. I think the feedback that we certainly receive from our members is that there is an inconsistency in the delivery of that material. I think a nationally consistent training that people need to do and a standard to which they deliver it is going to be essential for the efficacy of the training. I want to pick up on the point by my colleagues at Consent Labs. I don't think people can underestimate the power of peer to peer. I think peer to peer is incredibly important. Chanel can talk to this specifically. This was a campaign that started on Instagram. This is where people are going to tell their story. This is where people are going to be educated. We saw that in *Asking for It*. People have these questions. They want to find out. They will find out. Whether or not we want to be part of that dialogue is the choice government needs to make. We have to join the conversation because if we don't, we have no say in the narrative. That is really evident in the experiences of victims-survivors today. I think that Chanel can certainly talk to that as well.

Ms Contos: I concur with everything that the other witnesses are saying. Research shows that young people prefer to get education from an external provider, usually because of the awkwardness around these sort of conversations. However, that definitely does not mean that teachers don't need to know how to have these conversations or deliver this content, because it needs to be consistent messaging. It is very powerful to have these conversations from someone who is consistently in your life who can bring it up throughout multiple classes throughout the term. The ideal is both. Of course, resourcing is going to always affect how that is actually delivered. There is an easy and tangible policy that we got really close to pushing through with the Morrison government. We had a change of government and just dropped the ball on it. In the national curriculum for students, there is an initial teacher education curriculum which specifies what teachers at university need to learn in order to be qualified as a teacher in Australia. Embedding respectful relationships education or how to deal with disclosures of sexual assault or how to ensure that at least minimum harmful behaviours are not being perpetuated through teaching and through behaviour correction would be quite game changing in making this consistent across the country. You can have conversations in the PDHPE classroom about sex and consent explicitly. We can have this conversation, as Consent Labs said, in the spiral curriculum. You get called up in the playground for saying a misogynistic comment. Are you getting a detention, or are you also having a conversation about what that means and the impacts of that and empathy surrounding that? You disclose something to your year coordinator. Do they feel comfortable to take on that information? Do they respond in an appropriate way? Almost every English text in the whole world has something about power and gender that we could use to talk about those situations. It is good that we have this \$77 million consent education implementation package currently working. I do hope that we have more consistency in the near future about that.

I want to jump back to a question from before and say something about affirmative consent in general in terms of how the teaching is relayed. I read this in a poem. I really liked it. The poem, basically paraphrasing it, said that if we ask a woman to prove that she said no, it means that the default assumption to her body is a yes. I found that so powerful. As we are teaching consent and respect and body autonomy, affirmative consent needs to be the absolute baseline. In an educational setting, that also means that there is room to have conversations about enthusiastic consent and pleasurable sex, taking into account all forms of trauma responses, not just saying no and running away but also freezing and fawning.

Senator WATERS: Thank you.

Ms Wan: Senator Waters, I want to address one of the questions that you asked around inconsistencies in delivery between independent and public schools and whether there is an inconsistency. From our experience as education providers, there absolutely is an inconsistency between the types of education institutions in terms of the resources available to them. I consider the independent schools that we work with compared to the public schools that we work with across Australia. The independent schools by and large are able to come closer to best practice implementation of this education than public schools. By that, I mean they are more likely to be able to implement a year 7 to 12 program, or implement a full and comprehensive educator, professional learning workshop as well as engage with parents and carers. We see that public schools do not have the resources available, whether that is financial or teacher resourcing, to be able to come close to what is best practice.

Senator WATERS: That is so heartbreaking, because the Commonwealth could fix that with the stroke of a pen, as I think we all know. I would certainly encourage them to do so. Thanks, Chanel, for raising that initial teacher education curriculum, which I learned about in your joint submission. I'm not aware, though: who has jurisdiction over that curriculum? Who can mandate that it must include decent affirmative consent based education that teachers learn about and then can deliver more effectively themselves once they graduate? Who sets the curriculum?

Ms Contos: I believe, with the leadership of education ministers, ACARA, the Australian Curriculum and Reporting Authority, which drafts that curriculum, would have the confidence to start embedding that sort of requirement into education. With respectful relating, that is exactly what happened with the school curriculum. ACARA drafts it. They are a bunch of experts. They are experts for exactly how it should fit in there. The ministers have to approve it. It is a weird cycle where ACARA is trying to create something that the ministers want and the ministers are trying to get out of ACARA what they want.

Senator WATERS: Okay. But it sounds like there is a role for the federal government to influence the content there?

Ms Contos: Massively. Like I said, obviously, the conversations got really close with the Morrison government. Just because advisers change, they dropped the ball and lost contact with other things. I think it is a serious possibility and it would take very little resources to change it. It would have massive effects.

Senator WATERS: That sounds very exciting. Hopefully we can take that on. I have lots more questions, Chair, but I don't want to hog it.

CHAIR: Thank you, Senator Waters. I have a number of questions. Firstly, as someone touched upon, we have the Law Council of Australia appearing on Thursday as witnesses. I would ask each organisation to take on notice to look at their submission. In particular, they outline eight principles which they think should inform the evaluation of sexual consent definitions across jurisdictions. We haven't got time for you to give your input now. I would be very keen to receive any feedback you have, to the extent you can provide it over the next 36 hours. I'm not saying you need to. It would be helpful because we will be able to put that feedback to the Law Council and get their response. In particular, I draw your attention to principle 6, where they state:

consideration should be given to a broader range of legal and non-legal measures, including restorative justice options, to substantially reduce the incidence of sexual violence and its effects.

Could you in particular consider what they say in that context. That would provide us with an opportunity to put those questions to the Law Council. Ms Contos, I can see that you are eager to say something in that respect. I will give you the opportunity now.

Ms Contos: Thank you. Adjacent to this topic, I completely support affirmative consent laws around Australia. I also think that in the context of young people and other people vulnerable to misunderstanding these laws, restorative justice options are key in beginning to diminish the situation we have in Australia, which is a rape culture where sexual violence is pervasive and normalised. The reality is that the way sexual violence is experienced for a lot of young people in a social context, it often takes years to realise that it was an act of sexual violence. That is due to a lack of education and all these kind of things. As Jess mentioned before, pornography can be a very dictating force. It means that young people think they are consenting to an act when in fact they don't truly want to be doing it. All these things mean that we need to accept that not all victims-survivors of sexual violence want to go through a reporting process in order to get justice. A massive pillar upholding rape culture is that when you take a perpetrator to court, either you are one of that 1.7 per cent who gets a conviction, whether it is community service or a prison sentence, or you get called a liar and it is called a false allegation if nothing happens or it doesn't get reported. It's basically zero or 100. I see it a lot in schools, especially in the UK. I go into a lot of boarding schools, which is an extra specific context where lots of boys and girls are living together full time. It is just devastating that the police and the criminal justice system is the only option for these young people. Often they want an apology and validation for their emotions and their experience. It is basically that you don't get that at all or you go through this process that is basically stacked against you. I want to put forth restorative justice options. There is also research into that about survivor satisfaction rates following that process that had been done, I think, in New Zealand.

CHAIR: Thank you, Ms Contos. Could all the witnesses consider that topic as well in terms of restorative justice options? It is touched on in principle 6 in the Law Council of Australia's submission. I would be very keen to understand whether or not there are any jurisdictions leading the way in terms of restorative justice options and how it should be considered as part of any move to harmonisation to make sure that victims-survivors have access to that pathway as well as the formal legal pathway. Ms Berney?

Ms Berney: I want to touch on your comment about the groups that experience sexual violence, particularly people with a disability. The statistics are horrific. I'm sure the committee is aware of that. They are horrific for people with a disability experiencing sexual violence. But educational programs do exist through organisations such as People with Disability Australia and Women With Disabilities Australia. 1800RESPECT has a comprehensive educational piece about consent through their Sunny app. They do exist. People can participate in these discussions. We need to actually bring those survivors to lead the process for how these laws will work for them and what would work. The National Women's Safety Alliance is certainly happy to provide a response to the Law Council. We will do that. There needs to be a consideration as well of how you get the people in the room to discuss how they will be impacted.

CHAIR: Thank you. I want to ask a question about intoxication. There seems to have been quite a movement in the law to make it clear that if someone is voluntarily intoxicated, they can't use that as a shield or shouldn't be able to use that as a shield to say they had a mistaken belief as to whether or not someone was consenting to something. They shouldn't be able to rely on intoxication as a shield. I'm keen to understand what the education programs are finding and what we're teaching or need to teach young people around intoxication. Ms Wan or Ms Cooper?

Ms Wan: I can only speak to our education program and the way in which we talk about intoxication. Firstly, we do talk through the laws around sexual assault and the fact that you cannot give consent in New South Wales if you are intoxicated. That is a starting point. The way in which we approach the conversation is that intoxication

is never an excuse for sexual violence. As you said, Senator, perpetrators may often use it as a shield: 'I didn't realise. I didn't know. I didn't mean to. It's out of my character,' et cetera. But that should be not be used as an excuse. Intoxication can never be used as an excuse for sexual violence. You may liken it to another act of violence, which is punching someone. You would still know even if you had consumed alcohol or another drug that punching someone is morally or ethically wrong and that you should not do it. Sexual violence should be considered in the same way. You should morally know that it is still wrong and that you are not respecting someone else's rights or their body or their bodily autonomy regardless of whether you are intoxicated or not.

CHAIR: Ms Cooper, do you have anything to add on that point? Have all the jurisdictions moved where they need to be in not permitting intoxication to be used as a shield in terms of mistaken belief as to whether or not someone has consented? Do some of the jurisdictions need to move further? You can take that on notice if you like.

Ms Cooper: I will start with two things. Just to clarify, you cannot consent in New South Wales if you are too intoxicated. There is this almost vague grey word. What does too intoxicated mean? At the end of the day, it will look different for every person. It could be one drink for one person or it could be four drinks.

CHAIR: And you are also dealing potentially with young people. They are experimenting with alcohol for the first time as well.

Ms Cooper: Exactly—alcohol and other drugs. So it is also about understanding what impact and what effect does a certain alcohol or a certain drug have on your system and what does that look like for you. Unfortunately, there's really no clear line that you can say to students, 'Well, this is the point that you cannot consent to a sexual experience.' The reality is that most sexual experiences, particularly for the first time, happen when young people are intoxicated, be it by alcohol or another drug. I think that is the first point. By saying that it looks different for everyone and in terms of an education setting, it is probably saying on drugs it is a lot harder to consent because you more often go from zero to 100 whereas alcohol is usually a more gradual process and you need to be able to say, 'Can I stand up straight? Can I hold a conversation? Do I know what I am consenting to? Will I feel differently the next day? Would I say something different sober?' It's getting students to think about those sorts of prompts about whether they could actually give their consent or whether they are too intoxicated. In terms of your question about the reasonable mistaken belief defence, that still does exist in Queensland, off the top of my head. I think there is a lot of work being done in relation to intoxication by Dr Julia Quilter and Luke McNamara. I think Julia Quilter is giving evidence later in the hearing. The laws are one thing but the operation of the intoxication defence and how intoxication is actually used in the courtroom is very different. Jurors still have a lot of mistaken beliefs and assumptions that are steeped in outdated common law notions about intoxication that come up irrespective of what the law actually is. I think another thing to consider is the jury directions.

CHAIR: Ms Contos, do you have anything you would like to add in relation to that subject?

Ms Contos: When I deliver consent education with regard to intoxication, I usually mainly focus on the fact that intoxication is a very common form of coercion in order to sexually assault someone. So intentionally getting someone drunk is intentionally drugging someone. Of course we understand spiking to not be okay in our society. However, I don't think we understand that giving someone a double or triple shot when they think they're drinking a single shot is also a form of spiking and coercion. I think it's hard because I don't necessarily deliver explicit laws but more so ethics around consent and intoxication. So the question is whether this person is doing something that they wouldn't usually do. Are they being really loud and boisterous and tripping over themselves? That is room to not consent. Again, I agree with what Angie said. We instinctively know that, even if you are drunk, you can't hurt someone. It should be the same thing for sexual violence. It's not an excuse.

CHAIR: Thank you very much. We are going to have to leave it there unless someone has a quick final question.

Senator GREEN: We have so many questions. There are a couple of questions I have that I might put on notice. There will be plenty of time to respond. The issue that I think Chanel brought up in the opening statement around fawning and how that relates to our understanding of consent and affirmative consent is one I will explore with other witnesses. I might put some questions on notice to you, Chanel, and other witnesses. Maybe as women we understand it, but it's not always really understood. It would be helpful to have some more information about the freezing and fawning part of those interactions. So I foreshadow those questions.

CHAIR: Thank you very much. Thank you to all the witnesses for taking the time to appear today. Thank you for the work that you are doing in this incredibly important space.

Proceedings suspended from 11:06 to 11:20

BURGIN, Dr Rachael, Chief Executive Officer, Rape and Sexual Assault Research and Advocacy

MULLINS, Ms Saxon, Director of Advocacy, Rape and Sexual Assault Research and Advocacy

CHAIR: I now welcome representatives from Rape and Sexual Assault Research and Advocacy. Thank you for taking the time to speak with the committee today. It's deeply appreciated. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. If you have any questions as we go along, just feel free to ask them and we'll accommodate. Dr Burgin, do you have an opening statement to make?

Dr Burgin: No. We don't have an opening statement.

CHAIR: Thank you. So you're happy for us to go straight to questions?

Dr Burgin: Yes.

CHAIR: Thank you very much. I might ask the first question. I'll then pass over to Senator Green, the deputy chair. Could you give us some background in relation to your organisation? When was it set up? What is the purpose and objective of the organisation? How long has it been operating? What are some of the activities the organisation undertakes?

Dr Burgin: RASARA officially launched in 2020 as a result of the work that Saxon, me and some of our colleagues at RASARA were doing individually. We were fighting for the same cause, which is an affirmative consent standard to operate across Australia. Having each had our own histories of advocating in this space, we formed RASARA in 2020. Since then, we have been primarily involved in systemic advocacy across jurisdictions. I will let Saxon speak to how she started in this space.

Ms Mullins: I have been doing advocacy since I got rid of my anonymity in 2018. Rachel and I and some of our colleagues realised that there was a missing space in this sector of an organisation that deals specifically with sexual violence. Often we see it coupled with family and domestic violence. We saw a gap in the sector that we felt we could fill. I think some of our main goals are to uplift the voices of survivors and make sure that they are heard in conversations like the one we are having today. That's what we have been doing for the last few years and ensuring that survivor voices are centred and survivor experiences are heard when we're talking about changes that can be made both in legislation and in systemic reforms.

CHAIR: Excellent. Thank you very much.

Senator GREEN: Thank you, Dr Burgin, for being here today and for all the work you do. It would be remiss of me to pass up this opportunity, though, to say thank you to you Saxon for the advocacy that you have contributed to over many years. It must have been a very difficult decision to not be anonymous any more. I know that would have come with its own complications and difficulties. But the voice that you have been able to make in the space you have been able to create for this conversation I can't compare to any other woman in Australia at the moment. I think it's why you see a lot of high-profile women rallying around you not just today but also in the work that you do. It was a privilege to see you speak out the front of parliament a few years ago. It has been a privilege to see the work that you have been doing. I want to say thank you very much. We're not here today to talk to you about your personal experience. Of course, if you want to share any of that, because it would inform the questions we're asking, please feel free to do so. My question really is about affirmative consent. It is talked about a lot. You've both done a lot of work around it. For completeness and for the committee, what is affirmative consent? Why is it something that you are advocating for?

Dr Burgin: I will preface this response with this. I have been doing research in the space of affirmative consent for 10 years and have been having this conversation for all of that time. For a long time, it wasn't listened to. It is exciting to be here today and having this conversation being heard alongside my dear friend and colleague. When we talk about affirmative consent, we're actually talking about a specific social theory of consent. The word is bandied around a lot now. It actually refers to a specific set of expectations. It wasn't designed, though, to be a legal principle. So that translation of affirmative consent into law and legal practice is really what we're still grappling with. That is what I explored through my doctoral research. Ultimately, if we want to have an affirmative consent standard at law, we require certain elements to be present in the criminal law, including within the definition of consent but also more broadly in the fault element to the crime or the mistake of fact excuse, depending on the jurisdiction. Affirmative consent requires that consent is active and performative, that all parties to a sexual act are indicating through their actions and words that they want to consent. That means that someone's silence or passivity obviously doesn't equate to consent and that a person doesn't need to say no or withdraw consent. Saxon, do you want to talk on it?

Ms Mullins: When we talk about affirmative consent, because of what Dr Burgin was saying, we do leap from a principle into the legislation. We do see members of the public getting confused and worried about what that means for them. I think the main thing that we want to talk about regarding affirmative consent when talking to the public is what affirmative consent looks like in real life. It is you engaging in a sexual activity with somebody. You are asking them continually whether they want to be here and whether they are having a good time and they are continually giving you that response that they do and that they are. When you break it down in that way, I think it seems as simple as it really is. It seems as obviously and as well-used as it actually is in practice.

Senator GREEN: One of the things we didn't quite get a chance to canvass with the previous witnesses but I think really is important to get on the record and understand—you might be able to speak to this, Saxon—is a complicated legal notion that is not really that complicated in real life experience. Victims in sexual assaults freeze or are silent or almost considered to go along with the act because there's a fear that it could be worse or it could get even more violent. Unless you've been in that situation, it's really hard for people to understand why that would happen. Again, I'm not asking you to share your personal experience, which you've shared many times in other forums. What is that scenario? Chanel referred to it as fawning or freezing. Why is that an important factor for us to consider as a committee when we're talking about why we would need to move to an affirmative consent model?

Ms Mullins: So fight and flight are the well-known reactions to some kind of harm or violence. Freeze and fawn are equally as likely responses but are so often not talked about, especially in a sexual violence context, when we see most of the perpetrators are known to their victims. That is more likely the scenario that is going to happen. When we're looking through a legislative lens at the rape myth that comes into the courtroom, be it through jurors or whether it be through judicial officers, we are ignoring this whole wide spectrum of responses to sexual violence. That is why the affirmative consent legislation is so important. It does overcome that one small barrier of making sure that people are asking and the consent is given. It breaks over that barrier of, 'Well, they didn't say no,' which is such a low bar, but it is really important when you think about how much sexual violence would result in that response.

Dr Burgin: I will just build on what Saxon has just shared. I think it is important to differentiate freezing and fawning. They are two different trauma responses. As Saxon said, the rejection of those responses in relation to sexual violence only occurs in relation to sexual violence. It is a rape myth. We've all seen some movie where the protagonist comes across a bear or some kind of creature in the wilderness and they freeze. That is accepted in the plot line because it is a normal response. I think there is a narrative that freezing has just emerged because people are now saying that because they are talking about rape. Freezing is as normal and innate as any other trauma response. I will use the example that you raise, Senator Green. We know that going along with it because it might be worse otherwise is a survival tactic. We know that it is a worthy one because it does save people's lives in this context and in others. We work with survivors of sexual violence. The reality is that not everybody survives sexual violence. So those responses are really key for people. I think that speaks more broadly to those rape myths that we know are widely accepted in the community.

Senator GREEN: Thank you. Some submissions we've received have raised concerns about affirmative consent models reversing the onus of proof or compromising the right to silence. Essentially it refers to the fact that defendants rarely have to give evidence whereas victims of sexual assaults who do report and do go through a court process are often on the witness stand for days on end with what I would refer to as a barrage of questions, sometimes inappropriate and sometimes not. Can you reflect on some of those concerns around the consent model and how it might reverse these tried, very longstanding legal principles?

Dr Burgin: We know that the criminal justice system and its officers are resistant to change. It is unsurprising that any time something that is deemed radical arises, those concerns are raised. What we will say is there's no evidence, firstly, that affirmative consent undermines the presumption of innocence. It certainly doesn't reverse any right to silence in that it doesn't change laws around whether a person has to take the stand. We don't hold weight to those criticisms. There is no evidence to support that it will result in increased wrongful convictions. Some criticism is that we will see more people ending up in court held accountable for their behaviour. We would welcome that.

Ms Mullins: I absolutely agree. I think with the way affirmative consent is currently legislated in New South Wales, what you are doing when you encounter the affirmative consent legislation is picking a particular defence. It is up to you and your lawyer to give evidence to that defence. That is not a reverse of the onus of proof. That is just a defence that you have chosen. To say it is kind of a reverse of the onus of proof or negates the right to silence I think is a bit of a fake argument. As Dr Burgin said, there is absolutely no evidence that it would do that.

Senator GREEN: Another thing that you and, I think, many victims-survivors have touched on is that changing the definition of consent alone is not a silver bullet or a recipe for more convictions or even just to have a more satisfying justice experience for victims and survivors. Outside legislative measures and changes to the definition in criminal codes of what consent really is, what other things do you think need to be done in an institutional setting to start turning the numbers around when it comes to not only convictions but reporting? I really think the two things are linked. Why would you report if there is no possibility of conviction?

Dr Burgin: That is a great question. I think most importantly we shouldn't be encouraging people to report when we know the system is broken at best. We certainly also need to think about the fact that these law reforms will need to operate outside the courtroom. Police will have to apply these laws. They will have to change their practice to do so. There is some promising attention being paid to policing practice in relation to sexual offences in Australia. I'm actually working with the ACT government on doing that at the moment. But we do need to see investment at that early stage because we're not going to see an increase in reports. We have seen an increase in reports over time. I think New South Wales data says it is up 60 per cent in a one-year period from March 2020 to March 2021. That's significant. That means that police are dealing with more people. We know they are experiencing that process as harmful. We know that attrition rates at policing level are significant. It's the most significant point in time. Most people who report a rape will never see the perpetrator charged with an offence. So these laws have effect far before we get to the courtroom.

In saying that, I think we need to look broadly at how we're training and educating criminal justice actors. When we talk about rape myths—stereotypes and myths about rape, rapists and rape survivors—we often talk about juries and the community. We forget that lawmakers, police, judicial officers and lawyers are part of that community. In fact, they are influential in that community. We need to start holding to account these systems and organisations. In fact, schools and universities all need to be held accountable. These are institutions of influence, and there should be an obligation on them to work to prevent sexual violence in the community and to change these attitudes. Without attitudinal change, all of this will unfortunately just be dealing with people who have experienced rape as opposed to changing people's lives and allowing people to live free from violence.

Ms Mullins: I will continue on from that attitudinal change. From research, we know that with the first report a survivor makes, whether it is to the police, a friend, a colleague or a family member, the response they get in that moment will determine the rest of their survivorship, whether it means they go to the police or they tell another soul ever. When we are talking about attitudinal change, it seems so interpersonal. It has such a lasting effect. It does go some of the way to explaining low reporting rates. That attitudinal change, which means institutions, education and all of those things, is so important to making survivors feel supported and making them feel like they can report.

Senator GREEN: This is my last question and I will hand over the call. It takes me back to this issue of education and working to prevent this happening rather than dealing with the outcomes of a reported sexual assault in the justice system. Our previous witnesses spoke to us in detail about consent education in schools and universities, particularly for young people. In terms of affirmative consent and having more consistent laws around the country or even having laws where it's really easily defined and understood, how do you think that will help the conversation that we're having with young people about what consent is and what their rights are when it comes to those interactions and how they can have more positive experiences?

Dr Burgin: RASARA advocates for minimum standards. We've heard from other witnesses today about concerns in relation to harmonisation. We think minimum standards could be applied in a legal context and educational contexts as well. These are the expectations of what consent looks like in our community. In fact, we have been working on minimum standards since 2021 in this space and are happy to share those with you out of session. Our view is that it's important that when we're educating young people we are teaching them a higher bar than the criminal law. The criminal law is the lowest common denominator. We're dealing with people who have sexually assaulted another person. We need to look at something more rigorous. We need to look at a comprehensive relationships and sexuality program that takes into consideration not just what a legal definition of consent is and making sure you align with that but also what a good, healthy, mutual sex life looks like for young people. How can we make sure that everybody is not only there and participating but is there and enjoying themselves and wants to be there? They are not coerced. There is no social pressure. They are not forced. They don't feel scared to say no. They are not worried that if they say no they will get called a prude and if they say yes, they are a slut. Those attitudes are really fundamental. The law doesn't do that. I'm not sure that it's capable of it. When we're talking about education, we have to be more radical than that. I think Saxon would probably want to jump in here and talk a bit about the recent controversy. I will assume that.

CHAIR: Leading the witness—that's for us to do!

Ms Mullins: I want to follow on from that. We see this sort of uproar about teaching this kind of stuff to children. I think what is often missed is that consent isn't everything we do. It is not just about sexual activity. For small children, it is about consent to share your toy. When we teach the foundations of what consent is, it makes it easier to build upon throughout their life. When they get to young adulthood, we're not teaching them about sex at the same time we're teaching them about this newfound thing of consent. We're building upon a knowledge base that is rich and started young and has the right information. People get worried about what is being taught to children. I'm worried about what is not being taught to children and what that leads to.

Senator GREEN: Thank you. I will leave it there. Others have questions.

CHAIR: I will ask just one question. I will share the call with Senator Waters. I'm trying to get my head around this concept of affirmative consent and which jurisdictions have the law which should be the gold standard in terms of putting that into practice in the law and which jurisdictions need to do better, if I can use that terminology. I will get you to respond in a minute, Dr Burgin. I can see you are itching to respond. New South Wales seems to have made some relatively recent changes. I'm comparing their law—in particular, knowledge about consent—with that in, say, my home state of Queensland. One of the differences which stands out to me is that in New South Wales there's a section of the law, 61HK(2), that provides:

... a belief that the other person consents to sexual activity is not reasonable if the accused person did not, within a reasonable time before or at the time of the sexual activity, say or do anything to find out whether the other person consents to the sexual activity.

I compare that to the Queensland law and this issue of a mistake of fact et cetera. The law is section 348A(2):

In deciding whether a belief of the person was honest and reasonable, regard may be had to anything the person said or did to ascertain whether the other person was giving consent to the act.

So there is obviously a big difference in terms of the requisite standards there and the obligation upon a person under, say, New South Wales law to be proactive in terms of finding out if the other person is consenting and continues to consent. Is that the main difference, Dr Burgin, in terms of the jurisdictions and the law?

Dr Burgin: I appreciate this question—obviously you could tell. That provision in the New South Wales act is something that we really strongly advocated for directly with the New South Wales government. It wasn't recommended by their law reform commission, which ultimately we didn't support the findings of. Saxon and I worked with then government to advocate to include a requirement that active and reasonable steps be taken to ascertain consent from another person. Without that, it is not affirmative consent. The difference between the New South Wales approach, which is still problematic—I will return to it in a moment—and the Queensland approach you have laid out there is that in Queensland it offers another opportunity to a person accused to find reasons that they should be excused for their unreasonable and often dishonest behaviour. So it says a person who is accused can draw on things they did, no matter how reasonable, as evidence that they thought honestly they had consent. In New South Wales, we pushed for the inclusion of this provision that required steps for a belief in consent to be reasonable because we believe, and so does the whole theory of affirmative consent, that it is reasonable to expect people to make sure that the person or persons they are having sex with also want to be there and also want to engage in the sexual act that is taking place. The New South Wales approach is not gold standard, however. That is because of the inclusion of the phrase—I have it open here, prepared for this question—'within a reasonable time before or at the time of the sexual activity'. 'Reasonable time before' is a concerning phrase that is not borne out in the evidence. We don't know what that looks like. In fact, at the time, I think we argued that it was simply made up in the mind of the then Attorney General. It's not evidence based. There's no consensus about what a reasonable time before looks like. If you are at a bar down the street and someone says, 'Do you want to come back to my house and have sex?', and then you get there and there's crazy creepy things on the wall and you go, 'I'm not comfortable any more. I don't want to do this', have they taken steps in a reasonable time frame? The Attorney General at the time gave us an example: a husband and wife head off to bed and they decide they are going to have sex because it is the regular Thursday night, I guess, in this example, and then the husband says, 'Hang on, I'd better go feed the dog.' He feeds the dog and comes back. Does he have to ask again? We said yes. What if you smell like dog food and that has just turned you off? That is the argument made to support that provision. That provision has since been adopted in Victoria—

Senator WATERS: With the reasonable time frame?

Dr Burgin: With the reasonable time frame. We raised this concern with the Attorney-General's department in Victoria with our criticism that it was essentially made up in the mind of the Attorney General in New South Wales. There's no evidence base to support that, so it is not gold standard. It's the best we've got, but there is a way to go. Queensland and Western Australia are certainly a fair bit behind this.

CHAIR: I want to tease this out a little. In practice, then, in terms of how an allegation or a trial would play out, the effect of that is that it really puts the onus, putting aside the reasonable time debate, on the accused to establish that they did something proactively to actually elicit consent. Is that correct? Is that the key change in terms of—

Dr Burgin: Yes.

CHAIR: how an allegation might play out in a court trial—putting the onus on the accused in that context?

Dr Burgin: That's the intention. I think we need to wait to see how case law progresses here. Yes, in circumstances where an accused is relying on a reasonable belief in consent defence, yes, that is the intention.

CHAIR: I interrupted you.

Dr Burgin: No. I think Queensland and Western Australia in particular do need to, and I think are in the process of, addressing these concerns in the criminal law.

Senator WATERS: Thank you so much for your time and all of your work. Ms Mullins, thank you for your absolute mettle and guts. So well done to you for staying the course. I'm so impressed and proud that your work has led to that change in affirmative consent. I hear that it is not perfect. I want to acknowledge that is a mighty feat for any individual to have accomplished, so thank you so very much.

Ms Mullins: Thank you.

Senator WATERS: I want to stick on the last point. My understanding of affirmative consent is that it has to be ongoing. There is a notion here that you can at a point in time, whether it is a reasonable point in time or not, issue a one-off consent. How do we reflect the need for affirmative consent to be ongoing in the legal terminology? Is that possible? How would you suggest we do that?

Dr Burgin: That is also our criticism. I think that issue is raised again through provisions around withdrawal of consent. I can't find it quite now, but in the New South Wales act there is a provision that allows for the withdrawal of consent at any time. We can all agree that, yes, you might consent to sex that you then no longer want to participate in. Firstly, if we accept that we want affirmative consent, affirmative consent means that the conversation about consent is ongoing. If we accept that conversation, that asking or checking in with your sexual partners that Saxon highlighted before must operate through the entire interaction. Yes, that section does undermine that principle of ongoing conversations about consent, as does, in our view, withdrawal provisions. It again reinforces the notion that if you consent initially—I think Senator Green highlighted an example with the previous witnesses—and it turns violent halfway through, which we know does happen, does the onus then become on a person to withdraw that consent? There are, I suppose, oxymorons within the way these principles have been adopted in the criminal law. We know it doesn't work like that. Power, control and coercion doesn't function that way. Often people will give consent or they'll fawn and then fight back. Yes, the law doesn't reflect that, unfortunately.

Senator WATERS: We have such a long way to go.

Dr Burgin: Yes.

Senator WATERS: Thank you for your efforts in trying to bring it up. We touched on the fight, flight, freeze and fawn responses so far. I think there's a growing level of understanding about those negotiations in the community. I thought your bear example was brilliant, because it just so beautifully illustrates that we know about that concept so why doesn't it apply in other situations that might be considered more awkward? I wonder how well do you think police and judges, lawyers and juries understand those different responses? I would think poorly, but I'm interested in your view. What can we do to fix that?

Ms Mullins: I agree that poorly is how they understand them. As Rachael said before, I think there is a lot of focus on jurors and what sort of notions they bring to trials. I think our judicial officers have so much influence in that courtroom. Our judges don't understand this. Our prosecutors don't understand this. Our defence lawyers don't understand this. We can't be expecting them to guide a jury through what can be a confusing system with the right ideas when they don't have them. A massive part of having that understanding is making sure that we're educating judicial officers and police officers in the right way, which we are currently not doing. I've heard many examples of police officers where one police officer gets the sexual assault training and comes back and just tells the others in a bit of a word of mouth, sort of pass-it-along way of training. First of all, one day of training is not good enough. Second, if there is a second-hand one day of training, you may as well not have any training. I think funding that training, mandating that training and ensuring that it is robust and has the information that is required in it is the absolute bare minimum that we need from people who walk into those courtrooms.

Dr Burgin: I pulled a couple of very short quotes from defence counsel and jurors in cases I studied for some of my recent research. A judge, just to highlight the point, said, 'The jury will be told to assess her conduct. Is this the sort of thing you would expect of someone who had been sexually penetrated without her consent while she was asleep?' In another case, the defence asked the victim whether she realised that a single scream could have brought people running. She says yes. He says—it was a male—'But you didn't scream?' She says, 'No. I froze.' The defence finished this with, 'Would you say now that freezing in those circumstances was an irrational thing to do?' Defence counsels know that juries aren't clear on these issues. They know that rape myths operate in the community and that juror members are likely to rely on them. They purposefully prey on that information. It's a tactic. They want to raise this question. Regardless of whether these questions are objected to, juries hear them—

Senator WATERS: And it sticks.

Dr Burgin: and it influences them. And we know that juries make decisions far earlier than they're meant to.

But in terms of your question of how we address that, I know that there are a lot of conversations about getting rid of juries. I don't think that fixes the problem. We've seen in some high-profile sexual assault cases—I won't name them—that judges have equally as poor views, equally as problematic views, relying on 'contemporary morality' to make decisions about whether or not somebody was consenting and whether or not a person had reasonable belief that the other person was consenting. Getting rid of juries isn't the answer. I think we need to think about what a specialist court that is trauma informed would look like.

Senator WATERS: Thank you. I have so many questions that I will have to put some on notice. I want to ask about specialist sexual violence courts and whether you think we should have them. You just said yes, which is helpful. Could you perhaps take on notice any jurisdictions where they are operating and whether survivors have been asked to judge whether they were more comfortable with the outcomes of that process, though it would be hard to compare? There is the woeful inadequacy of the legal system to deliver justice. About 1.7 per cent of sexual assaults end in a conviction. There is the ridiculously traumatising process that you have to go through to even get there. Ms Contos in our previous session raised the need for alternative justice pathways. It's not something I've done a lot of thinking about. I'm really interested to know whether you think there are any alternative restorative justice approaches that survivors might like to choose or might like to have the option to choose? Can you point us towards where we can learn more about them and if that's what survivors want?

Ms Mullins: I think that's a really important way to phrase it as well—what a survivor chooses to do. The idea has been bandied about that a lower offence would make conviction rates higher. We are making the defence's job easier. We are often doing that at the expense of survivors' experiences and survivors' views of justice. I think that is an important thing to think at when we're talking about restorative justice. It is the idea of what is the survivor choosing to do. I think that is a great way to phrase it. I think that restorative justice is something that certainly needs more looking into in an Australian context. I know they mentioned in the last session that New Zealand has done small programs around this. That is something I think we need to look more into. I think there is a genuine concern that would lower the bar of—

Senator WATERS: Yes. It's such a tricky balance, isn't it?

Ms Mullins: Absolutely.

Dr Burgin: Of course I agree with Saxon. I think the important thing to flag is that there is an assumption that survivors want restorative justice approaches. Ms Contos in the previous session quoted the former Victims' Commissioner of England and Wales, Dame Vera Baird, when she said that rape has been decriminalised. I agree. It has been. Restorative justice feeds into that process. We have to be careful where the push for restorative justice comes from. Sometimes it comes from survivors themselves. That is good if that is what survivors are asking for. I think there is an assumption that all survivors want those alternative pathways as opposed to a system of criminal justice that—

Senator WATERS: That works for them.

Dr Burgin: works for them, where the deck isn't stacked against them.

Senator WATERS: Yes.

Dr Burgin: Where they are not going to be called unreliable or a liar. I don't think we know enough about what survivors would want if we had that system. I would be cautious in advocating. I also note that when the push for restorative justice comes from police and the criminal justice system—

Senator WATERS: That tells you all you need to know.

Dr Burgin: It tells you a fair bit, yes.

Senator WATERS: Thank you. This is my last question given the time, unfortunately. There was some news reporting last week. It is along the same theme of survivors getting to choose the outcome. There was some news reporting last week of Senator Reynolds recommending changes to the ACT Criminal Code to make it illegal not to report a potential criminal offence to police irrespective of whether the survivor wished for that report to be made. What is your view on what impact that would have on survivors and their agency in making those decisions about how to respond to their assault?

Dr Burgin: It is a completely ridiculous assertion to make. As partners on the #LetUsSpeak and #LetHerSpeak campaign, Nina Funnell's campaign around survivor voices, we strongly condemn those comments and question the ethos that got the senator to make that statement. It is a gruelling and difficult thing to report a sexual violence to anyone in your life—to your most trusted confidant, let alone to a police organisation that historically doesn't have a great track record.

Ms Mullins: The comments are unbelievable. Survivors have lots of different experiences when they go through the justice system. They will have lots of different takeaways from it. If you had a room full of survivors, you would hear a thousand different opinions on it. But the one thing that will always stay the same is that your agency has been taken away. To suggest that should be done on your behalf on some perverted view of what justice looks like is disgusting.

Senator WATERS: Thank you.

CHAIR: Thank you, Senator Waters.

Senator GREEN: I have one last question, if I can, really quickly. I know we need to move on.

CHAIR: Okay, Senator Green.

Senator GREEN: I never got the chance to ask someone this question before. Sometimes I think when we're talking about cases in the courts, whether they are high profile or not, there's a bit of a community belief that the courts will decide the truth of an incident. That's problematic because of evidence law and the onus of proof. It often means that victims are reluctant to come forward because they will be called a liar or think that they won't be believed. What would you say about that connection between the truth of an incident and whether someone should be believed and whether someone can be convicted in the courtroom? For me, they are so different and distinct. I think the community sees, 'Well, we don't know if he's guilty. We'll wait to see what the court says.' It is that concept.

Ms Mullins: You can definitely tell that in the language people use. When you talk about a case like this, often you'll hear someone say, 'He was found not guilty', which is not how a court works. So it is very obvious that it is the chosen way that people decide whether or not they are going to believe somebody. I think as the public we need to realise the difference between being on a jury, which has a burden that you have to reach, which is beyond reasonable doubt, and being a person in society. I think as people in society we can decide that with the data we have, with the facts we have, that women so very rarely lie about things like this. Women who go through the court process so very rarely lie about things like this. If your baseline is, 'I don't believe this person until a jury of my peers decides that it is true,' you don't believe survivors.

Senator GREEN: Thank you very much. Thank you, Chair.

CHAIR: Thank you, Senator Green. Thank you, Dr Burgin. Could you on notice perhaps provide some comments in relation to the Law Council of Australia submission?

Dr Burgin: Yes.

Ms Mullins: Yes.

CHAIR: I would find that very helpful, in particular in response to their enumerated principles that they would like to see reflected in any harmonisation. That would be great.

Dr Burgin: Absolutely, yes.

CHAIR: Thank you. I can see that you are itching at the opportunity, Dr Burgin. Ms Mullins, as my colleague said, I congratulate you on your bravery. I'm sure you've made such a profound difference to the lives of people who you don't even know. That is a great gift which you have given them, so thank you very much.

Ms Mullins: Thank you.

CHAIR: Thank you for attending today.

Ms Mullins: Thank you so much.

CLARKE, Ms Heather, Board Member and Secretary, National Association of Services Against Sexual Violence [by video link]

DALE, Ms Emily, Head of Advocacy, Full Stop Australia [by video link]

HUNTER, Ms Tara, Acting Chief Executive Officer, Full Stop Australia [by video link]

LAMBERT, Ms Nicole, Acting Chair, National Association of Services Against Sexual Violence [by video link]

LYNCH, Ms Angela, Board Member, National Association of Services Against Sexual Violence [by video link]

MALTZAHN, Ms Kathleen, Chief Executive Officer, Sexual Assault Services Victoria [by video link]

WEBSTER, Dr Amy, Policy, Advocacy and Research Manager, Sexual Assault Services Victoria [by video link]

[12:04]

CHAIR: I now welcome representatives from the National Association of Services Against Sexual Violence via video conference; Sexual Assault Services Victoria, also via video conference; and Full Stop Australia, also via video conference. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Are there any opening statements, firstly, from the National Association of Services Against Sexual Violence? Do you have an opening statement?

Ms Clarke: We do. Are you happy for me to give that, Nicky, given that people can't see me?

Ms Lambert: Yes, of course. Go ahead.

Ms Clarke: Thanks very much for the opportunity. We're the peak body for over 120 specialist sexual violence services. Our services provide crisis care for victims of recent assault; assistance to access medical and forensic care; support with reporting to police and dealing with the criminal justice system; trauma informed crisis and recovery focused counselling for recent and historical sexual assault; and sexual violence prevention, including supporting schools to deliver consent and respectful relationship sessions. We provide this continuum of services to women, men, children and people who identify as gender diverse across the lifespan and in response to sexual harassment and sexual assault that occurs in a wide variety of domains, including within families and intimate relationships, between people who are dating, work colleagues, friends and acquaintances, in care facilities, within education, in the community and faith settings as well as between strangers. So it's important, we feel, to understand that sexual violence services are different from domestic and family violence services, whose primary focus is necessarily on providing crisis support around separation generally from intimate partners.

We certainly believe that legal reform to Australian consent law is urgently needed. That is based on our significant contact with victims-survivors. We'd like to highlight that only about 13 per cent of victims-survivors report sexual assault. Participating in our current justice processes often proves too difficult, with many victims-survivors becoming disheartened and withdrawing from the process. Those who do continue to court frequently report that this experience is as retraumatising as their original assault. Victims report that their experience of the legal system results in them being minimised as mere witnesses, with many victims-survivors feeling that they are seen by the justice system as liars until proven truthful compared with the accused, who is innocent until proven guilty. I note that was a question from the previous session.

So the key recommendations that we would like to draw your attention to, which we believe will improve victim-survivor experience, are a nationally consistent statutory definition of sexual assault and sexual consent that promotes communicative, affirmative and ongoing sexual consent. That is needed. All of those involved in the legal process, including police, legal professionals and the judiciary, need specific education to ensure clear understanding of affirmative consent. There needs to be consistent interpretation of consent law by the judiciary so that the intent of consent legislation is upheld in practice. We also strongly believe that victims-survivors need additional support to navigate the justice system. We support the idea of independent sexual violence advisers based within specialist sexual violence services as well as the idea of specialist legal services for victims-survivors. We also wish to highlight that the capacity of specialist sexual assault services needs urgently to be strengthened so that our services can more effectively support victims-survivors who are dealing with the justice system. Thank you.

CHAIR: Thank you, Ms Clarke. Could you provide a copy of that, if you have it, to our secretariat who assists us? That would be helpful as well. Ms Maltzahn, do you have an opening statement?

Ms Maltzahn: We do, Senator. Thank you.

CHAIR: Over to you.

Ms Maltzahn: Thank you for the opportunity to make a contribution to this inquiry. Sexual Assault Services Victoria is the peak body for specialist sexual assault and harmful sexual behaviour services in Victoria. We work to promote rights, recovery and respect for victims-survivors and other people impacted by sexual violence and harm. Our members provide specialist support to more than 17,000 people impacted by sexual violence, both current and historic instances.

Dr Webster: As you know, affirmative consent legislation comes into full effect in Victoria early next week. Moving towards a stronger model of affirmative consent was recommended by the Victorian Law Reform Commission in its report in 2021 into improving justice system responses to sexual offences. SAS Vic warmly welcomes the new laws in Victoria, which include an updated definition of consent; the introduction of an affirmative consent model; additions to circumstances where consent cannot be given; the inclusion of non-consensual condom tampering or removal; and changes to image based sexual abuse laws. Critically, the new laws in Victoria also aim to improve the justice system to better protect victims-survivors, including education and direction for members of the jury to better understand sexual violence.

One of the things that we want to say here today is that while we strongly support the national harmonisation of affirmative consent laws and the laws as introduced in Victoria and in other states and territories, it is very clear that they are not a panacea. Without a whole lot of other things in place, they won't essentially realise the promise that they hold. It's important to understand as well that there are some limits to what the law can do. We would like to take the opportunity today to highlight some of what we see are the critical factors that need to be addressed to realise the full potential of these laws in every jurisdiction.

Firstly, the introduction of new affirmative consent laws has to be part of the broader integrated and well-resourced sexual violence reform agenda, including things such as independent legal advocates, improved protocols and mandatory instructions for juries, for example, to counter common misconceptions in the community. We also need, to make these laws work, education and training for members of the legal community and broad attitudinal change at a societal level to realise the spirit of any legislation. Finally, recognising the higher rates of underreporting, it's also critical that we expand the range of supports available to victims-survivors who choose not to make a formal report to police or engage with the legal system. Here the specialist sexual assault services play a really important role. We would be very happy to answer any questions that you might have around any of these. Thank you.

CHAIR: Thank you very much. Ms Hunter, do you have an opening statement?

Ms Hunter: We do. We would probably reiterate exactly what the other organisations have presented. Full Stop Australia has its foundations in 1971 as a rape crisis service in New South Wales. Today we run the NSW Sexual Violence Helpline. We provide a trauma specialist counselling response to all people impacted by sexual violence, including victims-survivors directly, people who support them and the professionals who work with victims-survivors. I guess we also support the harmonisation of the affirmative consent and consent laws across Australia. I reiterate what Heather said. This is an emergency. What we see is that sexual violence is a crime that is on the increase. It is underreported. I can speak from a service delivery perspective. In the past year, we have seen a 20 per cent increase of contacts to our sexual violence helpline alone. We are not seeing this as an issue that is going away. We also hear daily of people's experiences where they don't feel free to come forward and of a justice system that probably doesn't acknowledge the trauma impacts they experience as a result of sexual violence.

In addition to the opening statements, I would really like to highlight the need for across-the-board education for the justice system and for frontline responders that gives a really deep understanding of trauma and its impacts. Some of the really basic things involve this expectation that someone might walk in the door of a police station and feel free to be able to give a very clear, linear description of what happened to them and then continue to repeat that over sometimes a two-year period. I think this is a really foundational issue. It is about having an understanding of the impact of trauma and how that turns up in all our service systems. Again, changes in these laws need to be supported by education across the board. I know that previous sessions have talked more broadly about education and the importance of community and consent based education from an early age. We would also strongly support that need. We need to not just look at law reform. We need to look at system reform more

broadly and really support that notion of understanding the specialist issues of running a sexual violence service. We absolutely require ongoing resourcing around providing a safe space for people to come forward.

CHAIR: Thank you very much. I will now give the call to my colleagues.

Senator GREEN: Thank you for appearing today. Thank you for your submissions that have been really helpful to frame some of the questions we've asked not only you but also other witnesses. I want to ask a question initially of Sexual Assault Services Victoria. In footnote 1 of your introduction, you make a point about sexual violence as a continuum. You say:

Understanding sexual violence as a continuum provides an important foundation for combatting sexual violence, showing the enabling link between the common types, such as street-based sexual harassment, and rare but extreme types ... Criminal justice responses to sexual violence have limited preventive value if they do not adequately address the continuum.

Can you elaborate on the benefits of understanding sexual violence in a continuum and the comparison to different frames of understanding?

Ms Maltzahn: Sure. There are a number of ways that a continuum is useful for us. One is to say that there has been a tendency in Australia, I think, to focus on some forms of gendered violence. In Victoria, recently, very welcomingly, there has been a very strong focus on family violence and less focus on sexual violence. You can't talk about one without the other. There are things like trafficking that involve gendered violence that we tend not to talk about very much. I think in our policy we need to be thinking very broadly about different forms of gendered violence to be able to make sense of things. Theoretically—you couldn't really—if you fix family violence, the danger is that it just turns up in a workplace if we don't address the underlying issues. But the other part of the continuum, I suppose, is to recognise that gendered violence is not only a problem when it tips over into crimes. At the basis of the prevention strategy in Australia with our watch is that you have to look at the attitudinal problems we have and different ways they are expressed. Similarly, I will go back to that point. Street-based sexual harassment is often really not dealt with. It's somewhere people learn that it's alright. Boys learn it's alright to sexually harass girls and that is an inevitable part of life. In policy terms, we need a broad approach.

Senator GREEN: Thank you. When I think of street-based harassment, I always think about bar-based harassment. It is a given when you are growing up that there will be a touch or a grab. You are expected not to make a big fuss about that as well. I want to ask you about your analysis of the effectiveness of the reforms in Tasmania. It has been really useful, I think, in your submission for the committee to see some of your views. Can you talk to us about why you believe Tasmania's reforms have not led to as much of a meaningful improvement as, I guess, the advocates who led those reforms would have liked?

Dr Webster: Thank you for asking about the research about the laws that have been around for a longer time in Tasmania. They are really useful to look at. There has been some research into the efficacy of the longer standing affirmative consent laws in Tasmania. One of the key findings from that is where there isn't a specific focus and investment in formal education initiatives for members of the legal community in particular to understand the purpose, spirit and intentions of the reforms, you don't necessarily see the change in courtroom practices or courtroom experiences for victims-survivors coming through after that consent legislation is introduced.

The research that we looked at examined 19 trials between 2004 and 2008. It showed that the prosecution relied on pre-reform constructions of the absence of consent, going back to some of the older dominant misconceptions around consent that we were trying to change with these laws. So the focus was on force or fear of force and a focus on the victim-survivor failing to communicate consent and what the victim-survivor did or didn't do to resist, rather than on what the defendant did or said to make sure they had consent.

Ms Maltzahn: I will add to what Dr Webster said. I guess one of our observations, perhaps impolite, is that changing the law is relatively cheap. Governments can do it. But unless we do all the other things that are needed, it doesn't necessarily work. Something we would be very keen to see you do is harmonise laws to talk about the framework that is needed, the scaffolding almost, that is needed in every place that is introduced to make the laws work. The laws alone can be passed. In Victoria, we've got them. We welcome them. The report that recommended them had 91 recommendations. The government has implemented perhaps 10 per cent of them. The ones that will make the law work have not been introduced yet.

Senator GREEN: Okay. My next question is for the National Association of Services Against Sexual Violence. I am not picking favourites. I am particularly thankful to Ms Lynch. As a Queenslander, I'm a familiar with the work that you do in Queensland and advocacy that you have been a part of. I certainly want to ask you this. Your submission makes a recommendation for both national harmonisation as well as the development of essential principles. Do you see any difference between those two things? Can you have one without the other?

Ms Lynch: I think harmonisation is the actual law reform. That is the actual legislation going through and laws being basically in harmony with one another. The principles would be more around what the legislation or the changes are based on. Perhaps there is greater variety in relation to how the legislation adopts the principles. That is an off-the-cuff answer. I'm not sure if Nicole or Heather have anything to add to that.

Ms Lambert: I think that perhaps speaks a little to the comments made by SASV around the infrastructure around the laws as well. It is about the implementation of the principles which support the legislation. If they are really embraced, endorsed and embedded into practice, that provides some of that structure to support the implementation of legislation change.

Senator GREEN: Thank you. I appreciate that. I have a question for Full Stop Australia. Thanks for coming along today. In your submission, recommendation 4 talks about the potential benefits of including tendency and coincidence evidence as admissible in adult sexual offence proceedings in the same way that it is currently used in child sexual offence proceedings. I think this is a really interesting idea. It often seems strange that those types of things can't be talked about in court, where you have an accused who has behaved in a similar way or had similar circumstances maybe even earlier in the night, where there was an incident with another person or with that same person. I'm interested in your thoughts on recommendation 4 and whether you think it can assist in reaching convictions in cases of sexual assault.

Ms Dale: I'm happy to speak to that.

Senator GREEN: Thank you.

Ms Dale: The reason we think this is really important is that often in the majority of sexual violence matters there aren't any witnesses. That is a real barrier to victims-survivors achieving justice. In response to the Royal Commission into Institutional Responses to Child Sexual Abuse, there were reforms in a number of jurisdictions that made tendency and coincidence evidence, particularly tendency evidence, admissible in a wider range of cases for child sexual offence matters. That recognises that in those matters the same evidentiary issues often apply. They are offences that are largely committed in private without witnesses. That really impacts the ability of victims-survivors to get justice. We think that the same principles apply to sexual offences involving adult victims-survivors. As to whether that would improve conviction rates, we think there are a range of issues that mean that conviction rates for sexual offences are much lower than other types of offences. I think the statistic is that the number of convictions obtained in sexual offence matters is below two per cent, so it's really low relative to other types of criminal matters. This would be one way of addressing that and ensuring that relevant evidence is before the court. In order to address the issue of low conviction rates, there would need to be a number of other reforms as well.

Senator GREEN: Thanks, Chair. I might leave it there.

Senator WATERS: Hello, everyone. Thanks so much for your ongoing work in this field and the time you've taken to share your expertise with us both with your submissions and here today in person. I will start by asking your view of whether we should have specialist sexual violence courts. What are the advantages or disadvantages of that approach compared to embedding the cultural change and the expertise through the general court system?

Ms Dale: Is that a question for anyone?

Senator WATERS: Yes, please.

Ms Dale: Fantastic. I can speak to it briefly. Anybody else can add on. I think it would be really valuable to have specialist sexual violence focused courts, just noting that victims-survivors of sexual violence have particular needs. They've experienced a particular type of trauma. What we're calling for broadly to support, and we're really supportive of, is the national harmonisation of affirmative consent laws. As Tara mentioned in her opening comments, we would really support that reform being buttressed by education for everybody working in the justice system from police to people working in the court system, including judges, about the impacts of trauma in particular and the gender drivers of sexual violence. Sexual violence specific courts might make that a more streamlined process. I note that there has been quite a lot of research done suggesting that even in jurisdictions that have introduced affirmative consent legislation, there are still ongoing issues with the way the defence does cross-examination. They weaponise victims-survivors' experience of trauma against them to question their credibility and lean into harmful victim blaming myths and real rape myths. These continue to be really damaging to victims-survivors today, even when a number of jurisdictions have introduced affirmative consent reforms. Perhaps if there were a specialist jurisdiction, and everyone working in that system were receiving the right kind of training, that would help address those kinds of ongoing problems.

I think harmonised affirmative consent legislation is really important, and having that consistent understanding of consent is really important. Until you start to see cultural changes within the courts and within the justice system, I think it can only go so far.

Senator WATERS: Thank you. Ms Clarke, I think you have your hand up?

Ms Clarke: There could be a lot of useful learning, I think, from a specialist sexual violence court. However, NASASV is mindful of the sheer volume of sexual assault cases in the county courts. I guess there probably would be differing views amongst our board members about this question that you've asked. I worked in the justice system in the sexual violence reform unit in Victoria some years ago. I think possibly more benefit would come to victims-survivors by having the independent sexual violence advisers that I mentioned in our opening statement and specialist lawyers for victims-survivors who could then potentially even appear and ensure that their legal rights are upheld. As my statement alluded to, we see disparity really in the way that courts run and essentially the way judges run their courts. They impact victims very much. On balance, I think the courts are very costly. The value might come with those two other options.

Senator WATERS: Thank you. Does anyone else have a view on that? I have a number of other questions, so pipe up if you do, thank you.

Ms Maltzahn: We do, although I see Tara has her hand up too.

Senator WATERS: Could you repeat that, please?

Ms Maltzahn: I see one of our colleagues does too. Similar to what Heather has said, I think broadly we see a lot of merit in specialist courts. I think the danger for us when we're thinking around sexual violence and affirmative consent is to think that there's the one sort of knockout blow and if we just had specialist courts, things would be fine. But we know, as NASASV said, it's a common crime. The danger is that if you attach law change to having to have a specific specialist court, territories or jurisdictions will say, 'No. We won't do that.' I think one of the really important things is understanding the package of things that are needed to make accountability on sexual violence work. So wrapping support around victims-survivors, including independent advocates, and independent legal services is very important, as is the range of education and changes in how the court works. Some of them we've seen in Victoria we would really welcome coming in next week, essentially. Some have already started. Some other mechanisms could do the same job as the specialist court essentially. In Victoria, it hasn't been picked up by the government. One of the recommendations from the Victorian Law Reform Commission's sexual offences report was an accreditation so that the fees for lawyers in the system would be higher, for example, if they've gone through a particular training. So I think there are mechanisms we could adopt that would improve the standard of judicial behaviour, I suppose, without necessarily having whole new courts. So we are not opposed to them by any means, but it's not all or nothing, in essence. We could do a lot of what they aim to do through other mechanisms.

Senator WATERS: Thanks, everyone.

Ms Hunter: I will finish with one last thing. The only thing I would also add is around timeliness. If specialist courts gave us some very clear view of the number of matters going through the system and it meant that victims-survivors went through the system in a more timely way, we would be absolutely supportive of it.

Senator WATERS: Thank you.

Ms Lynch: I think, yes, one of the principles of those specialist courts is usually having one judicial officer who follows the matter all the way through and tighter case management. Obviously, there are different models of specialist courts. A model that we would support is one in which you have one decision-maker that can more tightly case-manage the matter and control the timeframes and not let them blow out with adjournments and things of that nature.

Senator WATERS: Thank you. It seems like a lot of those features could be delivered either by a specialist court or by better trained generalist courts. Thank you. I think I hear both sides of the argument there. I will move on. I think it was Full Stop, Ms Hunter, who raised this. Forgive me if I have it wrong. You said there was a 20 per cent increase in contacts to your helpline just in the last handful of years. I wonder whether you had a concomitant 20 per cent increase in your funding. In all of your experiences, do frontline sexual violence support services have the funding that they need to meet demand?

Ms Hunter: No. Absolutely not. To be frank, I'm still waiting for confirmation of the funding that we will be receiving. We did receive a one-off national partnership agreement fund. We had been promised by the New South Wales government that would be an ongoing increase to our funding. I am still waiting for confirmation on that. Prior to working for Full Stop, I worked in a frontline sexual assault service for three years. I guess what I've seen over that five-year period is not sharp increases but a very consistent increase every year that you are

following the numbers. Every month, while there might be some patterns of presentation, there is absolutely an increase in demand. I can see everyone from NASASV wanting to put their hand up. I think as a whole we are experiencing a lack of recognition around the specialist nature of sexual violence. Quite often when we're looking at the national plan and the resourcing that goes alongside that, we get caught up in domestic and family violence funding, disbursement and announcements. We don't want to be pitted against that weird knowledge that sexual violence occurs in about one-third of domestic incidents. That is, again, reported. We are seeing sexual coercion as a really significant part of domestic and family violence matters.

We are absolutely underfunded and under-recognised. I find it difficult to understand. It's almost like people want to look away from this issue. I do believe that some of that feeds into the myths and beliefs that it couldn't have happened and it couldn't be true. Well, it is. We know it is. It's really important that as part of this law reform we actually need resourcing. When we're talking about this, I can guarantee you that people are phoning our service as we speak because it is triggering for them to recollect their own experiences.

Senator WATERS: I'm happy to hear other views on that.

Ms Clarke: I might just jump in and highlight, I think, the national partnership agreement, which Tara mentioned. The federal government's response is that the funding of frontline domestic, family violence and sexual violence services is a state responsibility other than the national partnership agreement. It's very difficult for sexual violence services to tease out what proportion of that funding is coming to our sector. Another source I want to highlight is the commitment by the government of the 500 additional frontline positions. That is still being worked through at a state level. Quite a significant number of months have now elapsed since the government was elected and that promise was committed to. We really worry how much of that funding will come. We certainly have made approaches to the relevant ministers. It does get passed back to the states. Meanwhile, I will highlight that the government is investing significantly—I'm talking in excess of \$115 million—in health related initiatives for primary care. In fact, from our reading of those projects, they will replicate some of the services that in fact our counsellors are already providing. We can't really understand that. We are puzzled by that. On the one hand, it is a state responsibility but yet the federal government is funding primary care to the tune of a significant amount of money.

Ms Lambert: I will jump in as well. I agree with everything that Tara and Heather have said already. I think it is important to note that sexual violence services have been experiencing excessive demand for many years. I think it's fair to say across the board in all states and territories that the services are not funded well to meet the demand. What we have seen in the last certainly three to four years is an increase in demand yet again. It is being influenced by a range of factors but significantly by the global and national conversations around sexual violence. So we welcome those conversations because it really does mean that community awareness and understanding is starting to improve. What it does mean, of course, is that there are significantly higher numbers of victims-survivors coming forward seeking support. Services have not received any additional resourcing in order to meet that demand. So we're very strongly advocating that any initiatives introduced to impact the service response system for victims-survivors of sexual violence or to aid prevention in terms of community awareness must also come with some level of resourcing to actually meet the demand that they are going to generate for service responses.

I also note that Heather mentioned the primary health network initiatives that the federal government is currently implementing. We are currently having some conversations with the health department and the primary health networks around those initiatives, which is good. We've found it a bit difficult to have a voice in those projects, but we do currently have an avenue to express some views, which is great. I want to pick up on something Heather mentioned. Some of the planning around those projects does aim to almost replicate the existing response system that we have here by creating a new one within a primary health care setting. We do find that a bit concerning. I think it is important to note that because we could otherwise be thinking that investment is going to make a significant difference to the demand and the needs of victims-survivors. We certainly have some concerns that might be actually creating referral roundabouts and confusion for victims-survivors.

The last point I would make in terms of specialist services is that we do provide, as Heather noted in our opening statement, quite a wide range of support services to victims-survivors, which includes that initial crisis response, advocacy and ongoing therapeutic and trauma recovery work. In amongst that, counsellors within sexual violence services do an enormous amount of support for victims-survivors as they try to navigate and negotiate the legal system. We don't necessarily receive specific funding to do that work. We certainly believe that it would be very beneficial to have additional resourcing for that role. We do think that specialist services are probably best placed to provide that independent advocacy role for victims-survivors because of our background and understanding around the impacts of trauma on victims-survivors and their therapeutic and recovery needs.

Senator WATERS: Thank you. You have anticipated two other questions, which saves me some time. I was going to ask about whether those PHNs are replicating what your frontline service is already doing and whether there would be simply an additional layer of essentially unnecessary intervention. You used the term 'referral roundabout', which I thought was very apt. Hopefully it's not an apt description. Thank you for that. I also want to ask whether or not you do just as much counselling for the trauma that the legal system creates for sexual violence survivors as for the original assault. Thanks for that.

Ms Lambert: I will add to that. Most definitely that is the case. Sometimes we are engaged with victims-survivors for lengthy periods of time purely to support them with their ongoing needs around their interaction with the legal system. That can occur across a period of time. As we know, there are often quite significant adjournments. It may be that there are gaps in the work we do and then they re-engage with our service again. It can take several years. We can work with victims-survivors for three years. To be quite frank, a lot of the work after that three-year period is about helping them cope with the devastation of the fact that they didn't receive an outcome that they feel brought them any justice.

Senator WATERS: Thank you for doing both elements of that work.

Ms Lynch: I want to jump in from a Queensland perspective, Senator Waters, in relation to the funding. We were just provided some Queensland figures last week after seeking them for nearly a decade, I believe. They are in relation to our sister services. We are not taking away from our sister DV services. It is just a comparison in relation to funding. Our sister services receive \$96 million per year in relation to funding from the Queensland government. Sexual violence services receive \$13 million. That equates to about 13 per cent of the comparison. That is to give you a comparison. It is 7.4 times the amount of funding goes to that. As I said, it is not taking away from our domestic violence services. They are the most comparative sector that we can look at in funding terms.

Senator WATERS: It sounds like we need to grow the funding pie rather than force people to compete for the crumbs from the table.

Ms Hunter: I want to talk about one more thing certainly from a New South Wales perspective. There is no specific funding around specialist court support. Often frontline services are having to make decisions around leaving people on waiting lists. I know from a health perspective there was one service—it was the one I used to run—that provided specialist court support because of resourcing. While we do work with people, actually being able to sit with people going through that court process is not always possible. People who are in that recovery phase are often left on waiting lists because at the front end you are needing to see in a timely way people with a crisis presentation.

Senator WATERS: Could you all take on notice, please, to provide the committee with a bit more information? Ms Hunter, you mentioned the previous organisation that did that court support work, I presume in a counselling sense rather than a legal advice sense. It is a bit hard for me to tell who is who on the video. There was an independent advocacy role mentioned in relation to the court as well. I assume they are two different functions. Could you provide us on notice, please, a bit more detail of the number of services, if any, that do provide that work? Clearly there's a need for it. It sounds from what you've hinted that there's not adequate funding to meet that need. Given all of the shortcomings in the so-called justice system for survivors of sexual violence, it's all the more necessary. With the brief time left for me, I want to ask NASASV whether they've called for funding to install a respectful relationships education lead teacher in every school. I am moving to prevention now. You also call for funding for sexual assault services to partner with schools to deliver that education. Could you run us through the reasons you are suggesting that and the risks of either not having that education at all or not having it delivered by experts, or at least experts informed in the composition of the curricula?

Ms Clarke: Certainly. I think that suggestion is based really on years of work that sexual violence services have done in partnering with schools. What we can see is that schools, of course, and teachers already have very full and complex jobs. We are tasking the schools and teachers with this other added complex task of providing content about consent and how to negotiate respectful relationships. Our experience year after year was that schools might designate a teacher for a period of a year. That would change. It's not in anybody's ongoing job description at schools as it currently stands. I am speaking from my Victorian experience. We worked over that period of 15 years when I worked at that service. It was common. That is one of the issues. The leadership for the program is very variable. The resources allocated are very variable. We must not forget, of course, that a large number of teachers themselves will be victims. There's no real scope in any kind of formal way for people to opt in or out of doing this work as it stands at the moment. It is an individual school thing, presumably. We can share feedback with you from teachers. We ran training for the teachers before they presented these sessions. They said, 'Look, we just don't feel comfortable. We didn't really sign up for this.' There's a lot of gender dynamics in relation

to the very senior classes with young adolescent men who are nearly 18 and young female teachers. There's a whole range of issues really.

We totally support the introduction in the curriculum of the consent and respectful relationships support. The government has committed a sizable amount of money, which it is going to allocate to the states, to enhance that initiative. In the long run, it's like the issue with funding frontline services. Unfortunately, sexual violence is a massive issue. A lack of understanding about consent and how to negotiate respectful relationships for young people is also a very big issue. We need to invest in a reasonable and meaningful way and give schools a specialist position. Every other learning area, such as maths, English and science, has a key learning coordinator. We think respectful relationships is significant enough that it needs one as well. We think there would be teachers who are interested in specialist training.

Another issue these days, of course, the impact of pornography on young people's sexual relations. It is really large, and frighteningly so, really, in terms of what our clients share with us. I'm talking about young women now. Again, this is not a topic that most teachers feel they were trained to talk to their students about. We talk to our clients in our services about it all the time. It makes sense that as soon as you do some consent training in a school, you will bring forth disclosures. You really need that link. We need to be partnering. We need to be resourced to do that work. So do the schools.

Senator WATERS: Thank you. Beautifully said. I will pass over the call.

CHAIR: Thanks, Senator Waters. In the brief time we have available, I will ask each of the witnesses to take on notice the principles that have been proposed by the Law Council of Australia in relation to the potential evaluation of sexual consent definitions across jurisdictions. It is contained in section 11 of their submission. They outline eight principles that they consider should apply. Law Council representatives are appearing as witnesses on Thursday morning. I'm very keen to put to them any feedback from any organisations and any witnesses we have here today in relation to those principles. In the event that you have had a chance to look at some of these principles, and if anyone has any preliminary feedback or commentary in relation to the Law Council of Australia's submission, I will seek it. Does anyone have any comments at the moment? I realise you probably haven't had a chance to read it. No?

Ms Maltzahn: Maybe I can foolishly run in to say that, as you would expect, particularly our barristers association here in Victoria has a range of views around affirmative consent. I think there can be—please tell me if I am going in the wrong direction—a sense that the presumption of innocence might be eroded and we need to protect the proper function of courts. We would say that we want to get to a level playing field where the presumption of innocence is held but victims actually are able to do their job as witnesses. We would then be in a very fine place. A lot of what we're suggesting is not about eroding any of the traditional protections of community members. It's just getting the court system to work as well for victims of sexual assault as it would be for victims of car theft. I don't know the particulars, but I guess we are familiar with some of the general arguments that are used against reforms that would make a big difference for victims and hold perpetrators to account and stop suffering.

CHAIR: That's very useful, Ms Maltzahn. Some of the issues that are raised in the principles that I am keen to have the benefit of feedback from these organisations and all of you as witnesses are in relation to their statement that sexual consent laws should reflect the communicative model of consent. I note in that respect they don't say the affirmative communicative model. They actually say communicative model. I will be putting to them why they don't use the word 'affirmative'. Secondly, at principle 5, they state that consideration should be given to vulnerable groups disproportionately impacted by the implementation of a communicative model of consent laws, including persons with disability and young persons. Principle 6 is something my colleague Senator Waters raised. They talk about increasing investment in restorative justice for—this is to use their term—'suitable sexual offence matters'. I am keen to hear your views. Does anyone have any views now before we suspend on the concept of restorative justice and alternative pathways with respect to these matters? I will give each of you an opportunity to perhaps provide any comments now. Ms Maltzahn, do you have any comments with respect to this concept of restorative justice pathways and any initial views?

Ms Maltzahn: Yes. There are a number of pilots in Victoria. We welcome them. Again, the Victorian Law Reform Commission considered this. I was very interested in Ms Mullins's comments earlier. I think the danger we have is that we have a two-track system. For every other crime, you get a decent go, recognising the limits of courts in a range of ways. For sexual assault, you have a different process. The Victorian Law Reform Commission has some very good principles that would allow us to consider restorative justice so that it works for survivors rather than being a diversionary program for perpetrators. So we do support restorative justice, but it has to be one of a package of a whole lot of things. It can't be the main thing, because we know that too many police

will direct victims off to something else which isn't the justice system. The danger is that restorative justice works as another thing to send victims to. If it is done properly with constraint for victims, not for police, we support it.

CHAIR: I will give a final opportunity to each of the other organisations to give some preliminary comments, if you would like, on the issues relating to restorative justice pathways. I will go to the National Association of Services Against Sexual Violence first. Any comment?

Ms Clarke: I might jump in.

CHAIR: Sure, Ms Clarke.

Ms Clarke: Again, that was something our service in Melbourne did have a bit of experience of. I will let people know that the reality is that it is a very labour intensive option. It really starts from the premise that the accused or the person who has done the sexual harm totally recognises the harm they have done to the victim and acknowledges that they have committed a sexual assault. I guess experience tells us that doesn't happen very often. It doesn't happen very often in the justice system and more broadly as well. The first step in the restorative justice process, as we were trained in it in Victoria, is obviously meeting with the victim to see what—it is generally she—she wants and the person who has committed the sexual harm and seeing what their stance is. At that point, there has to be a really detailed assessment about whether they are prepared to acknowledge what they've done and the harm it has caused and then to take reparative steps to give the victim some sense of justice and healing.

CHAIR: Thank you. Ms Hunter and Ms Dale, do you have any comments on that restorative justice pathways issue? Ms Hunter?

Ms Hunter: Again, we concur with the other services. We need to be ensuring that it's done in a safe way. I do believe that it could be part of an option. I'm a really big supporter of choice for people. I certainly have worked with many victims-survivors who have said, 'I just actually want to tell the person who has done the harm what it has meant for me.' They want to be able to voice it. As Heather has talked about, it probably sounds a lot more simple than it actually looks in practice. We need to have a full safety assessment to ensure that we are not doing more harm than good. Again, it is not giving people at a systems level, such as the police, an out. We need to make sure that a victim-survivor is making it as their choice, not as the second option because people feel like it's too hard to go through the legal system.

CHAIR: I understand. Ms Dale, finally, do you have any comment?

Ms Dale: I will reflect what everybody else has already said. I think of the needs and recovery of victims-survivors. If restorative justice is to be an option for dealing with sexual violence matters, victims-survivors' needs in recovery need to be centred. I think in considering that option, we need to remember that the victim-survivor is someone whose agency has been taken away. To the extent that they really want to engage with that process and that is something that is going to help them on their recovery journey, that would be a great option. It is not if that is something that they are not interested in or if the accused isn't recognising the harm they've caused or if it's just not appropriate in that case.

CHAIR: Thank you. Thank you very much, Ms Dale. I thank all of the witnesses for appearing today and for all the incredibly important work that you do in the community. Thank you very much for your participation in this inquiry.

Proceedings suspended from 13:07 to 14:05

RAMAN, Ms Padma, Chief Executive Officer, Australia's National Research Organisation for Women's Safety [by video link]

CHAIR: Before we recommence, I would like to deeply acknowledge that this inquiry and the matters that we are about to discuss might cause distress and may be causing distress to people participating in or listening to today's evidence. For those attending today's hearing, we have Lifeline crisis support workers here today. Thank you for being with us. A private space is available. You are welcome to speak with them at any time during the day. Those listening remotely can contact Lifeline on 13 11 14 or 1800RESPECT for support and advice. Please do not hesitate in reaching out for support.

I now welcome the representative from Australia's National Research Organisation for Women's Safety via video conference. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Thank you for attending today. Ms Raman, do you have an opening statement that you would like to make?

Ms Raman: Just a brief one, Chair, if that's alright.

CHAIR: Absolutely. Over to you.

Ms Raman: Thank you. ANROWS is an independent not-for-profit company established as an initiative under Australia's National Plan to Reduce Violence Against Women and their Children 2010 to 2022, which was the first national plan. Our primary function is to build the evidence base that supports ending violence against women and children in Australia. The rates of sexual violence against women in Australia are sobering. The ANROWS report *A life course approach to determining the prevalence and impact of sexual violence in Australia: findings from the Australian longitudinal study on women's health* highlighted that the lifetime prevalence of sexual violence amongst women is shocking. This research indicated that 51 per cent of women in their 20s had experienced sexual violence and that 34 per cent of women in their 40s and 26 per cent of women aged 68 to 73 had experienced sexual violence. These rates were higher for women with disability or illness. Results from the PSS, the personal safety survey, by the ABS also has identified that 20 per cent of women have experienced sexual assault, or one in five women have experienced sexual assault, since the age of 16 years.

As you have heard today, despite these high rates of sexual violence, reporting rates remain low. Data from the PSS, again, reveals that of the women who had experienced sexual assault by a male perpetrator in the last 10 years, only 13 per cent of those victims-survivors had reported the most recent incident to the police. Fear of not being believed is a key factor in whether women disclose sexual assault to their informal networks and through formal pathways, such as police or authorities.

Importantly, we recently released the national community attitude survey, or NCAS. NCAS tells us that there is a strong culture of mistrust of women's reports of sexual violence. For example, 34 per cent of respondents believed that sexual assault allegations were commonly used to get back at men, and 24 per cent of respondents agreed that a lot of times women who say they were raped led the man on and then had regrets. ANROWS research also shows that women with disability, people with diverse gender identities and sexualities, women from culturally and linguistically diverse backgrounds and Aboriginal and Torres Strait Islander women face additional barriers when reporting to police and accessing services.

The results from the 2021 NCAS also tell us that problematic community attitudes towards, and understandings of, sexual violence and consent persist in Australia. These include myths and misperceptions that represent men as unable to control their sexual drives and women as untrustworthy. For example, one in four—that is, 25 per cent—agreed that a sexually aroused man may be unaware that a woman does not want to have sex. One in 10 agreed that women say no when they mean yes.

These NCAS results highlight the changes needed. The introduction of sexual consent laws that are nationally consistent that emphasise the need for affirmative consent can support shifting some of these attitudes. Our attitudes are shaped by the world around us. They are influenced by our families, friends and communities as well as through formal societal systems and institutions, such as schools, the media, police and, most importantly, the law. Attitudes have a real impact. They influence social norms about what is acceptable behaviour and how people respond to violence against women. Consent laws and community attitudes together can impact whether victims and survivors recognise their experience as actually being sexual assault or sexual violence, whether they choose to disclose or report and the responses that they receive to these reports. The NCAS shows us that much more work needs to be done. Putting the symbolic weight of the law behind the changes we need to community attitudes will help us to reach our aim of ending violence against women and children in one generation. Thank you, Chair. I'm very happy to answer any questions.

CHAIR: Thank you very much, Ms Raman.

Senator WATERS: Hello, Ms Raman. Thank you very much for all of the work that you do leading the wonderful organisation that is ANROWS and for your time today and your expertise, of course. I will start with some questions about the NCAS. The survey is done every four years. ANROWS has done it for the last two surveys. Was it in existence before 2017? Was someone else doing it? Was 2017 the inaugural one?

Ms Raman: No. It has a really interesting history. It's the longest running community attitudes survey in the world. It was started by VicHealth in 1995. They kept going with it every four years and then handed it over to ANROWS once we were created. The best comparisons we can make are between 2009 and 2021. Before that, they were still working on the methodology, so it is harder to make those comparisons.

Senator WATERS: Can you draw some conclusions about the trends that those surveys over time indicate and the attitudes to violence against women and to sexual violence in particular? I'm not anticipating good news.

Ms Raman: Yes. It is a really good question. It's not great news. The good news is that attitudes are shifting. They are getting better. The good news around sexual violence is that between 2017 and 2021, we saw a stronger increase in understanding and rejection of sexual violence. In fact, we saw a stronger increase in that. We saw a plateauing around domestic and family violence, which is another really interesting phenomena.

Senator WATERS: Makes no sense.

Ms Raman: Well, it makes some sense in the context of the big national conversation we've had in the last four years around sexual violence. It is about those brave advocates who have come forward. It is about maybe even the conversations we've had around institutional child sexual abuse as well. So there is an increasing understanding. Attitudes are really are changing very slowly. I think our attitudes around sexual violence we can unpack more. What we know and what the research tells us is that sexual violence is much more likely to be perpetrated by someone you know, yet attitudes are still lagging. A considerable proportion of people still think about rape or sexual assault as something that is perpetrated by a stranger. Because they think that, a series of other attitudes fall out of that.

Senator WATERS: Yes. Does ANROWS ever issue recommendations about what can be done to change those attitudes? Obviously two key drivers of the inquiry here is to harmonise the laws upwards and to have some decent sex education and respectful relationships education in schools. Do you endorse those? Is there anything else you would recommend?

Ms Raman: I completely endorse them. The NCAS provides a goldmine in terms of where our prevention efforts should be. We can't say that attitudes and behaviours are necessarily completely linked. You can have great attitudes and still behave badly. There is a connection. We do need to work on attitudes because they shape what we think of as acceptable behaviour.

Senator WATERS: Lastly on NCAS, before I move on to some other questions, you've called on the government to commit to funding to continue that national survey. How much is required to achieve that? Do you think the four-year interval is still an appropriate one to gather a rich data set?

Ms Raman: We have the next one funded, which is fantastic news. I guess it is an interesting question about the four-year interval. We feel that is a good amount of time to really look at whether attitudes have shifted. However, internationally, survey times are becoming shorter. Between the 2017 and 2021 NCAS, we did some deep dives. We supplemented the quantitative survey results with some qualitative work. I point the committee to the work we did on mistrust of women's reporting of sexual assault. We did a report that tried to unpack where this mistrust was coming from. In terms of what else we would talk about, one of the things I keep saying is that when you look at the stats, we've got a situation with sexual assault and sexual violence where 87 per cent of people don't report it. Of the 13 per cent of people who do report it, we've got a situation where four in 10 Australians don't believe them and yet we have a criminal justice system that relies on juries. I really endorse what Chanel was saying—I managed to catch a little bit of it this morning—on thinking about alternatives to the criminal justice system as well. I'm not saying that we shouldn't harmonise the laws; I think it is a really important thing. I think it has a really important symbolic message and helps educate the community. We've done all this tinkering with the criminal justice system. I worked on sexual assault reform in Victoria in the early 2000s. We haven't seen a change in conviction rates. We haven't seen what victims-survivors would call justice being served through the criminal justice system. I am not saying don't use the criminal justice system. We need alternatives. We know that especially when you are talking about young people. When you ask them what they want, they say that they want an acknowledgement, an apology and accountability and that they don't want it to happen to other people.

From a broader systemic point of view, we need to be offering victims-survivors other ways to achieve justice when the criminal justice system is just not delivering on it. I would also say that however good the laws are across the country, implementation is a great big problem. We have our front line of implementation being the police. I'm sure experts such as Karen Iles will give evidence on some of the shortcomings in that end of the process.

Senator WATERS: Thank you. It's a tricky one, isn't it? Do we just accept that the criminal justice system was written by men and administered by men and will never serve justice for sexual assault survivors, or do we keep trying to fix it? There's no right answer there. I appreciate your input there.

Ms Raman: I think we have to do all of it. We have to do all of it. We have to keep improving the systems we have but also think about alternatives and other ways of healing women—largely women—who have experienced sexual violence.

Senator WATERS: Thank you. Does ANROWS do any work to monitor the effectiveness of respectful relationships education and sex education and/or behaviour change programs?

Ms Raman: Yes. We have one project that is due to be completed in the second half of the year. It has evaluated respectful relationships education in Victorian schools. We have been talking to people such as Consent Labs and NASASV who do work in this space and are thinking about whether programs like that should be evaluated to see whether they can be more widely adapted across the country. It seems that, anecdotally, young people respond much better to consent education when it is delivered by people their own age, but we don't know this empirically yet. There are pockets of work that have been done on evaluating existing respectful relationships education. I can take it on notice to provide what we've got to date to the committee and what is forthcoming as well.

Senator WATERS: Thank you. Yes, please. We assume it works, but we want to know how best it works and who best delivers it in what sort of format, be it by the school or an independent provider. You talk a bit in your submission about the inconsistency of affirmative consent with the 'mistake of fact' defence. That has come up a bit today. Most of our senators here are from Queensland, although we have some remote folk participating as well. Can you run us through your concerns with that? Can you reflect on the community education work that would be needed to implement an affirmative consent model given what we know from the community attitudes survey?

Ms Raman: I was listening earlier. You talked about alcohol and intoxication. One in 20 respondents—I know it doesn't sound like a lot, but it is still six per cent—agree that an intoxicated man is less responsible for perpetrating sexual assault, and one in 10 agree that intoxicated women are partly responsible. I guess the 'mistake of fact' defence is an example of inconsistency across jurisdictions. You all know what the defence actually means. It undermines the principle of affirmative consent, which basically requires individuals to take steps to confirm that the other party is providing clear and ongoing consent. The defence perpetuates common rape myths, including that men can't regulate their sex drives. I quoted the figures earlier. I find it really concerning that if a man is sexually aroused he doesn't need to turn his mind to consent. It perpetuates myths that men may not understand that a woman is not consenting and that women say no when they mean yes. I think there is a real problem with that defence. I guess that is what affirmative consent laws around the country are starting to recognise.

Senator WATERS: Thank you. I know we have limited time. I have more questions. I'm sure my colleagues also have some.

Senator GREEN: Thank you. Thank you very much for being here. Senator Waters has touched on some of my questions. I want to go back to some of the trends you were talking about. Can you explain and reflect on trends around the stranger rape myth over time?

Ms Raman: I am having a look. The most recent NCAS finding is interesting because it says that 69 per cent strongly or somewhat strongly agreed that women were more likely to be raped by someone they knew. That has actually improved, which is a good figure. There's still one-third that either disagreed or didn't know. The NCAS surveys 20,000 people. One-third of those people still think that sexual assault is most commonly perpetrated by a stranger. I would have to take on notice how much that has changed over time. I do know that it has improved. We've still got a significant problem in terms of communicating to the community that it happens by someone you know. This is actually an interesting finding across the NCAS. Even if we're talking about family, domestic and sexual violence more broadly, 91 per cent of Australians think that family and domestic violence is a problem but only 47 per cent of Australians think it happens in their suburb, town or backyard or community. So we've still got this idea of violence against women happening somewhere else, not in my community, not by someone I

know. To get it seen as a community-wide problem, not an individual problem that is locked behind your front door, we still have a long way to go to educate the community that this is a problem that affects every aspect of our economy and how we live as a society.

Senator GREEN: Thank you. I'm not sure if you have the answer to this question. In reflecting on that trend around the myth around stranger rape, do you know, or can you point to, any successful campaigns that have challenged that myth? It's good news that the figure is changing. I wonder whether there is any insight into why it is changing.

Ms Raman: I can take that on notice. I'm not aware of any. Historically, we've done better at understanding family and domestic violence than we have sexual violence. That change in the last four years says to me—this is an hypothesis; I don't have empirical evidence for it—that when it is in the national conversation, when you are coming out of the shadows into something that has public attention on it and you have very articulate survivors being able to talk about their experience, things shift. We've seen the great advocacy of people such as Saxon Mullins who have got laws changed. We've seen Grace Tame start and ignite a national conversation around these things. In some ways, while campaigns are really important, it also is this moment in time things that can happen that can actually start a conversation. Something I keep saying about this whole area of violence against women is we're still not talking about it around dinner tables. It's still something that we keep private. We don't have enough conversations about it. I think part of shifting the attitude is continuing to have those conversations, continuing to make very clear the stats that we do know and the evidence that we do have, which suggests that by and large this sort of violence is occurring by people you know.

Senator GREEN: And encouraging women to come forward, I imagine, is part of that.

Ms Raman: Why would women come forward when the rates of conviction are so low, when the process is so traumatising and when we know that these attitudes are held by mainly men but also by women? There is a lot of work we need to do to increase reporting. To do that, we need trust in the system. The system needs to be able to respond to what victims-survivors are actually asking for.

Senator GREEN: I want to touch on one of the other issues you raise in your submission, which you might have discussed already with my colleagues. I'm interested in your assessment of jury directions. You've made some recommendations about changes that could be made to jury directions or content that could be included in them. Jury directions have come up a few times in the submissions but also by the witnesses that we've heard from today. They obviously play a very big role in conviction rates. What do you see would be helpful recommendations or amendments to jury directions? What are the key things that are missing from jury directions right now?

Ms Raman: I guess it goes to the point you've just made. One of the really important things that jury directions could include is clarifying and putting some facts around the stranger rape myth. It could be used to talk about the fact that sexual violence is not easily reported and it is often hard for women to report immediately because there is a sense that reporting has to happen straight after something has happened. It could also be used to talk about things such as the freeze response and the impact of trauma on victims' and survivors' memory and presentation.

The thing about jury directions, though—this goes back to my work in Victoria in the 2000s—is they can be very long. Juries have to take a lot in. The way that you direct a jury is fairly important. When you're talking about using juror directions to help take away some of the misconceptions, we also have to think about the language and information we use in directing those juries.

Senator GREEN: Okay. Finally, you have raised the issue of the intervals of the work you do. The survey is on a four-year interval. You recommend that NCAS could be a longitudinal measurement of progress towards meaningful consent reform. Are there any other measurements or studies that should also be considered and things that we should be looking to as part of the broader approach to changing community beliefs around consent and what consent really means?

Ms Raman: One of the things that we lack in Australia is good longitudinal data. Even the NCAS is a point in time. We can compare because we have a big enough sample size, but we're not following the same people to see if their attitudes have shifted over time. We're looking at it at a point in time. It is the same with the PSS, the personal safety survey, administered by the ABS. It is done every four years too. The good thing is that we're starting to do comparisons between the personal safety survey and the NCAS so that we've got a good understanding of what people think and what people experience.

Neither of them are longitudinal. Longitudinal surveys take resources and additional resources because you have to recruit a group of people who are prepared to be followed through their lives. They give you a much

better and richer sense of what is actually happening. So we need to invest in longitudinal survey instruments, I would say, across a range of indicators of disadvantage in Australia.

Senator GREEN: Great. Thank you, Chair.

CHAIR: Thank you. I have a few additional questions, Ms Raman. In terms of the NCAS findings in relation to the matters you have drawn out, I will give you one that stood out to me as somewhat disturbing. One in four respondents agreed that a sexually aroused man may be unaware that a woman does not want to have sex. That is 25 per cent. I was reflecting that if you have a jury of 12 people, that means potentially three people on the jury have that attitude. Does that vary across age groups based on gender? Can you provide any more depth as to whether or not there are particular cohorts where that is more of an issue than others? Can you provide—

Ms Raman: We certainly can. I can take that on notice. In the next couple of months, we will be releasing research on young people's attitudes. We are breaking it down. We've just looked at different jurisdictions to see whether there's difference in attitudes between jurisdictions. Really there isn't much apart from the ACT being better than other jurisdictions on most questions and the Northern Territory being a bit behind. We have that demographic data. We know that, for example, we've got the gender breakdown. It's slightly dangerous to talk about it because of its statistical significance. We know that men have these attitudes more than women, but women also share these attitudes. I can take it on notice and see what breakdown we can provide in terms of age and gender and any other attributes you might want. We also collect data from people from non-English speaking backgrounds and Aboriginal and Torres Strait Islander communities. We will do those subpopulation reports further down the track.

CHAIR: I would be interested to get that further clarity with respect to differences based on those attributes. I will put that into further context. We have heard from witnesses earlier today in relation to the impact of access to pornography and depictions of situations and sexual relationships et cetera. There are legitimate concerns being raised as to how that may be calibrating people's perceptions with respect to a whole range of matters, which would include, I think, some of these issues and perceptions that this NCAS has been delving into. Any further information you can provide to us with respect to that would be helpful. Thank you.

In the time available, I would like to delve into this concept of the 'mistake of fact' defence. In itself and of its very nature it is almost inconsistent with the concept of affirmative consent. I note all the senators here in person are from Queensland. The efforts to reform the law in Queensland seem to be to try to tweak the law with respect to the 'mistake of fact' defence. But the 'mistake of fact' defence is still there. From your perception, there's just a conflict between the two concepts. Is that correct? Could you expand on that somewhat?

Ms Raman: I think there is a complete conflict. One assumes that you can rely on that to say that you mistakenly believed. The other requires you to confirm that there is in fact consent. So the two sitting together is very problematic. Being a lawyer, there are many instances where the law, in trying to proportionately ensure that the rights of both the complainant and the respondent are being met, comes to these awkward compromises. I would say they are inconsistent.

CHAIR: Okay. I have two final questions. Our next witness is from Violet Co. Legal & Consulting. I want to put something that was said in their submission which gave me pause for thought. I am interested to get your perception of this. I will quote from the first page of their submission:

In our view, the key issue with sexual assault legislation is not its drafting; it is its application.

To paraphrase, we can look at harmonisation of the laws, but perhaps the bigger problem is with respect to the application of the law and the interaction of the victim-survivor with the institutions of state, be it law enforcement or the legal system. That is really the community concepts and perceptions, which you outlined in the survey that has been undertaken on a four-year basis. I am interested in your views with respect to that concept.

Ms Raman: I strongly endorse that. That was my point earlier about tinkering with the law. You can keep doing it. You can have the amount of protections we put in in Victoria around a victim being able to give evidence by video conferences, jury directions, changes to evidence laws, having specialist witness support in the DPP and having specialists trained not just who are dealing with sexual assault. All of that has not resulted in a change in convictions. I think the point that Violet Co. make is a very strong one. You can have the best laws in the world, but it is its implementation that is really important. I guess the consistency of definitions and harmonisation of laws goes not to necessarily how they are applied but how you can explain it to a community. I think that is the more important part.

In terms of sexual assault reform, it is really the application. Victims-survivors have told us repeatedly that the system as it stands retraumatises them. To explain to a victim-survivor that when they are going through a

criminal justice process they are a witness to an action that the state is taking against the perpetrator is a really hard concept to get across. How are you a witness to something that has happened to you? I think it is that point around the system, starting with whether they are believed by police, starting with the experience with police, and moving through those processes of the DPP and the disconnect often between the criminal law and what someone has actually experienced. The particularity with which you have to remember every detail of something is actually a traumatic experience for so many. It means that the whole system is one that has the effect of retraumatising often victims-survivors. I completely agree that we can have the best laws and we can have harmonised laws. We need to make sure that they are effectively and consistently implemented and that a woman knows that she will be believed through the process.

CHAIR: This is my final question. I trust you won't mind taking it on notice. The Law Council of Australia put forward eight principles in relation to what they consider should be the basis for informing the evaluation of sexual consent definitions across jurisdictions. I've asked all the witnesses appearing. Could we have your feedback with respect to the eight principles that are put forward by the Law Council of Australia? If you have an opportunity to give some early feedback before they appear as a witness on Thursday morning, that would be helpful. Otherwise, you could provide some feedback in due course.

Ms Raman: Thanks, Chair. I have looked at them. Fundamentally, they make sense. Their No. 1 principle around the integrity of the criminal justice system is one that I think is where the tensions lie sometimes. Their suggestions around affirmative consent and restorative justice all make perfect sense to us. We will take that away and provide anything further if we can by Thursday.

CHAIR: Okay. Thank you very much. Thank you for appearing as a witness today. Thank you very much.

Ms Raman: Thanks, Chair, and thanks, Senators.

Senator GREEN: Thank you.

ILES, Ms Karen, Director and Principal Solicitor, Violet Co. Legal & Consulting

[14:42]

CHAIR: I now welcome the representative from Violet Co. Legal & Consulting. Ms Iles, thank you to Violet Co. Legal & Consulting for making this submission. I note your submission outlines that Violet Co. is a social enterprise and Indigenous business founded by you as principal solicitor and director. Thank you for the submission and thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. Would you like to make a brief opening statement before we go to questions?

Ms Iles: I would if that's possible.

CHAIR: Over to you. Absolutely.

Ms Iles: Thank you very much. I would like to start by acknowledging the traditional custodians of the land we're on today and my own Aboriginal ancestors whose shoulders I stand on today. I recognise their wisdom, resilience and connection to country. Thank you for the opportunity to speak today. My opening statement will be in two parts. One is generally on the terms of reference. Secondly, I would like to share my personal experience of being a victim of sexual assaults in two separate states, which I hope goes to the heart of the terms of reference of this inquiry.

While I welcome the improvements to sexual consent laws and hopefully harmonisation of affirmative consent across all jurisdictions, they are a no-brainer, respectfully. Respectfully, I don't see it as the main game. These changes to create uniform affirmative consent law must be made swiftly by our Commonwealth, state and territory attorney-generals and parliaments. This in some ways is the easy part. We can't stop here. I'm asking you today in this inquiry and as part of these terms of reference to make findings and recommendations on how this understanding of consent can be applied in the community for those to whom disclosures are first made. These could be parents. It could be teachers overhearing things. It could be friends. It can also be frontline responders. It can be to police, who should have the responsibility to investigate these crimes, and to the courts, which make determinations of guilt.

I will start by saying deeds, not words. We must quickly fix these words in legislation. There is the definition of 'affirmative consent'. We then need the deeds. We must address the gap in what the law says and what our community expects and what the justice system—in particular, the police and the courts—actually do in practice. What use are laws when they are not enforced? Today I give evidence as a solicitor who routinely represents victims-survivors of sexual assault. Many of those are Aboriginal women. Mostly we do that work pro bono. I'm here today in that professional capacity. I'm happy to answer questions about my clients' experiences in a deidentified way where I can.

I am also here today from my own personal experience. I hope that you will find that my evidence touches on terms of reference (a), (b), (c), (d), (f), (g) and (h). I submit that we need to ensure that consent laws are consistent and understood by citizens. But we need to focus on the enforcement gap. The law must be enforced predictably and consistently across our country. This will give confidence to victims-survivors to access the justice system and report to police. Even if harmonisation is not a project that the states and territories embark on, we can currently close this enforcement gap now. We can do that by compelling police to have to investigate serious crimes of sexual assault, particularly aggravated sexual assault against children. There's also a gap in demonstrating that our laws have consequences. This can help with prevention. The crimes that I was victim to and many of my clients and hundreds of thousands of women, children and men across this country carry the most serious penalties in the criminal statute. In Queensland and New South Wales, the crimes that were perpetrated against me by multiple perpetrators carry life sentences, yet there is such a limited access to justice for so many victims of sexual assault.

The reason I am particularly emphasising—this will conclude my general remarks—the need for enforcement is that, as we heard from the witness prior to me, Padma Raman, certain types of victims get access to justice. Only a tiny handful of victims bother to report sexual violence to police. There are many reasons for that. One of those is a lack of confidence that they will be believed and that rape myths around consent will be used against them. Certainly with victims we also see—the discussion paper notes this—that there is a radical loss of momentum once that police report has been made to actually having your perpetrator appear before a court and a jury. There's no empirical research that I have been able to find. I urge the inquiry to make a recommendation to fund a body such as ANROWS to do this research. Typically, victims who get through that very narrow funnel to actually have their perpetrator stand trial are young, stereotypically good looking, white, well and wealthy. They are the deserving victim. That is who goes before our courts. This is not those women's fault. None of the

witnesses that have gone before me is at fault. We must extend this debate and look at the enforcement gap so that all victims-survivors have an equal access to justice and that they have an equal access to police taking action on their report and actually investigating these crimes.

At the moment, what we don't see is Aboriginal women's complaints, if Aboriginal women even choose to report to police, noting the overrepresentation of Aboriginal people in our criminal justice system and the massive issue of misidentification of Aboriginal women as perpetrators. What we don't see is these type of victims presenting and ending up in our courtrooms where these reforms will have an impact. Although these reforms can have an impact on shaping a national conversation around consent, and that is absolutely welcomed, the only victims who will actually get the practical application of these laws are victims who end up in courtrooms. That is a very narrow subset of victims and one that falls foul to some of our unconscious biases.

I want to take a bit more of your time. I know I have probably gone over the three-minute short introduction. I also want to share with you my personal experience of how consent laws play out when you are a victim who has been offended against in multiple states. As my submission and annexures provide, I have been a victim of aggravated child sexual assault in two states—Queensland and New South Wales. I believe I'm the only victim-survivor to have experienced multijurisdictional crimes, giving direct evidence to this inquiry. I am told that I am the only Aboriginal victim-survivor of multijurisdictional crimes to give direct evidence. I hope that lived experience matters. I hope that by sharing what I'm about to share it will give you a concrete example to keep in your minds when you are deliberating on the results of this inquiry and you are making findings and recommendations to our parliaments.

The crimes that were committed against me when I was aged 14 years and my friend, my co-victim, who was aged 13 years have been widely reported in the Australian press. Journalist Ben Smee at the *Guardian* Australia published what I think is, although I'm biased, an exceptional in-depth investigation on 4 October 2022. This was followed by reporting on *A Current Affair*, the ABC, Nina Funnell on News.com, Channel Ten, *The Project* and much more over the last 12 months. I refer the committee to these reports that have been through both the scrutiny of journalistic fact checking but also the fact checking of the outlets' legal teams. I hope you read those articles with the sincerity that they are reported.

While I would like not to have to recount, I don't expect that the committee is necessarily aware of these crimes that I have been a victim of. There is much that hasn't been published, so I want to today take you to some of the pertinent points around consent that haven't been published. The aggravated child sexual assaults that I was victim of, three in Queensland, two in New South Wales, were perpetrated by the same gang in 1993. The most reported on was a gang rape by 18 men and some high school aged boys. I was 14 years old. I was a child incapable of consent. I knew what consent was as a 14-year-old. I had a terrific upbringing. I don't think you could find parents more responsible and more supportive than mine. My parents instilled in me a sense of confidence and self that allowed me to know right from wrong. It allowed me to appreciate what rape was. I think that is one of the first myths to unpack in all of this—a sense that sometimes victims-survivors may not know that they are being raped. I would like to say that is absolute poppycock. Victims-survivors know when we are being raped.

I kicked and I fought like hell. I said, 'No. Stop. Get off me,' repeatedly. I bit. I had to be held down. I was locked in a room. I was threatened in the presence of a weapon. I had a dirty sock shoved in my mouth to muffle the noise. There were no drugs and alcohol in my situation or my co-victim's. There was no 'he said, she said', one on one. There were witnesses and there were lots of them. I wasn't confused and I would suggest my rapists were not confused. Regardless, I was 14 years old. I was a child. I was incapable of consent legally and emotionally. My friend was 13 years old. Our perpetrators knew we were this old. We had told them.

I would like to unpack myth No. 2—that perpetrators, criminals, don't know when they are raping. I would submit that many do. To say otherwise is a polite and somewhat palatable way of excusing rape. There are many I think instances of entitled single sex private school boys and many others in the public eye, high profile cases, that would say as a defence that they were very confused as to whether someone was consenting or not. I think it is very important that this inquiry can see through that legal tactic. In my experience—I will refer now as a solicitor—of being in conversation with defence lawyers, it is a tactic that is used by those who are accused of sexual assault to say that they didn't know and that they were confused. I think we owe boys and young men—I have one who is about to turn 15 years old—a little more credit to know what they are doing is wrong.

Because we were on holidays in Rainbow Beach in Queensland, the sexual assault for me took place in both Queensland and New South Wales. We were literally staying on the border. The hotel was literally on the main drag that is the border between both states. Consent laws then, as they are now, are very clear about these type of rapes. They are not consensual. They are rape. For me, the new consent laws would be somewhat irrelevant because under existing law in both states consent would not be an applicable defence in my circumstances.

However, what I would say is how consent is applied by police. Despite these facts, police forces in both Queensland and New South Wales have completely, and I would say negligently, failed their public duty not only to hold rapists accountable but failed to protect subsequent girls and women from other sexual assaults from this predatory gang. Despite laws clearly defining these sexual assaults as crimes, police have now, only 19½ years after I first reported them, referred the matter to a specialist police unit in New South Wales.

In New South Wales, the conduct of police in the recording of these assaults has been dreadful. I am calling on our New South Wales Premier Chris Minns, who I met with at length in 2022, and his Attorney-General Michael Daley and Special Minister of State John Graham to action this. I'm also calling on Queensland Attorney-General Yvette D'Ath to action these items. I'm calling for legislated duties to ensure that police adequately investigate sexual assault, particularly aggravated sexual assault on children. These duties would and should ensure that police uphold an understanding of consent laws.

This is something I haven't publicly said. I will pause to say that there is so much shame in not only reporting sexual violence but then to have police do nothing. Of friends, family members and members of our community, four in 10 don't believe a woman anyway. I do wonder—we don't have research on this—if that will increase when people find out that you report to police and they did nothing. I suspect that more than four in 10 Australians think I am a liar, a slut and many other negative connotations. I can tell you I'm not.

In New South Wales, in that first instance, when I reported sexual assaults against me, the female police officer at Newtown police detailed a violent gang rape—my head pushed into the sand on a deserted beach at nighttime, me as a 14-year-old. She reported that as consensual. A subsequent female police officer in New South Wales in Redfern a few weeks later failed in what I say is the most negligent manner to take further evidence from me despite my repeated requests and follow-up. This is deeply insulting. This police action has caused me what the *Guardian* Australia, in their headline, named as unspeakable trauma. It's not the trauma of the rapes, although traumatic; it is the trauma of dealing with police in two different states with two different sets of laws.

We must start believing victims and reforming consent law and having it applied consistently, evenly and predictably by police across our country if we're going to start to change this picture. We need to deal with one set of laws. For victims of multistate crimes such as me, it would be much easier.

In this inquiry, I am asking you to consider not just the definition of consent and harmonising it but the definition of sexual assault crimes; the consistency and harmonisation of penalties; the consistency and harmonisation of police process and procedures, in particular, legislating a duty of care and minimum standards to investigate sexual assault; harmonising judicial processes and procedures for those very few who do get through the narrow funnel of the justice system; and, finally, the harmonisation of victims compensation schemes. If you are a victim of rape by a perpetrator connected to an institution, you have access to a national scheme set up by the Commonwealth government. You can access predictable compensation, predictable alternative justice pathways and restorative justice. I am not eligible for victims services or victims compensation in Queensland. This is despite legal experts declaring the crimes against me are amongst the worst ever to be reported to authorities in Australia.

It is within the power, I believe, of the Commonwealth to establish a victims compensation scheme that can apply to victims of sexual assault outside of an institutional framework, because state and territory victims services are just not adequate at all. Connected to that, we need victims commissioners in every state and territory and federally to support victims-survivors through the justice process so that victims-survivors don't need to engage their own costly legal representation. Hopefully, I can stop representing victims-survivors pro bono through my practice. They are the findings that I would seek you as senators to make. Thank you very much.

CHAIR: Thank you very much, Ms Iles. I did read the stories at the time and was absolutely horrified. Thank you so much for having the bravery to tell those stories and for appearing before us today. It is absolutely invaluable for us to hear testimony from someone like you who has gone through what you've gone through in terms of formulating our recommendations as part of this inquiry. Thank you so much for all the work you are doing through your legal and consulting firm as well. Thank you very much. I will pass to Senator Waters.

Senator WATERS: Thanks, Chair. I will echo those comments. I am so desperately sorry that the system let you down so badly. We will work to do whatever we can to try to fix those deep systemic failures. I know it is a big job and I know it's not just a job for us; it is a job for everyone. It's not at all fair what happened to you. My heart goes out to you. I honour the fact that you've now dedicated your life to helping others who have similarly faced those situations. That is incredible. I have a lot of sympathy for your comments in relation to the police. I'm from Queensland as well. Some of the findings about poor police conduct, if I can call it that in a diplomatic manner, have been directed at the Queensland police force. I hear your recommendations with all ears. I personally support them. What do you think can be done to address that police inaction and what seems to be that

broader culture within policing? Is it simply more training? Is it more oversight? Is it a change of leadership? Is it specialist police stations? Where do you think we should start with that?

Ms Iles: I think it should be all of those and much more. Glenn Davies, who was formerly the head of the sex crimes squad in Victoria, appeared on Channel Ten's *The Project* alongside me. Perhaps the inquiry should call him as a witness. I first sat on the board of the New South Wales Rape Crisis Centre in my early 20s. That is more than two decades ago now. Back then, we were talking about police needing more training on this. That is 20-odd years ago and occurred probably for generations before me. You can always have more training; great. I think the inquiry in 2022 in Queensland demonstrated that, in relation to domestic and family violence and police conduct, police are incapable of regulating themselves on this point. The judge in that matter found that police in Queensland were systemically—her words, not mine—sexist, misogynist and racist. That is a massive culture shift. What we need, I believe, is our parliaments to step in and support police to understand what is important in upholding our laws and what must be investigated and set some parameters of how that is to happen. It is not to say investigate every barking dog, every noise complaint or every break and enter. It is about very serious crimes, particularly crimes that carry the maximum penalty in our statute book—the hundreds and hundreds of missing and murdered Aboriginal women and children who don't have their deaths investigated or the more than 80 gay men in Sydney who didn't have their deaths investigated. There must now be the opportunity for parliaments to say, 'Enough is enough.' You can continue with your culture change. We need to invest funds into setting up a legislative response that will compel police to investigate and set aside funds for victims commissioners and a national victims compensation scheme for sexual assault survivors. That is where the money should go.

I believe that the most funded police force in the world is New South Wales police. I could be wrong. I am saying this giving evidence. I don't think that having the policy and the budget response go to police is necessarily the right thing. Blind Freddy could tell you that I was not consenting. Blind Freddy could tell you that. Frankly, officers of our law should be able. I, as a 14-year-old, could tell you that was rape. Officers of the law should absolutely know and be familiar with the law and uphold it. If they are not, there needs to be transparent and independent police accountability mechanisms. If I did my job that poorly, I would be struck off the solicitors roll. They must be held to account because the trauma that victims-survivors experience in the justice system is phenomenal and no fault of their own.

Senator WATERS: And also so very needless. I know we have a shortage of time. You make a suggestion that both police and lawyers working on assault matters should be specially accredited. What would you like to see as part of that accreditation? Can I also get your views on whether you think there should be specialist sexual assault courts?

Ms Iles: Yes. Absolutely there should be specialist sexual assault courts. As the previous witness said, we have a situation where four out of 10 Australians do not believe victims-survivors on face value. That instantly throws a jury and makes a conviction exceptionally improbable. There have to be those specialised courts that can reduce the retraumatisation of victims through the court process. I forget the earlier part of the question.

Senator WATERS: The matter of accreditation for police and lawyers.

Ms Iles: Yes. I think that could be a matter that the Law Council and state and territory law societies could work on in conjunction with universities and the college of law and so forth. It is to actually have, similar to the family dispute resolution practitioners scheme—

Senator WATERS: I was going to ask whether it is like that.

Ms Iles: specialised solicitors in this space. Again, without that specialisation, it can retraumatise victims.

Senator WATERS: And you suggest that not just the lawyers but also the police should seek that style of accreditation?

Ms Iles: Absolutely. I would assume that they would already.

Senator WATERS: You would hope that.

Ms Iles: But unfortunately not.

Senator WATERS: Thank you so very much. Thank you, Chair.

Senator GREEN: Thank you very much for your evidence. It's not lost on us as senators that asking people to come here and give evidence and relive trauma is a lot to ask. We really do appreciate it. You've done that numerous times. It's really important. That is why we are having this inquiry. Thank you. Straight off the bat, you said that your case had now been referred to a specialist unit. Where are things at in terms of your personal case at the moment?

Ms Iles: I'm not sure how much I can comment in a public forum.

Senator GREEN: Because you don't want to prejudice an outcome? Okay. That's fine.

Ms Iles: Yes. I would point to 19½ years of inaction by two police forces and the destruction of primary evidence.

Senator GREEN: You obviously do need to be careful in terms of what you say. From a committee point of view, we would be keen to understand if there is anything that we can do to progress that matter if it hasn't been progressed. Perhaps that is something worth taking on notice to consider so that we're not doing anything to impact an outcome for you.

Ms Iles: Thank you very much.

Senator GREEN: I have another thing to ask and then I have some general questions about the matters we have been discussing. You've probably thought a lot about this over 19 years. I can just imagine the different thought processes you would have gone through by now. Have you thought about whether you think police treated you differently to other victims at the time or whether that was essentially a normal approach? Particularly do you think that they treated you differently because you are Indigenous?

Ms Iles: I will find my notes so I don't forget one of the items. For me, I talk about the justice system. This theory of mine is based on the experiences of my clients as well. When I was in my early 20s, I did not make it known to police that I am Aboriginal. I didn't disclose my heritage. I don't think that many people looking at me physically would think that I comply with what stereotypically people think Aboriginal people should look like. I don't think that the police back then would have identified me as Aboriginal and, therefore, treated me differently. But I would say that my clients do experience that. For me, I think there are five factors that really impact on whether police do or don't do any form of investigation. The first is the type of crime and the facts of the case. This is about the definition of consent and notions of what the victim was doing. What was she wearing? How much did she drink? Was it really her fault? All of that victim blaming myth comes into play. The second is the type of victim. In academia, there's a phrase that Glenn Davies refers to as the deserving victim. Is the victim the type of victim that police would like to do something about? The third point is the type of perpetrator. I would note the overrepresentation of Aboriginal men in the justice system and the willingness of our justice system to disproportionately focus on some type of perpetrators and disproportionately not focus on other types of perpetrators. I think personally that's where my case gets stuck. The fourth area is the police officer and their own unconscious bias and their own concepts of what is consent and how the law should and should not be applied and what it means. Finally, there is police culture and leadership. That's to the point of training and leadership and so forth can come in.

I think you've got to have all of those five factors working in your favour as a victim to actually have access to justice. That's not the type of justice system that I would submit we want. I would submit that we want a justice system that is predictable and not reliant on these five different types of subjective interpretation as victims go through the reporting process.

Senator GREEN: I'm conscious of time. I have had this from my own experience. Where the victim and perpetrator are strangers or unknown to each other, that is a very different concept from someone who is known or where there might have been sexual history in the past. I think we have focused in our conversation with you a lot on police and police reporting, investigating and charging. Even when we get to that point, there's a court process to go through. In your personal experience, you haven't had the opportunity yet to go through that process; 'opportunity' is probably not the right word. When your clients and the people you work with actually get into a court system, what are the unconscious biases in the court system that we need to be conscious of as well?

Ms Iles: I would have to say that in 4½ years of my own private practice, I haven't had one single victim of sexual assault set foot into a courtroom. The vast majority of my work with sexual assault victims is supporting them to report to police and have police do something. It is the absolute minority of victims who actually have any legal consequences on their perpetrator. When I say legal consequences, I mean charges. In New South Wales, nine out of 10 victims who report to police have no legal consequences for their perpetrators. That is 90 per cent of the 13 per cent who muster up the crazy courage to bother reporting to a justice system that really does not produce outcomes for victims-survivors. It's the definition of insanity doing the same thing multiple times and expecting a different result, yet we persist.

Senator GREEN: Thanks, Chair. Again, I'm very grateful for you sharing your personal experience with us. I know it will make a big impact on our committee. Thanks.

CHAIR: Thank you, Ms Iles. I will ask you to take this on notice, if you wouldn't mind. This is a request I'm making to all of the witnesses. The Law Council of Australia proposed eight principles to guide the harmonisation

or further evaluation of sexual consent definitions across jurisdictions. I'm very keen to obtain your reflections on those eight principles, if you could.

Ms Iles: I can absolutely take that on notice, Chair. I would say at a high level that I did hear the reporting on the ABC this morning about the Law Council of Australia submitting that strengthening consent laws may actually—I won't be able to use the precise words; and it was only reporting—disadvantage young men in our community and that it might be unfair, the traditional and more stringent—

CHAIR: Just before you go on, let me read the principle to you—

Ms Iles: Thank you.

CHAIR: so that you can respond and say whatever you like in response to that now. Principle 5 states: consideration should be given to vulnerable groups disproportionately impacted by implementation of communicative model of consent laws, including persons with disability and young persons.

That's the principle that the Law Council of Australia has proposed. I am giving you an opportunity to respond to that statement.

Ms Iles: As a member of the profession and a practitioner with particular expertise in this area, it's disappointing that I haven't been involved in the Law Council's submission. I will take it on notice, particularly the point about those particularly with intellectual disabilities. It may be different. Our criminal law does recognise that there are certain factors with people with intellectual disabilities, absolutely. They are already in law. For young people, the largest single cohort of perpetrators are boys and men aged 15 to 19 years of age. That is the largest cohort. We know that they go on to reoffend. I'm sorry, but I do not think they should be given a free pass. I don't think that the expectations on them should be any different. We have the age of criminal responsibility. I know that is a point of debate at the moment. For a 15- to 19-year-old, young men in our society should absolutely be expected to understand right from wrong. They understand right from wrong in terms of murdering people. They should understand a similarly serious crime of what it looks like to rape someone. I think that is a reasonable expectation. As a society, can we do better in supporting boys and young men to understand the law? Absolutely. I am not in any way concerned that harmonising laws and strengthening to create affirmative consent across our country is a miscarriage of justice or unfairly targeting the largest single group of offenders in our country. I strongly reject that.

CHAIR: Can I put something else to you—

Ms Iles: Absolutely.

CHAIR: just before we leave it there? This is from paragraph 63 of the Law Council's submission:

The Law Council notes the concerns raised by Liberty Victoria in relation to requiring rigid requirements on young people to take active steps to ascertain consent.

The Law Council then quotes Liberty Victoria's submission. I quote:

Young people in the process of exploring their sexuality and relationships are likely to be disproportionately affected by the proposed amendments. It is our view that attempting to use the criminal justice system to drive changes in sexual behaviour is fraught, especially given the potentially punitive penalties for being found to have committed sexual offences.

Could I have your response to that?

Ms Iles: Absolutely. I would like to take the opportunity to respond in full because I know time is tight and there's a lot in that statement.

CHAIR: Please, sure.

Ms Iles: I would firmly reject that sentiment from, I think, Liberty Victoria. Sexual assault and rape are long-established crimes in our criminal code. The notion that young men—I say young men because the vast majority of perpetrators are men—would be somewhat disadvantaged in the eyes of the law by having these requirements is just so offensive. I can say that on my behalf but also on behalf of my clients when they've been raped and sexually assaulted. It's almost as long as time immemorial that we've seen, 'Oh, I didn't know that no meant no. I didn't know that she wasn't consenting.' These types of defences are often used. They are defences—I would suggest not actually perhaps what was in the mind of many at the time—or legal strategies to take advantage of loopholes in our legal system. I will provide a more fulsome response to that. I am disappointed that Liberty Victoria would echo those views.

CHAIR: Thank you very much, Ms Iles. I associate myself with all the remarks by my colleagues with respect to your courage and the value of the testimony that you've given today. Thank you so much.

Ms Iles: Thank you, Chair.

Proceedings suspended from 15:24 to 15:31

BOGAART, Ms Esther, First Assistant Secretary, First Nations and Justice Policy Division, Attorney-General's Department

BRAGGETT, Ms Dianne, Director, Respectful Relationships Education Team, Department of Education

DOHERTY, Ms Greta, Group Manager, Women's Safety, Department of Social Services

KIEKEBOSCH-FITT, Ms Heidi, Acting Assistant Secretary, Criminal Justice Reform Taskforce, Attorney-General's Department

O'CONNOR, Ms Rachel, Acting First Assistant Secretary, Improving Student Outcomes Division, Department of Education

PURDY, Ms Lara, Branch Manager, Response and Behaviour Change, Department of Social Services

ZEZOVSKA, Ms Julie, Director, Responses to Sexual Assaults Section, Attorney-General's Department

CHAIR: Good afternoon, everyone. I now welcome representatives from the Attorney-General's Department, the Department of Social Services and the Department of Education. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. I'm sure you're all pretty well familiar with it. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits answering questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Do any of you have an opening statement?

Ms Bogaart: I have a brief opening statement on behalf of everyone, if that's okay. Thank you for the invitation to appear at this public hearing of the inquiry into current and proposed sexual consent laws in Australia and for the opportunity to make a brief opening statement. Before I begin, I would like to acknowledge the Ngunnawal people as the traditional custodians of the lands on which we meet and pay my respects to their elders past and present. I extend that respect to any Aboriginal and Torres Strait Islander people here today.

As I mentioned, I lead the First Nations and justice policy division in the Attorney-General's Department. I'm joined by colleagues from AGD as well as Social Services and the Department of Education. As you would be aware, in March, AGD submitted a Commonwealth government joint agency submission to inform the committee's inquiry. To assist the committee today, I would like to start by providing an overview of each of the appearing departments' responsibilities that relate to this inquiry.

Senator GREEN: That was my first question.

Ms Bogaart: That is really what my opening statement does—

CHAIR: Ms Bogaart has lots of practice anticipating questions from senators.

Ms Bogaart: to help direct your questions, yes. While legal frameworks relating to sexual violence are predominantly the responsibility of the states and territories, the scale and severity of sexual violence in Australia makes this a nationally significant issue requiring national leadership. In line with the government's election commitments, the Attorney-General's Department provides national leadership to strengthen sexual assault and consent laws and to improve criminal justice responses to sexual assault. Under the auspices of the Standing Council of Attorneys-General, or SCAG, the officials-level National Working Group on Criminal Justice Responses to Sexual Assault is central to facilitating discussions with the states and territories on these issues. The working group chaired by AGD and comprising state and territories justice officials oversees the implementation of the five-year SCAG Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-27. Under the work plan, all jurisdictions have committed to taking collective and individual action to improve the experiences of victims and survivors of a sexual assault in the criminal justice system, focusing on strengthening frameworks, building justice sector capability and supporting research and greater collaboration. This work also supports the implementation of measures under the National Plan to End Violence against Women and Children 2022-32, or, as we will now call it, the national plan.

The national plan, which was released in October last year and led by the Department of Social Services, is the cornerstone of the Australian government's strategy to address family, domestic and sexual violence. It sets the national policy agenda for the next 10 years and provides a national framework for Commonwealth, state and territory governments, family safety experts and frontline services to work towards ending gender based violence in one generation.

The role of the Department of Social Services in preventing and responding to sexual violence is predominantly to support prevention efforts and research along with funding 1800RESPECT, the national front door for people affected by family, domestic and sexual violence. The states and territories have primary funding responsibility for frontline service delivery. The Commonwealth provides funding for frontline services to states and territories under the national partnership on family, domestic and sexual violence responses.

The Department of Education is working with the states and territories and the non-government education sector to enhance the delivery of consent and respectful relationships education in Australian primary and secondary schools and is engaging the Australian Human Rights Commission to deliver the national consent survey. This survey will seek to understand secondary students' experiences of, and attitudes towards, consent education and awareness and experiences of sexual harassment.

I will pause there in terms of an opening statement. We are happy to take questions to assist the committee.

Senator GREEN: Thank you so much. I have a lot of questions to get through. I will begin with some of the things that you've touched on. Thank you for that explanation, because it is a little confusing, I guess, where the different issues lie. Often the purpose of a Senate committee is to cut across some of the different portfolios, but then it can be a little difficult for us. We are looking at not just legal reform, not just legislation, but consent and consent education in schools and the way that universities are dealing with it. So there's a lot of different pieces. So we really appreciate it. And there's women's safety. In terms of the National Working Group on Criminal Justice Responses to Sexual Assault, what is the progress on that working group? The Senate inquiry will consider, I guess, what work has been done. How can we assist in that working group process in terms of the questions we are asking or the issues that are being covered?

Ms Bogaart: The work plan has been finalised. It is now being implemented. I will ask my colleague Ms Zezovska to talk you through where it's up to.

Ms Zezovska: The work plan, as my colleague just mentioned, was endorsed by the Standing Council of Attorneys-General back in August last year. The working group was initially running for between 12 to 18 months to develop that work plan. It is the five-year work plan that was agreed. Now we are in that implementation phase. Rather than meeting very regularly, we've moved to a quarterly basis with some themes attached to each of those meetings that relate to the work plan priorities. There will be an annual report at the end of each year provided to the Standing Council of Attorneys-General as well as an environmental scan looking at all the initiatives that states and territories and the Commonwealth have either individually or collectively done under that work plan. That will be published on our website.

Senator GREEN: Okay. Your submission mentioned that the Australian Institute of Criminology is conducting a national review of sexual assault legislation. I think you've said it was to be published in July. What is the progress on that? What are some of the key takeaways from that review?

Ms Zezovska: There has been a slight delay with that report. It's currently out for comment with the working group as well as stakeholders across the Commonwealth agencies, including the Commonwealth Director of Public Prosecutions and the Australian Federal Police. Comments are due by 4 August for that interim report. That is the literature review as well as the comparative legislative analysis of all state and territory and Commonwealth laws. There will be a final report released later in the year that will be complemented by the findings from the AIC survey of victims and survivors as well as some consultations with legal experts.

Senator GREEN: So the comments are due back on 4 August. When will the report be published?

Ms Zezovska: I will have to take that on notice from the AIC peer review process perspective. They have confirmed that they would like to provide the committee with a confidential copy before that is concluded.

Senator GREEN: Our committee?

Ms Zezovska: Yes.

Senator GREEN: Perfect. It is a national review of sexual assault legislation. I take it from that one of the things being considered is the comparison of the definition of consent in different jurisdictions. Is that right?

Ms Zezovska: Yes. That's right. I can give you a bit more detail, if you like.

Senator GREEN: Yes.

Ms Zezovska: I have a list of the research questions. Essentially, the legal analysis examines all offences and other provisions in the Australian state, territory or Commonwealth statute of relevance to sexual violence and abuse. That includes violence against children and adults. It is looking at, along with that, the consent provisions, the aggravating and other exceptional circumstances defences and mitigating circumstances associated with those offences. The key research questions that we have asked the AIC to look into are the nature and scope of these

pieces of legislation across the country and what differences and similarities, if any, there are between those frameworks; what impact any inconsistencies have on the investigation and prosecution of these offences and the ability of victims and survivors to receive the support that they require; what the barriers and challenges are to achieving consistency across Australia; whether there are any gaps in responding to new and emerging forms of violence; and what best practice looks like.

Senator GREEN: That would be a very useful document for our committee to have, so thank you for that commitment. I want to touch on a couple of different programs and things that are being worked on and delivered. I understand that the Attorney-General's Department has funding. I think \$2.1 million has been allocated to conduct a scoping study on alternative reporting mechanisms. These alternative reporting mechanisms may be, for example, anonymous online portals. We've heard so many witnesses express issues with current reporting mechanisms and the difficulty that victims-survivors have. Can you share any preliminary views? When will we have a bit more information about those alternative reporting mechanisms?

Ms Zezovska: Since the last time you asked this question at estimates—perhaps it was Senator Waters—we are able to now confirm that RMIT has been contracted to do that scoping study. We're in, I guess, the early stages of setting up some consultations for that scoping study. It is meant to run over 12 months. The first is a national working group meeting that we've called on an ad hoc basis this Friday. That's it really at this point. In terms of early findings, there are none yet to share.

Senator GREEN: Thank you. In terms of the work that DSS is undertaking for the National Plan to End Violence against Women and Children, I know it has probably been well-documented, but for the purpose of our committee, can you tell us about the consultation in the lead-up to that plan? What work is being undertaken to include sexual violence or sexual assault as part of the overall plan?

Ms Doherty: The National Plan to End Violence against Women and Children was really the result of over two years of consultation starting with a parliament inquiry in 2020. In addition to that inquiry, there was the 2021 National Summit on Women's Safety; a comprehensive national consultation process that included a public survey on DSS Engage, which is the department's website; targeted workshops facilitated for the department by Monash University, including workshops and seminars with people with lived experience of violence; and, obviously, consultation with the states and territories that have signed up to the plan through state and territory advisory mechanisms.

Specifically in relation to sexual violence, the national plan puts more emphasis on sexual violence, including sexual harassment, as a form of gender based violence more so than its predecessor, the previous National Plan to Reduce Violence against Women and Their Children. I think embedding an understanding and awareness of sexual violence across the four domains of the national plan—that is, prevention, early intervention, response, and then recovery and healing—is something that came through very strongly in the stakeholder feedback. When you go through the national plan, under each of those domains, there are key areas for action. There are activities specific to sexual violence across that spectrum.

In terms of work currently underway in the department, funding was committed in the recent October budget for a consent campaign. This would be a national campaign aimed at the influencers of young people—parents, teachers, sports coaches and other influencers in young people's lives—to help understanding and to help adults in young people's lives have conversations about consent. That campaign is currently in the development stage. The early research from that was published last year. In the most recent budget—the May budget—the government committed funding for a series of small-scale trials in a range of settings to look at best practice to prevent sexual harm and violence specific to particular contexts or communities as well as funding for Teach Us Consent, who you heard from this morning, to develop and distribute social media resources for young people and to set up a youth advisory mechanism.

Senator GREEN: Great. I want to go back to the consent education campaign; I think that is the word you used. No disrespect to anyone who might have been involved in it, but we don't want another milkshake campaign. What are we doing to make sure that consent campaign and the funding that has been committed to it doesn't end up in another milkshake ad and that it actually is speaking to young people at the point they are at and in a way that is effective in terms of educating them around consent?

Ms Doherty: I will start, and I will hand over if I miss anything. To be clear, the consent campaign is really aimed at influencers. That is really just adults. It's not a campaign targeted at young people. This is about equipping and enabling the important people in young people's lives to be able to have conversations with them at that point.

Senator GREEN: And why is this particular campaign important instead of directing it at young people? I know there is other work going on to speak to young people. Why is it important to educate the influencers?

Ms Doherty: The rationale for a campaign focused on influencers is that we know that for all the effort you can put in in institutional settings, such as schools or sporting clubs, if those messages aren't being reiterated at every level in a young person's life, they are not going to cut through and get buy-in. So it's important to make sure that everyone is equipped to have those conversations. That's why this campaign is focused on the adults, or the influencers. My Education colleagues might talk more about the schools based and other approaches. It is part of a suite of information resources that build that whole picture.

Ms Purdy: I will add something. Some of the market research that has been undertaken in relation to the campaign shows that there's a lot of confusion amongst adults around consent. Adults are actually lacking confidence to have those conversations. That suggests that we need to provide adults with information first as a way of then backing in the messaging that is later provided to young people.

Senator GREEN: That's helpful. Can you step us through the plan for what Teach Us Consent have been asked to do? How much funding have they been given? What is the time frame?

Ms Purdy: Teach Us Consent has been provided with \$3.5 million over two years. The purpose is to undertake research and develop social media materials targeting young people 16 years and over. As part of the funding, some money has also been provided for them to establish a youth advisory group to ensure that we are testing the materials before they go to market. It is fair to say that funding was only announced in May, so we're still at the very early stages of working with Ms Contos on that initiative.

Senator GREEN: I have one last question and then I will hand over the call. Maybe I will get it back, but maybe not. Ms Doherty, you've answered questions before in estimates about some funding given to Universities Australia, I believe, to run a campaign about consent in universities. There has been some reporting over the weekend about the fact that the campaign or the approach was changed. There is a bit of confusion about why that happened or how it was communicated to the department. What happened with that piece of funding? I understand it was provided back in 2021. There was a decision to change the campaign earlier last year some time. I'm guessing since the reporting on the weekend you might have had a chance to refresh your memory. What happened? Where is that campaign at at the moment?

Ms Doherty: Funding for that was initially announced in the 2019-20 budget based on a proposal received from Universities Australia. The proposal was to develop a campaign specifically around raising awareness of sexual assault on campus. Universities Australia proposed to, I guess, develop the collateral and then work through universities to disseminate it to students. Through developing the materials and then testing with universities, Universities Australia advised the department that the campaign as developed was not viable to be rolled out. Universities Australia was not keen to proceed. Given the persistent rates of sexual violence on campus, the department decided that something should happen rather than cease the project. That is the point where a decision was made to move from a campaign targeting students to a good practice guide, which is focused on empowering and supporting prevention practitioners within universities to develop and deliver prevention work on campus. So that resource was developed as a result of the campaign not being feasible from a Universities Australia perspective.

Senator GREEN: Okay. Who made that decision to continue with the funding?

Ms Doherty: A decision was made by the department in consultation with Universities Australia. I think the original funding agreement was worded broadly to support work that would support the prevention of sexual assault on campus. Given it was in the broad scope of that intention, it was agreed to change the scope.

Senator GREEN: Because it was within scope, did you have to let the minister know there had been a change? Did you let the minister know there had been a change in the program?

Ms Doherty: We briefed the minister when we had the final product.

Senator GREEN: Okay. But the previous product was under the former government. I understand what you mean. Thank you. Thanks, Chair.

CHAIR: Thank you, Senator Green.

Senator WATERS: I have a number of questions. Let's just stick on that last theme. I am confused as to why they get to tell you what to do when it's public money that has been allocated to fund a campaign that was supported by the students. Can you just explain the process that both did apply and should have applied when Universities Australia said no.

Ms Doherty: Universities Australia approached us in 2022 with concerns about the feasibility of rolling it out and concerns around how it could be delivered in universities. At that point, a preference was to not proceed with anything. We made the decision that was not acceptable given the prevalence of violence on campus. We wanted to work with what we had to make sure that we could develop and deliver a different product that still contributes to prevention efforts on campuses.

Senator WATERS: Forgive my ignorance as to the regulatory structure of universities. How is it that Universities Australia gets a veto? There was a commitment to fund an education program co-designed by students. It sounded to me like a good process. Is there some way to avoid Universities Australia blocking that? Was there any other pathway that could have been taken to deliver that wanted and necessary information to students that was co-designed by students?

Ms Doherty: We had entered into an agreement with Universities Australia on the basis of a proposal provided by Universities Australia to deliver it. I guess our contractual arrangement was with Universities Australia. There were limited opportunities to find a different partner for delivery at that point given that the agreement was with UA.

Senator WATERS: Thank you. I understand that now. Would it theoretically have been open to the government to go through each of the individual unis? Is there any other sort of conglomerate that exists?

Ms Doherty: I'm sure there are other pathways that we could explore. Again, on the basis of an agreement that was committed to in the 2019-20 budget and on the basis of the budget provided, that was the approach we decided to take.

Senator WATERS: Okay. So your agreement was obviously needed. I understand that it was their original idea. They walked away from it. I appreciate that put your folk in a bit of an awkward position. Did you need to tick off on that change? It was still \$1.5 million of public money. Could you have held the line? It's all hypothetical now. It has ended up in a really unsatisfactory way.

Ms Doherty: To answer your question, yes, we had to agree to a variation of the funding agreement to facilitate that change in direction and to facilitate a deliverable coming out at the end.

Senator WATERS: Was consideration given to just cancelling the agreement and taking the money back and perhaps then engaging someone else to do that worthy project using that money? Was that on the table at any point?

Ms Doherty: Universities Australia was proposing to cancel the agreement. I guess the complexity then is investment in a product. So we couldn't get the whole lot of money back because a third party had been engaged in terms of concept delivery and things. There had been some commitments made already.

Senator WATERS: We will have them appear before us, reluctantly, I might add, and we can ask them these questions. You said that they said to you that the campaign was not viable. You also said that they contended it wasn't feasible. What was the reasoning by which they came to that conclusion?

Ms Doherty: I don't have the detail of that. I think I could summarise it as there not being full support for it to roll out.

Senator WATERS: By whom?

Ms Doherty: From UA members.

Senator WATERS: I look forward to us being able to get some answers directly from them on that point. Thank you. That is most unsatisfactory. In terms of the refreshed material, if we can call it that, are you satisfied that the community of practice material addresses the concerns that students aren't getting the consent education they need and deserve?

Ms Doherty: I will hand over in a moment. The community of practice materials are not aimed at providing consent education to students. I think that is probably not where the campaign was at. As originally formulated, it was an awareness raising campaign as opposed to an education product that would be delivered. It wasn't education. It was an awareness raising campaign. I don't think either the campaign or the good practice guide would fulfil that aim. However, the good practice guide does provide, as I said, advice to university practitioners around how to develop and support good practice in prevention activity on campaign. I might hand over.

Ms Purdy: As Ms Doherty says, the intention is to provide further information and advice to the prevention practitioners in universities to assist them to roll out their prevention initiatives. It contains a number of examples of good practice of initiatives that are being implemented in universities around Australia. It also includes an audit tool that the practitioners can use to make sure that whatever they do introduce is done in a consistent way with those good practices that have been identified.

Senator WATERS: I understand that the community of practice resource was just published on Friday. Having now seen it, are you satisfied that it meets the funding objectives?

Ms Doherty: The answer is yes. Insofar as the revised objective was to provide advice and support to prevention practitioners in universities, it does that.

Senator WATERS: So the funding objective was revised as part of the agreement revision. Is that right?

Ms Doherty: I guess the funding objective was to support prevention activities on campuses. A campaign is one way to do that. This is another way to achieve it.

Senator WATERS: Just for clarity, you said in response to Senator Green's questions that you briefed the minister at the end of the process. Just so I understand, you didn't brief the minister at the time about that change of agreement and focus that, again, I flag happened without student consultation, consent or, frankly, knowledge?

Ms Doherty: Not at that time.

Senator WATERS: Why is that?

Ms Doherty: As I said, the decision was made to facilitate delivery of a product in line with the objective of enhancing prevention activity on campuses. The department had, I guess, scope within the agreement to make that decision.

Senator WATERS: When the minister was ultimately briefed, did they express a desire to have been briefed earlier on that change, or were there no concerns raised?

Ms Doherty: The minister was briefed and acknowledged the recommendations in the brief around approving the product and noting the upcoming launch.

Senator GREEN: Of the end product?

Ms Doherty: The end product, yes.

Senator GREEN: But not the change?

Ms Doherty: Not the change.

Senator WATERS: The minister was not concerned about the changed nature of the product and they were not concerned about being told a little bit after that decision had been made. Is that right?

Ms Doherty: The brief simply sought the minister's agreement to the end product. It provided some advice around the process and sought the minister's agreement around the launch event, which was last Friday. That is the scope of what we sought the minister's views on.

Senator WATERS: Was the minister made aware that the scope had changed?

Ms Doherty: Yes. Through that process.

Senator WATERS: And no concerns were raised?

Ms Doherty: We didn't seek advice on that. We were simply seeking approval of the product.

Senator WATERS: The *Universities Accord Interim Report* released last week recognised that unis need to do far more to address sexual assault and harassment on campus. The report made a few recommendations towards fixing that—for example, a national student charter, broadening the ombudsman's powers and a tertiary education commission. In response, the minister said that he would be working through National Cabinet to get action across the country. I note that End Rape on Campus and another student advocacy organisation who we'll also hear from in the course of this inquiry have welcomed that. They've called for more immediate action by setting up a taskforce to oversee university responses. What is being done in relation to that call for urgent action and particularly a taskforce?

Ms Doherty: I might defer to my education colleagues on that issue.

Ms O'Connor: We don't have our higher education experts here today. I can affirm that obviously the minister is working through the accord process and I'm sure would be aware of that recommendation and considering a response to that. But I don't have information today in terms of what that response might be.

Senator WATERS: Are you aware whether the minister has been briefed on the calls from End Rape on Campus for more immediate action? Is anyone in the department doing work on that more immediate action? Have you been asked to do that work?

Ms O'Connor: I'm not aware, but I can certainly take that on notice and get you some further information.

Senator WATERS: Thank you. Advocacy groups have called for comprehensive ongoing sex and relationship education targeted particularly at international students in their first year of university. Is any work being done on that?

Ms O'Connor: I can take that on notice.

Senator WATERS: This is like estimates. Thank you. I will go back to some of the broad issues. Thank you very much for your submission. It did nicely layer out the various bits of work that are underway. It is helpful for us to see that jigsaw. Could you explain for me whether there is any active consideration on harmonising consent laws, particularly harmonising up to an affirmative consent model?

Ms Bogaart: The first priority of the SCAG working group and the work plan that has been put together is to review the criminal offences and legal definitions, including consent relating to sexual offending in the context of each jurisdiction's legislative framework and the criminal justice system and, if necessary, consider progressing and implementing appropriate reforms. So it is a matter for each state and territory how they take that forward. It provides a bit of a national framing around it. We've then got the support of the AIC research that is being done, which will really flesh out what best practice might look like and inform states further. In addition, we've got the ALRC inquiry into justice responses to sexual violence, which will commence towards the end of this year. It has a focus on law reform and proposals to strengthen sexual assault law and improve the outcomes and experiences of victims and survivors in the criminal justice system.

I think probably the answer is that there's a whole lot of things in place to have those conversations and to support and facilitate states and territories across the board lifting their legislative responses. You would know, Senator, that several jurisdictions have already legislated affirmative consent laws. Queensland has committed to do so. The remainder of the jurisdictions mostly are reviewing or considering it. So there's certainly action in place. The working group is a really great opportunity for conversations and discussions about how states are doing that to support each other as well.

Senator WATERS: Thank you. Can you remind me when the ALRC review of justice responses is due to finish? I know it hasn't started.

Ms Bogaart: It's a 12-month inquiry. It will start towards the end of this year and be done by the end of next year.

Senator WATERS: Is it right that they've got an expert advisory group to inform them?

Ms Bogaart: There will be an expert advisory group established. That is in progress at the moment. Another thing that will inform—

Senator WATERS: Who is on that, or has that not yet been set up?

Ms Zezovska: I can provide a bit more information. Firstly, I note that the advertisement for the ALRC's two part-time commissioners went live yesterday. That starts the process for the recruitment for those who will lead the ALRC inquiry. Concurrently, we're leading an expression of interest process to inform the composition of the expert advisory group. That will be comprised largely of victims-survivors and their advocates—others who can provide lived experience expertise. That ad should go out within the next month or so. We've also got the national roundtable on justice responses to sexual assault that has now been scheduled for 23 August in Sydney. A large part of that day will be to inform the terms of reference of that inquiry as well.

Senator WATERS: Thank you. That meshes it together nicely. I'm very pleased to hear you've got lived experience and that is not even thought about as nice to have but is a must-have these days; that's good.

Ms Zezovska: The ALRC will have its own technical experts. They will consult across the country as well. That is what is funded from the government funding.

Senator WATERS: Great. Will the terms of reference for the ALRC inquiry cover police responses to sexual violence allegations?

Ms Zezovska: The Attorney-General will issue the ALRC terms of reference, so it's obviously subject to his agreement and the consultations that will undergo through the national roundtable. We're taking a very broad approach in the discussion on the day. The consultations we will have thus far range over the whole justice process, essentially, not just the legislative frameworks, to looking at police and court processes as well.

Senator WATERS: Good. It sounds like something that the Senate could inquire into. It's a shame that the timeframes don't match up. Thank you. I want to ask about a specific budget allocation. I think this is one for AGD. There was funding for a community-led sexual violence prevention pilot. Do we know anything more about what that is, where it will be located, what it will do and how it will be evaluated?

Ms Doherty: That is DSS, Senator. We can talk to that one.

Ms Purdy: In the May budget, the government provided \$8.2 million to develop an evidence base for sexual violence prevention and to learn what works through funding up to 10 small-scale pilots over three years. So the intention is that we will contract or procure a university-led provider to work with community organisations to develop and test the pilots.

Senator WATERS: Sorry, develop and test the?

Ms Purdy: The pilots.

Senator WATERS: What are the pilots? What are they piloting?

Ms Purdy: A range of different approaches in a variety of settings to actually work out what works in terms of sexual violence prevention. I can give you a couple of examples. There may be a trial that tests, for example, sexual violence prevention activity in community sports clubs. This could include facilitated conversations by role models, identifying coaching and team champions and sport club generated awareness raising resources. Another option is testing similar activities but in a nightclub or music venue focusing perhaps on positive masculinity and consent. Another option is to test sexual violence prevention conversations in faith based or ethnic community hubs, so engaging men in conversations for role modelling and perhaps setting community expectations. They are just some initial thoughts.

Senator WATERS: They all seem sound to me. That is all useful to help improve the evidence base. Will that inform the shape of future respectful relationships and sexual education programs in tertiary and secondary curricula?

Ms Purdy: The intention is certainly to develop an evidence base to inform a range of initiatives going forward. I don't think it has been specifically designed for tertiary or school settings. It is more general just to have a better idea about what works in relation to different cohorts and settings.

Senator WATERS: Thank you. You touched on this at the outset in relation to the action plan under the National Plan to Prevent Violence against Women and Children. Can you remind me, please, what specifically that first national action plan does to address to sexual violence and sex and relationships education? I do agree that the second one is better on those issues than the first was. Can you be a little more specific for me?

Ms Doherty: Yes. I will clarify. Are you referring to the national plan or the first action plan?

Senator WATERS: Sorry. It's the first action plan. It is the second plan, but it is the first action plan, if I'm not mistaken.

Ms Doherty: Thank you. So the first action plan is still in the development stage. Essentially, the action plan will set out some key areas and activities for investment from the Commonwealth, states and territories consistent with the objectives of the national plan. However, because it is still going through the approval processes, and state, territory and Commonwealth ministers for women's safety will meet later this month to consider it, it's too early to comment specifically on what is in that action plan.

Senator WATERS: Okay. We'll follow that up next time. I want to get an understanding, please, of the Standing Council on Attorneys-General work plan on sexual violence, which I think is that five-year work plan we talked about earlier. Is it right that police responses are excluded from that work plan? If so, why?

Ms Bogaart: I'm not sure that they are excluded. Priority area 2 is broadly concerned with justice system practices, capabilities and support. I think police could fit within that, but it doesn't specifically refer to police practices.

Senator WATERS: Do you think it's worth it? If the intention is to include that, do you think it would be worth redrafting for clarity? Whose scope would that fall within?

Ms Bogaart: The workload has been settled. It is the implementation that is taking place now and how we ensure that the implementation is broad and looks at all of the different parts of the system. I think the work plan effectively sets it up for the justice system practices. Police are part of that system. I think it is the implementation and how we take that forward and where police sit in that.

Senator WATERS: So I have your commitment that police responses are included in that work plan. You think they are within scope and they will get sufficient attention?

Ms Bogaart: No. They are not included. We think, in implementing it, there could be opportunities to look at police responses over time, but it is not specifically referenced.

Senator WATERS: Now I'm confused. Do you think it's not specifically referenced but it is impliedly included or it's not specifically referenced and it is impliedly excluded?

Ms Zezovska: They are not explicitly included. I guess that was a decision based on the remit and the portfolio responsibilities of the Attorneys-General when we were developing it under SCAG. Having said that, as Esther mentioned, we've got a number of measures underneath that go to the justice process more broadly. So some of the education and training initiatives, for example, would extend beyond just the courtroom setting and would be focused on police as well. That goes to other supports such as witness intermediaries and legal assistance providers as well. So it is not explicitly mentioned, but it is captured within the implementation of those initiatives.

Senator WATERS: Thank you.

Ms Zezovska: The ALRC inquiry, though—

Senator WATERS: Will cover that for sure. Thank you. So is it just the nature of the fact that it is the A-Gs doing it and not the police ministers that it's not—

Ms Zezovska: Yes. And up until that point, the Police Ministers Council wasn't established yet.

Senator WATERS: They've got one now?

Ms Zezovska: Yes.

Senator WATERS: Do they ever catch up and talk about these sorts of things?

Ms Bogaart: They have cross-referenced agenda items. I'm not sure if there's a planned joint catch-up, but it has been discussed.

Senator WATERS: Can I ask that you convey my suggestion that there be a collaboration particularly in relation to police responses and that be within scope for somebody's work plan, be it the police ministers or the SCAG?

Ms Bogaart: The Attorney-General is on both. The Commonwealth Attorney-General is on both councils, so he is driving similar things in both of them.

Senator WATERS: Okay. Hopefully they will be aware, then, that this is an issue that deserves attention. I have one final question. Has the national respectful relationships education expert working group met yet? If so, what are their terms of reference? Do they have an agreed work plan?

Ms O'Connor: Yes. That sits with Education. Yes, they've met. They've met twice. There is terms of reference which we can table.

Senator WATERS: Yes, please.

Ms O'Connor: Broadly speaking, their key remit is to oversight a rapid review, which is looking into how respectful relationships and consent education across the country is delivered. This will follow on from an earlier review undertaken by Monash University looking at what is being delivered. It will really add to that body of work and complement it. There is the establishment of a respectful relationships education framework to help provide guidance to schools around the ways in which they are delivering respectful relationships education—for example, the selection of experts to support them in delivery. That will inform a national grants process, so it will lead into the establishment of grant guidelines to support the rollout of grants across the country to both states and territories in the non-government sector to support the delivery of respectful relationships education.

Senator WATERS: Thank you. In what time frame will we get to the end point of rolling out the grants?

Ms O'Connor: We expect the grant round to start in September, with delivery in schools and in the education sector from next year, 2024.

Senator WATERS: When will the grants open?

Ms O'Connor: We anticipate that the grant round will open in September.

Senator WATERS: Thank you very much. Thanks, everyone. I note that it is an all-female panel. Once again, women are asked to do the work. Thank you for doing the work. Let's hope in future that we can have a few more than just one chap with the very meritorious Senator Paul Scarr in the room. Thanks, all.

CHAIR: Thank you, Senator Waters. I have some questions. I want to pursue the question that Senator Waters raised in relation to what the police ministers are doing. This is especially given the evidence we heard earlier today from Ms Iles in particular in terms of her terrible experience interacting with law enforcement agencies in two states. It has certainly underlined in my mind the importance of our police ministers at all levels engaging in looking at their own systems and processes. The submission is heavily weighted towards other aspects of the legal system, or justice system. I note that on page 13 there's a reference to providing a further \$4.1 million over four years from 2022-2023 to the Attorney-General's Department to enhance law enforcement responses. In particular, that seems to be channelled towards the development and delivery of a national training package, so it's to be

commended. I'm happy for you to take this on notice. The residual concern I have is what the police ministers are doing. Obviously, the remit and responsibilities of the Attorney at a federal level includes the Australian Federal Police. It does beg the question in my mind, given the importance of the law enforcement agencies, what is happening in that space. I'm happy for you to take that on notice. I want to underline the importance of the issues Senator Waters raised in term of the thinking of this committee. I will ask you to take that on notice, Ms Bogaart, and provide a fulsome response.

Ms Bogaart: I'm happy to take it on notice. I note that the Police Ministers Council, which has only met once so far—it has recently been established—has agreed to a standing agenda item on domestic, family and sexual violence for future meetings. So it is certainly something that they will be considering. We can propose that agenda items on issues like this are there.

CHAIR: So from my perspective, it's incredibly important that those ministers are aware of the issues that we are hearing in the context of this forum and no doubt are being ventilated in other forums so they understand the importance of this issue and the concerns in the community. On notice, your response could perhaps deal with that concern.

Ms Bogaart: Yes. There will be opportunities through the ALRC inquiry, which is specifically being asked to look at police responses to then generate any recommendations or issues that come out of that and take that into police ministers forums. Of course, it will be a matter for the police ministers to agree on the agendas. There are things in train.

CHAIR: I note that the Attorney is a 'police minister'. Correct?

Ms Bogaart: He is, yes.

CHAIR: Thank you. Ms Doherty, I'm going to ask you some more questions about this Universities Australia issue. When did Universities Australia actually communicate with DSS and advise—these were the words you originally used—that it was not viable or not feasible to roll out a campaign? When was that communication received?

Ms Purdy: It was in June 2022 that UA advised the department that a campaign was not possible and that it sought approval to terminate the agreement.

CHAIR: How did they communicate?

Ms Purdy: I don't have that detail, I'm sorry.

Ms Doherty: I imagine it would have been by email.

CHAIR: Can you take that on notice? Could you take on notice whether or not you could provide to this committee a copy of the communication from Universities Australia with respect to their communication?

Ms Doherty: I'm happy to.

CHAIR: Could you also provide a copy of the response from DSS to that communication?

Ms Doherty: Sure. We're happy to take that on notice.

CHAIR: If you could take that on notice.

Ms Doherty: I imagine it was an email. I'm happy to follow up.

CHAIR: Ms Doherty, I note you are taking the communication on notice so I don't want to push you into areas where you want to refresh your memory. Was it in that communication where they actually talked about the fact that they couldn't receive consensus amongst the vice chancellors with respect to the campaign and that was the issue?

Ms Doherty: I wouldn't want to speculate without having the email in front of me.

CHAIR: Okay. I was reflecting on this. Universities Australia, as I understand it, used some of the funding provided by the Australian government to undertake research in terms of potential marketing schemes or campaigns. Is that correct?

Ms Doherty: Yes. The funding was obviously initially to develop a campaign. Universities Australia engaged a third party to develop some potential materials.

CHAIR: Did the department receive any of those deliverables that were produced by the third party and provided to Universities Australia?

Ms Doherty: I will have to take that on notice. I think that is the case.

CHAIR: You think the department did?

Ms Doherty: I will have to confirm on notice.

CHAIR: Take that on notice. Could you provide copies of anything that was provided by Universities Australia in that respect? Was there anything which the department sought from Universities Australia which was not provided by Universities Australia or which they refused to provide?

Ms Doherty: I would again be speculating, Senator. That is a level of detail I just don't have access to.

CHAIR: Take that on notice again. Were there any further discussions between the department and Universities Australia when they actually communicated that it wasn't feasible or viable for the reasons which they outlined, which no doubt will be in their written communication? Were there any discussion or conferences with respect to exploring ways forward to resolve those issues, to perhaps have the department have a discussion with the vice chancellors to try to progress the issue?

Ms Doherty: Yes. I don't have dates or mechanisms for the discussion. There was ongoing correspondence back and forth, I think particularly in relation to the advice that UA's preference was to cease and that was not our preference. So there was ongoing conversation and negotiation in terms of a potential way forward. That is how we ended up with an agreed good practice guide as the deliverable.

CHAIR: Take it on notice. Can I have copies of any documents or records relating to those discussions for the purposes of this committee? In the course of those discussions, was there any request from the department that the universities actually recompense the department for funds which had been thrown away in the course of the universities having the benefit of funds provided by the department but then saying it wasn't their preference or they didn't consider it was viable to move forward?

Ms Doherty: Our agreement was with Universities Australia, not the universities themselves. We wouldn't have had any conversations in relation to—

CHAIR: Was there any discussion with Universities Australia with respect to recompensing the Commonwealth regarding funds that Universities Australia had been provided under that agreement but which Universities Australia then subsequently said they didn't want to proceed with?

Ms Doherty: The funded deliverables, which, as I said, were the campaign collateral and that development, had been contracted to a third party. That money had been committed to an organisation that had developed and delivered work. So recompense wasn't an option given that work had been commissioned.

CHAIR: The recompense could have come from Universities Australia, given that they're the ones who engaged the third party and then came to a decision that they didn't want to proceed with the campaign, notwithstanding the Commonwealth government's preference that they should proceed with the campaign. Isn't that correct?

Ms Doherty: Sorry: the question is—

CHAIR: Well, I understand what you're saying in that the money was paid to the third party, and the third party provided deliverables to Universities Australia. But from the Australian taxpayer's perspective, Universities Australia entered into an agreement with the Commonwealth government to provide a campaign. They went out and used Commonwealth funds to pay a third-party service provider, and then Universities Australia decided not to proceed with the campaign. On that basis, didn't the Commonwealth have an opportunity—a legal right, potentially—under the terms of the agreement to say to Universities Australia: 'Well, you contracted the third party and now you've decided not to proceed with the campaign. That's your decision, but please recompense us the funds which we the Commonwealth provided to you, because those funds are being thrown away because you've chosen not to engage in the campaign'?

Ms Doherty: Yes. Thank you. Sorry—I'd misunderstood. Again, I couldn't say for sure whether that option was discussed. I think I can reflect that there was an amount of developmental research that informed the campaign products, and, to the extent possible, that was tapped into in the development of the good practice guide. So, while the campaign didn't proceed in the original format, the learnings through that development have been able to be reflected in the good practice guide in terms of things like the importance of setting-based engagement and the ways that students like to receive information. While it was a different product in the end, it was informed by that early piece of work.

CHAIR: And I have one final question before we adjourn. Is the agreement with Universities Australia public?

Ms Doherty: I think it should be on GrantConnect, yes.

CHAIR: Could I ask you to, for ease of reference, provide a copy to the committee, on notice?

Ms Doherty: Yes.

CHAIR: Thank you.

Senator GREEN: I might have some further questions on notice, but I've got to go.

CHAIR: Okay. Thank you. Thank you everyone for appearing today. We greatly appreciate it. I need a motion from a member of the committee that the date for returning questions on notice be 15 August 2023.

Senator GREEN: So moved.

CHAIR: Senator Green, I think you're agreeable to that, as you leave. Thank you. That concludes today's proceedings. The committee has agreed that answers to questions taken on notice at this hearing should be returned by close of business on Tuesday 15 August 2023. I thank all witnesses who've given evidence to the committee today. Thanks also to broadcasting and Hansard, the secretariat and our representatives from Lifeline; thank you for being with us today.

Committee adjourned at 16:33



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES
COMMITTEE

Inquiry into Missing and Murdered First Nations Women and Children

Public

TUESDAY, 20 FEBRUARY 2024

BRISBANE

BY AUTHORITY OF THE SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Tuesday, 20 February 2024

Members in attendance: Senators Cox, Green, Scarr, Shoebridge and Waters

Terms of Reference for the Inquiry:

Missing and murdered First Nations women and children, with particular reference to:

- a. the number of First Nations women and children who are missing and murdered;
- b. the current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children;
- c. the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children;
- d. the systemic causes of all forms of violence, including sexual violence, against First Nations women and children, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children;
- e. the policies, practices and support services that have been effective in reducing violence and increasing safety of First Nations women and children, including self-determined strategies and initiatives;
- f. the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children;
- g. the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated; and
- h. any other related matters.

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CHAIR (Senator Scarr): Good morning, everyone. I declare open this public hearing of the Legal and Constitutional Affairs References Committee for the inquiry into missing and murdered First Nations women and children. I acknowledge the traditional custodians of the land on which we meet and pay my respects to their elders past and present. I would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who are participating in today's hearing. This hearing is being broadcast live via the web. I remind witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee.

The committee prefers evidence to be given in public, but, under the Senate's resolutions, witnesses have the right to request to be heard in confidence, described as being 'in camera'. If you are a witness today and intend to request to give evidence in camera, please bring this to the attention of the secretariat as soon as possible. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time.

Before we begin, on behalf of the committee, I acknowledge that this inquiry and the matters that we are about to discuss might cause distress to people participating in or listening to today's evidence. The committee has tried to arrange for support services to be present today, but, as many of you no doubt know, services in this space are under pressure and in high demand. The committee regrets it was unable to make available in-person support for today, but, if you need support, we encourage you to contact Lifeline or 13YARN. Please ask the secretariat for the contact details, or these details can be found on the inquiry webpage.

Welcome. Thank you for taking the time to speak to the committee today. Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat.

Proceedings suspended from 09:08 to 09:23

CHAIR: Ms Iles, do you have an opening statement?

Ms Iles: Yes, I do. In the legal profession, I've been honoured with recognition for my expertise and commitment to the areas of legal rights and access to justice for women and First Nations people. I represent victims of sexual assault and discrimination in my capacity as a solicitor. In this work, and in my involvement with Aboriginal communities, the issue of unresolved trauma caused by a complete lack of access to our justice system—a system that is gate-kept by police—comes up a lot.

I'm an Aboriginal woman myself. I'm a descendant of the Dharug people of Dyarubbin, the Hawkesbury River, and Ganangdayi, the lower Macdonald River, in New South Wales. I, myself, am a victim of sexual assault. My own experience attempting unsuccessfully to access the justice system has been well publicised. I've provided to the committee today an article from the *Guardian Australia* by Ben Smee, dated 3 October 2002. The article is titled "'Unspeakable trauma': police in Queensland and NSW failed to investigate alleged gang rape of 14-year-old girl, records show." I'd like to focus on the policy solutions.

Today I'll speak about three categories of crimes: abduction, sexual assault, and murder. They often go hand in hand. Currently, there's an inquest in New South Wales into the deaths of Cindy and Mona Smith, two Aboriginal girls who were murdered 35 years ago in Bourke with what was, I'm sure the inquiry will hear, a complete lack of police investigation. There are also the cases of dozens of Aboriginal women in New South Wales who have been sexually assaulted and murdered over the past few decades on the Central Coast, Mid North Coast and North Coast. In the New South Wales parliament, Jeremy Buckingham is trying to get to the bottom of why there's been no substantial police investigations into any of these sexual assaults and murders.

Sexual assault is often omitted in the discussion of missing—I should say 'abducted'—Aboriginal women and children. Similarly, when we speak of the violence against Aboriginal women and children, the narrative is often of domestic and family violence with Aboriginal men as perpetrators. But this inquiry is about perpetrators who are non-Indigenous men. The violence of women and children who are First Nations who are abducted, sexually assaulted and/or murdered is more than often not carried out by non-Indigenous men. And that is where the focus, I submit, should sit. The context is critical. In 2022, an inquiry by Her Honour Judge Deborah Richards, the Independent Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence,

had very strong words to say about the Queensland police force. She labelled them as 'sexist, misogynist and racist'. This context is critical when we look at this issue today.

I want to focus on seven solutions—I will be brief—to supplement my written submission, which was drafted some time ago. I provide these solutions and actions as a legal practitioner with experience in this area and as someone with my own lived experience. I've been given permission to pose these solutions by other Aboriginal women who I hold in high regard. So here are seven ways that this inquiry can provide access to justice for Aboriginal women, children and families.

First, there must be national principles on how police investigations must, at a minimum standard, be conducted. Unenforceable police codes of conduct, operating procedures and victims' charters of rights are not cutting it. Victims must know what to expect and get it, no matter who they are, what colour their skin is, what mob they're from or when they report to police. These minimum standards must be enshrined in the law in states and territories so that justice can be applied evenly and without gender based and race based discrimination. That was a recommendation from the Australian Law Reform Commission report in 2018, *Pathways to justice—an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples*. The recommendations said that the law should be:

... enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples.

That includes victims and their families.

Second, a national and nationwide duty of care is owed by police to Aboriginal and Torres Strait Islander victims or, if they're dead, their families. Police must not harm and must not traumatise victims and their families through negligent actions and deliberate actions. This should be enshrined in law, nationally and in the states and territories. Police must be held to the same standard as other government officials and professionals. Police action can cause harm, and they must have a 'do no harm' ethos. Their fundamental role in our society is to protect every single person—not to pick and choose and exercise discretion but to protect every single person equally and without discrimination. The duty of care must be extended to victims-survivors of sexual assault and the families of abducted and murdered Aboriginal and Torres Strait Islander people. This is not a duty of care to every woman and her dog but to a limited amount of people in our society who have already suffered unspeakable crimes. A duty of care means having a duty of care to mental health and wellbeing, and it means police not acting with negligence or recklessness when carrying out their duties.

Third, a national state and territory police complaints integrity corruption commission is needed, and it needs to follow the Northern Ireland model. Bodies in each state and territory are routinely criticised for their lack of transparency, accountability and justice. The Yoorrook commission has just reported on the inquiry into the LECC in New South Wales, which happened last year. The conflict of interest of police investigating police is absolutely laughable and Orwellian. We wouldn't accept it in any other profession. I believe the Northern Ireland model is an instructive model, and I would urge the commission of inquiry to recommend a deep dive into how that body could be set up nationally in Australia. Essentially, it is an independent body that is not staffed by police or former police. When they receive a complaint, if they determine it and find that the police were negligent or lacking in proper conduct, they have the power to refer it to prosecution, and they have the power to reinvestigate, rather than giving the victims back to the same police force who wronged them so badly. That model has been recognised and recommended in the Yoorrook commission and also the commission of inquiry in Queensland by Judge Richards, which I referred to earlier.

Fourth is a national independence complaints and compensation scheme to address police negligence, with all states and territories contributing. States and territories are conflicted in claims against them, just as we've seen institutions like the Catholic Church struggle with this. As a society, we set up the royal commission and a national redress scheme. We must provide access to some form of justice to end the unresolved trauma for Aboriginal and Torres Strait Islander families in the aftermath of murders, sexual assaults and abductions.

Fifth is research into the connection between poor police responses to abduction, sexual assault and murder, and the suicide of the victim or the victim's family members. I've spoken about that in camera. We simply don't have the numbers, just the qualitative examples. Suicide as a result of poor interaction with police is widespread. From what I'm aware of and privy to through my networks and clients, I believe that at least every week a victim of sexual assault or a family member of a victim who doesn't get justice commits suicide. They're driven there by the helplessness that an absence of access to justice leaves. Police truly do have the blood of victims on their hands.

Sixth is a national truth and justice commission regarding the abduction, sexual assault and murder of First Nations women and children. This must be accompanied by state-funded legal representation for victims-

survivors and their families, restorative justice and compensation schemes, just like there were for victims of institutional child abuse. In the case of the truth and justice commission, it must include scope for an inquiry into violence—not just crimes by individuals but crimes by the instruments of the state, such as police—and the physical and mental harm that retraumatisation causes by the interaction with victims and families.

Finally, my last policy solution for your consideration is a national alternative to police for Aboriginal and Torres Strait Islander victims and their families for those who have been abducted or murdered or are victims of sexual assault. We must provide alternative pathways to access to justice. We need legislation to empower a civilian body at a nationwide level to receive reports of harm and to be able to coordinate a response. This will eliminate the need for victims-survivors and their families to be interacting with police as much as possible.

I come from an employment law background. In employment law, we would treat this through a risk assessment lens. You need to eliminate the hazard. Police are the hazard to our people. Police are the hazard to our mental health and wellbeing. Of course there can be training, and there has been for decades. Of course there are individual police officers who are doing a fabulous job, and I'm sure that those First Nations officers who are sitting behind me in this inquiry today are doing a fabulous job. However, inquiry after inquiry finds that, systemically, the police force consists of sexist, misogynist and racist culture. We can never get justice. Until that is resolved, police are not safe for many Aboriginal and Torres Strait Islander victims and their families to deal with.

I urge this inquiry to consider a roundtable, led at the Commonwealth, on what these nationwide alternatives could be. The role of victims commissioners, I think, would be a good step in that direction, but they must be dedicated Aboriginal and Torres Strait Islander victims commissioners. I leapt with joy at the news that the victims commissioner was being appointed in Queensland. The photo of him in the news, however, was of a non-Aboriginal man standing in front of a Queensland Police Service logo. I'm sure that that former police officer did great things in his career; however, he is not a safe person to represent me. He is not a safe person.

They are the recommendations I am seeking for you to consider at this inquiry. I'd be happy to expand and provide more evidence as to why, as a professional in this space, I believe that they're the appropriate findings and recommendations for this inquiry to consider and to make.

CHAIR: Thank you very much. We have limited time. Senator Cox has some questions in relation to the recommendations that you've made, and I will be giving an opportunity to all senators to ask you questions. Before we do that, you're happy to take questions on notice if any of us would like some further information?

Ms Iles: Of course.

CHAIR: Thank you very much. Senator Cox, you have the call.

Senator COX: Thank you, Ms Iles, for giving evidence this morning. We really appreciate both your submission and your walking us through your recommendations. I have a few questions. Can you expand on the legally enforceable minimum standards of investigations and what they might look like in practice? I know you gave a bit of information, but I'm wondering if you might be able to expand on that a little bit.

Ms Iles: I'm calling for legislated minimum standards for police investigations for the aggravated sexual assault of children but also for the abduction, sexual assault and murders of First Nations people, for the reason that police codes of conduct are discretionary; they're not transparent to the general public. In order to give clear expectation of what justice looks like, we must give those clear expectations to members of our community, to assist them to come forward and report serious crimes so that police can then, hopefully, do their job and get very dangerous rapists and murderers off our streets. We can't do that if victims don't come forward. We need transparency, and they need to be able to rely on a set of legislated minimum standards so that, when police don't do that, they are actually able to hold police accountable, because I can tell you it is impossible to hold police accountable for breaches of their own rule book. It is impossible.

So a minimum standard would need to be very basic, really: interviewing a victim; not destroying their statement; not destroying the evidence that they hand over; interviewing relevant witnesses; and, where there's a named person of interest or a named perpetrator, interviewing them at the appropriate time and not destroying their statement. That would be the very bare minimum of what I would expect our police forces to do. We've conducted opinion polling with essential media, and 88 per cent of Australians agree that that is the job of police and that those minimum standards should be legislated.

Senator COX: That's great, thank you. Sorry, I'm not able to see whether you're finished or not at this end of the phone, but I really appreciate that. You, yourself, have experienced the issues of who has jurisdiction and that some matters happen across borders. I know that's some of the evidence that we've received in this inquiry in this

jurisdiction. Do you have any insight about how that could be addressed in relation to cross-border issues or those that are multijurisdictional?

Ms Iles: Yes, absolutely. I believe that the federal parliament should legislate to provide the Federal Police with the power to take over investigations that involve multiple police jurisdictions. It is simply too much for victims and their families to be expected to deal with multiple police forces, multiple laws and multiple investigations. I appreciate that there are issues with the cultural and sexual violence capability of the Australian Federal Police. I'm mindful of a similar inquiry a few weeks ago where Senator Shoebridge really took the head of the AFP to task on their conduct. So I'm aware of the issues with the Australian Federal Police, but we have other crimes, such as the sexual exploitation of children, where the federal police are given jurisdiction. I do believe with my heart that, despite their failings, the proper course of action for multijurisdictional crimes is at a federal level.

Senator COX: Obviously that's consistent with your final recommendation of a national framework; is that correct? I just wanted to make sure that's correct.

Ms Iles: That's correct. My understanding is that the federal parliament was instrumental in creating national principles for coercive control legislation around this country. And I'm asking this inquiry to do that again, to alleviate the burden on victims-survivors, like me, of speaking to every Attorney-General around the country, and actually create a set of national principles around this issue of police accountability. Then it is up to the states to implement those in their criminal codes.

Senator COX: I know you mentioned, personally, the impacts of biases and the racial attitudes of police and other key players in the justice system, such as the DPP or coroners court—who are, in fact, both appearing today and have done in other jurisdictions—that specifically relate to First Nations people. Do you have any insights about how we can help to address this?

Ms Iles: Sorry, I didn't quite catch what you were seeking—how we help who address what?

CHAIR: Just repeat the end of your question, Senator Cox.

Senator COX: The biases and racial attitudes of police and other key players, such as the coroners, the DPP or other judicial officers in the justice system.

Ms Iles: I think that culture change and training—absolutely; you can never, ever stop that. We can't ever stop learning. However, there needs to be a carrot and a stick. We need clear, mandated statutory change to compel police and others to apply the law evenly, fairly and without discrimination. Unfortunately, generally speaking, in this country police are exempt from antidiscrimination jurisdictions. So it's very important, I think, that those Law Reform Commission recommendations from way back when in 2018 around the application of the law being fair, equal and without discrimination—we can't simply leave it to the police to self-regulate. They have shown for decades—in fact, since the earliest days of colonisation my people, my ancestors on the banks of the Hawkesbury River have never been given justice and have never been able to rely on a police force to investigate the sexual assaults and murders of Aboriginal people. We have to take it out of their hands. The discretion is untenable.

Senator COX: That's great; thank you. You mentioned the report of the independent commission in your submission. Can you highlight what you think some of the key elements are for this committee to consider?

CHAIR: Senator Cox, you're just a little bit fuzzy. Can you repeat the question? You referred to the independent commission that I think Judge Richards chaired.

Senator COX: Yes; that's right.

CHAIR: And what was your question?

Senator COX: Just for the witness to highlight some of the key elements of that inquiry for the committee to consider. Ms Iles said some in her opening statement; I'm just wondering if she wanted to add any other elements to that.

Ms Iles: The relevant and pertinent points are around police accountability mechanisms in Judge Richards' report. The majority of the report does speak to domestic and family violence, which is not the subject of this inquiry, but certainly the remarks around police accountability, their own law enforcement and conduct inquiries and commissions and how they need to be transformed radically in the state of Queensland is very instructive.

Senator COX: That's it from me, Chair. Thank you, Ms Iles.

Ms Iles: Thank you.

CHAIR: Senator Green, do you have any questions?

Senator GREEN: I do, thank you, Chair. I am very conscious at the time, but I wanted to thank you for giving your evidence today, Ms Iles, and for the evidence you've given to previous inquiries. It has been very helpful, particularly the consent inquiry that this committee held. I have a couple of particular questions around the recommendation about how we can get victims-survivors—I'm conscious of using the right language there—to be central to some of the recommendations and changes that we're making. There are two questions. What are the recommendations that you think we really need to canvass with victims-survivors? And how would you recommend the committee go about that?

Before I hand over, I do want to say thank you for coming to us with lots of recommendations and solutions. What my mind goes to, after listening to those, is how we would get some consensus or support around some of those recommendations. Hopefully, that assists you in answering my questions.

Ms Iles: In terms of how to make these reforms or proposed reforms have consensus, a national truth and justice commission regarding the abduction, sexual assault and/or murder of First Nations women and children would be very instructive. We've seen it in other areas, such as the disability royal commission, the aged-care royal commission, the royal commission into institutional child sexual abuse. We've seen those commissions of inquiry take that truth and turn it into a reality for victims-survivors. I think that would be helpful.

A more cost-effective way might be to liaise with the federal commissioner, Micaela Cronin, and her office. Her office deals with sexual assault. I really want to make that distinction and not have it blur into domestic violence. This is about sexual assault, abduction and murder—'stranger danger'; not those known to us. Her office has a First Nations team and could lead some type of consultation.

Alternatively, ANROWS, the national research body, also has a First Nations research team, which I am part of. It's a community research team that could be used to assist the parliament in gathering that evidence from victims-survivors. I would strongly urge that it be Aboriginal women who take that testimony. You get different testimony depending on who asks the questions and how. I would also urge consideration as to a whole range of cultural aspects in terms of who those people might be.

Senator GREEN: I'm conscious of time, so I'll leave it there.

CHAIR: Senator Shoebridge.

Senator SHOEBRIDGE: Thanks very much, Ms Iles. Thank you for putting together such a comprehensive package of national reforms that I personally believe would, if they were implemented, go towards delivering larger measures of justice for First Nations peoples, particularly women and children. Sometimes it seems like an impossible wish list to have some kind of legally binding minimum standards on police, but there are other jurisdictions around the world that actually have these clear expectations on police to investigate serious crime. Can you point to any?

Ms Iles: Yes, absolutely. In the US, the FBI has a model called exceptional clearance where certain aspects of an investigation need to be conducted before the FBI are able to shelve that inquiry. It means that normal day-to-day officers in the FBI—this is what I'm told, and this would be an area that the inquiry could make some direct inquiries about with the FBI, because my evidence is a little second-hand—must demonstrate to an independent panel that they have done their job before they're allowed to put it aside.

We also have examples in Canada and the US. I'd point to the submission of Dr Amy McQuire, Sisters Inside and the ICCR to this inquiry. It speaks to the measures in Canada and the US and also the United Nations on the disappearances and murders of first nations women and children globally. There are, I believe, some good things happening in other jurisdictions in terms of truth telling, restorative justice and compensation that could be looked at.

In terms of it being legally binding, I'm very aware that this is the hardest campaign of my life that I am running at the moment. To hold police accountable has been a call of Aboriginal and Torres Strait Islander people and women in this country since the founding of this country as we know it now, back in 1788. This campaign is incredibly hard to run, and the reason it is hard to run is the strength, or the perceived strength, of the police union and police and the damage that taking the police on can potentially do to the careers of politicians. I would urge each of you: please take up that mantle, because, simply, the public is on your side. The opinion polling shows it. You won't find many people who think police investigating police is a great idea. You just won't. It doesn't pass the pub test, and we need politicians to come out of the box and stop protecting police, because they are harming, and in their harm they have blood on their hands for so many victims-survivors and their families, and they are causing intergenerational trauma in Aboriginal and Torres Strait Islander communities. That is the subject of much hand-wringing across the nation: how do we solve intergenerational trauma? Let's start with regulating police and taking the bias out of police.

Senator SHOEBRIDGE: When you talk about a duty of care, your evidence suggests that it could start at the most basic level, which would be an obligation to respectfully take evidence from victims and survivors and their families, an obligation not to destroy that evidence and an obligation to investigate—to interview key witnesses and seek to interview the alleged perpetrator. Just establishing that as a basic level should, it seems to me, be non-controversial.

Ms Iles: For serious crimes, I agree. I don't think we can have that expectation for every stolen bicycle, barking dog or neighbourhood dispute, but we can for very serious crimes.

Senator SHOEBRIDGE: Potential murder, homicide cases and serious sexual violence?

Ms Iles: Yes.

Senator SHOEBRIDGE: If you establish that as a basic duty of care that police have, it would seem to me to be almost inarguable.

Ms Iles: I would agree, and the Australian population agrees. The fact that these crimes all carry the maximum penalty under our Criminal Code demonstrates the seriousness with which our community treats these crimes; yet the gatekeepers of our justice system do not treat them with seriousness.

Senator SHOEBRIDGE: Have you had these discussions with police? If so, what's been their response to having a legal obligation for the most serious crimes to do the most basic policing? What's been the response?

Ms Iles: Unfortunately, the response from both the New South Wales and Queensland police commissioners has been non-existent, despite my being on practically every TV channel and print outlet. Their silence is deafening. And it is worse than that. The briefings, which are incorrect and frankly defamatory about me, that the Queensland Police Service and the New South Wales police service are briefing journalists with are outrageous. I can only think that they are intended to discredit me and to shut me up so that I cease pointing out the gross failings, the gross negligence and potentially the corruption in those forces.

In terms of something being legally binding, I asked the current New South Wales police commissioner, Yasmin Catley, the New South Wales Attorney-General, Michael Daley and the New South Wales Minister for Women, Jodie Harrison, about this in a meeting, and the police minister responded to me. I asked, simply, 'Can we create a statutory duty for police to be required to give a leaflet for a counselling service to someone that walks into a police office and discloses sexual violence?' and she replied, 'No.' A leaflet! Requiring police to give a leaflet so that someone doesn't commit suicide after disclosing the worst thing that's happened to them in their life—I was told, 'No, that would be too hard.'

CHAIR: Thank you very much, Ms Iles. I've just got one question to tease out this recommendation around having some sort of alternative agency that you referred to. Presumably that agency would need to have the powers that police would have, so wouldn't it, in effect, almost become a police agency? Do you understand what I mean? There are things you need your first responders to be able to do in terms of investigations et cetera in relation to a case. They need certain powers in order to collect evidence, engage in inquiries and then go through the process of preparing a brief for the prosecutor to consider. Potentially you'd have to deal with the same issues in that context as you do in the current context. Isn't that right? I'm just trying to tease out how this addresses the issue.

Ms Iles: This would be a fabulous opportunity for this committee or the parliament to have a standalone discussion with First Nations communities on what their preferences would be in relation to this and what the options could look like. But, put simply, there is a history of 250 years with police forces. In this state, in Queensland, we had the—I'm going to get the name wrong—First Nations mounted police. In Queensland there were Aboriginal and Torres Strait Islander people who were part of the police service who went around causing harm to other First Nations people. There is so much history with police. As Judge Richards says, there is so much sexism, misogyny and racism. It is so hard to unpack.

I would suggest that, even in the interim, even if you put in a sunset clause—10 years or something like that—until the police force can demonstrate that they can realistically and properly execute their duties without bias, without discrimination, equally and fairly, for every citizen, for every person in this country, we need something, because at the moment women and children are dying every week across this country from domestic and family violence and also sexual violence and murder. We must do something bold to shake this up. I'm the Commonwealth appointed director on the board of Our Watch. They are concerned with the prevention of violence against women. They're concerned with the implementation of the National Plan to End Violence against Women and Children. We will not end violence against women and children if we tinker around the edges. We must give women, children and First Nations people in this country access to justice. Otherwise, they won't come forward, they won't report and they'll never get access to justice.

Meanwhile, perpetrators are being given the message that it's fine: knock yourself out, fellas, because no-one will hold you to account. And that's the evidence in Amy McQuire's submission of what has been found through research in Canada—that is actually the message that gets sent to perpetrators and that's why First Nations women and children are targeted and experience so much violence. It's because no-one is ever held accountable and because of the sexism, racism and misogyny in police forces. It's not because they're promiscuous, somehow vulnerable or this or that; it's that the perpetrators of that violence are never held accountable, and people know they can get away with it.

CHAIR: Okay. Ms Iles, thank you for attending today and thank you for giving evidence. As the deputy chair said, we greatly appreciated the evidence you gave in the context of a previous inquiry, and thank you again today. We do wish you all the best, and thank you for all the work that you do in this space. I'll also take the opportunity to thank everyone who accompanied you today. That's greatly appreciated, and you're good people for doing that, so thank you very much.

BLISS, Ms Sam, Inspector, First Nations Division, Queensland Police Service

DEWIS, Mr Alan, Executive Director, First Nations Division, Queensland Police Service

EDE, Mr Michael, Acting Superintendent and Commander, Women's Safety Commission of Inquiry Implementation, Domestic, Family Violence and Vulnerable Persons Command, Queensland Police Service

HANSEN, Mr Damien, Detective Inspector, Homicide Investigations, and Operations Manager, Crime and Intelligence Command, Queensland Police Service

JOHNSON, Mr Kerry, Superintendent, First Nations Division, Queensland Police Service

KELLY, Mr Mark, Assistant Commissioner, Brisbane Region, Queensland Police Service

NIXON, Mr David, Detective Inspector, Internal Investigation, and Principal Investigator, Ethical Standards Command, Queensland Police Service

[10:03]

CHAIR: I now welcome representatives from the Queensland Police Service. Thank you for taking the time to speak with the committee today. This inquiry did visit Western Australia, and the WA police chose not to appear, which was to the great disappointment of this committee, which we expressed publicly. So it is greatly appreciated that the Queensland Police Service has attended this inquiry. As chair, I genuinely appreciate that. And thank you for providing the profiles of the witnesses here today, too.

Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. If you're asked any questions which take you into areas where you think you need to reflect on that, please feel free to take a question on notice, and then you can provide a more fulsome answer. Do any witnesses have any comments to make on the capacity in which they appear?

Mr Kelly: I'm the assistant commissioner currently at Brisbane Region. Before this week, I was the assistant commissioner of the People Capability Command for training.

CHAIR: Do you have an opening statement you would like to provide, Mr Dewis?

Mr Dewis: We have a copy for you. I was about to provide that as a speech to you.

CHAIR: You can. If you have an electronic copy and if you could send a copy to us electronically even now, we can just distribute that to the senators who are listening online. That would be greatly appreciated. Over to you, Mr Dewis.

Mr Dewis: Good morning, and thank you for the opportunity to speak before the committee. To begin, the QPS would like to respectfully acknowledge the First Nations peoples as the traditional owners and custodians of the country on which this event is taking place. We recognise the continued connection to land, sea and community. We pay our respects to them, their cultures and to their elders, past, present and emerging.

To assist the committee, we have provided short overviews of the experience of the witnesses to help members identify who may be best placed to answer particular questions. In addition to those seated at the table with me, we have a number of other subject matter experts who are able to contribute to this hearing, should a question be asked which is outside the knowledge of the members seated at the table. From the outset, I would like to assure the committee that QPS appears before the committee today to be as open and transparent as possible. The QPS is committed to building cultural capability, trust and transparency, and strengthening relationships between the Queensland Police Service and First Nations communities across Queensland.

I'll give you an overview of recent reviews and inquiries. The policing environment in Queensland continues to be characterised by rapid change, increasing complexities and increasing calls for service delivery. Effective policing requires the support of the community, and police must always ensure that they act within community expectations and in line with the standards which the community demands. The organisation has been the subject of numerous inquiries and reviews over the past 35 years, starting with the Fitzgerald inquiry, the report of which was tabled in parliament in July 1989. The Fitzgerald inquiry was followed by the 1991 Royal Commission into Aboriginal Deaths in Custody, which was formed in response to a growing public concern that deaths in custody of Aboriginal people were too common and were poorly explained. The final report, signed on 15 April 1991,

made 339 recommendations, mainly concerned with procedures for persons in custody, liaison with Aboriginal groups, police education and improved accessibility to information.

The 1991 Royal Commission into Aboriginal Deaths in Custody marked a change in the conduct of reviews and inquiries which followed, now seeing an increase in focus on First Nations perspectives and issues. Some of our more recent inquiries include the Women's Safety Justice Task Force's *Report One: hear her voice* and *Report Two: women and girls' experiences across the criminal justice system*; the Royal Commission into Institutional Responses to Child Sexual Abuse; the independent commission of inquiry into the QPS response to domestic and family violence that contribute to systemic reform, impacts of colonisation and racism; and the *Not now, not ever: putting an end to domestic and family violence in Queensland* report.

In each inquiry, there have been identified issues from which the QPS has learned. In responding to and implementing recommendations, we have sought to improve our response to the Queensland community. The QPS has also contributed to broader initiatives, including closing the gap; path to treaty; truth-telling and healing; reframing the relationships; and promoting multi-agency initiatives and partnerships to address and manage youth crime and recidivism, including whole-of-government initiatives and regional initiatives in collaboration with partner agencies and community; the development and embedding of cultural training to enhance awareness and capabilities; the establishment of a sentiment analysis and reporting platform to better inform the QPS in key policing and community issues.

To keep pace with the rapidly evolving environment, the QPS continues to explore opportunities to develop and maintain strong community relationships. We achieve this by the delivery of a high-quality, best practice and efficient policing service with a focus on the development of collaborative and integrated service responses to increase community safety. The QPS continues to remain agile to address the impact of new and emerging issues on the criminal environment and leveraging the recommendations of recent reviews and inquiries to drive reform and build a diverse and inclusive organisational culture.

An overview of the First Nations Division will now be supplied. The First Nations and Multicultural Affairs Unit was established in November 2020 to develop culturally responsive strategies to strengthen organisational cultural capability and the service relationship with Queensland First Nations and diverse cultural communities. As highlighted in the independent commission of inquiry into QPS's response to domestic and family violence, the First Nations and Multicultural Affairs Unit's effectiveness was constrained by structural and resourcing limitations. As a result of these findings, the functions of the First Nation and Multicultural Affairs Unit have been separated to ensure First Nations communities and multicultural communities have a dedicated work unit focused on their unique needs. This was recommendation 46 of the commission of inquiry.

To address First Nations cultural capabilities within the QPS, the First Nation Division was established and stood up in December 2023. That was recommendation 47 from the commission of inquiry. The First Nations division continues to progress significant bodies of work to build a culturally inclusive, responsive and capable workforce. This includes establishing the First Nations Advisory Group to build cultural capabilities through education, collaboration and consultation on strategies and objectives. The service is designed to improve policing outcomes for First Nations peoples and communities.

On behalf of the Commissioner of Police, the First Nations Division coordinates all requirements for the First Nations Mayors Summit. The summit provides an opportunity for the mayors, elected council representatives from discrete communities and the Torres Strait Islands to raise any community concerns with the commissioner, executive leaders and external guests from across government. The summit also provides an opportunity for the QPS to share information and discuss current and emerging policing challenges that are impacting our communities across Queensland.

As an outcome from the 2022 summit, the commissioner made a commitment to hold two summits per calendar year, within six to nine months. Consistent feedback received from previous summits identified the necessity for an increase in availability and discussion time with the commissioner and other relevant members of the executive leadership team as this is the preferred method to address major, ongoing and systemic issues.

In response to recommendation 41 of the commission of inquiry into domestic and family violence, the QPS has implemented cultural capability recruit training. This is co-designed and co-facilitated with internal and external subject matter experts. Cultural capability recruit training was first delivered in April 2023. Since then, five intakes have participated in training.

Our priorities for 2023-24 include enhancing our cultural capabilities to improve relationships and achieve positive outcomes for First Nations communities; working with each other, the community and partner agencies to strengthen our response to, and prevention of, domestic and family violence, youth crime and sexual violence;

responding to the needs of our communities by creating a victim-centric policing focus to prevent harm, trauma and crime; strengthening the integrity and professionalism of the police to enhance community satisfaction, trust and confidence in the QPS; and attracting and retaining the right people, proactively developing organisational capabilities with the First Nation Division, and taking a bespoke approach to recruitment of First Nations people across all roles of the QPS.

In closing, the First Nations Division is committed to working with external stakeholders and subject matter experts to assist this committee and to also progress the Queensland Police Service.

CHAIR: Thank you very much. Senator Cox, are you happy if I go to Senator Shoebridge first, to ask some questions?

Senator COX: I'm always happy if you put Senator Shoebridge in front of me.

CHAIR: I'm not sure how to take that, but—

Senator SHOEBRIDGE: I'll tell you, it hasn't been my experience in the party room!

CHAIR: Senator Shoebridge does need to go at 10.30, so I'll give him an opportunity first.

Senator SHOEBRIDGE: Thanks, Chair, and thanks, Senator Cox. I know that you sat in here and you heard Karen Iles's evidence. Did you?

CHAIR: I don't think that the people at the table did.

Senator SHOEBRIDGE: In the public session. Our inquiry has heard from multiple victims and survivors of serious sexual violence and family members who have lost a loved one to homicide. One thing they repeatedly say is that the police didn't treat them the same—that they, at many times, faced serious disrespect. Basic due diligence like taking a witness statement wasn't followed, or, if it was taken, it was destroyed. Perpetrators weren't identified and interviewee. If you look at our submissions, you see that happens time and time and time again for First Nations families. Do you acknowledge what you just put to us: that there is a deep breakdown in trust between a great bulk of the First Nations community in Queensland—and it's not limited to Queensland—and your service? Do you acknowledge that as a starting point?

Supt Johnson: Can I say it's case by case? Some communities we work really well with, and in other communities there are tensions and there are issues. I would concede that across the board there are hits and misses—in some areas we do well and in some areas we don't. I can certainly say that in my area, with the First Nations Division we probably come at it in a slightly different way: we're not taking statements off witnesses and we're not taking reports and so on. But as an observation around it—and I base it on the fact that we meet with the 15 discrete mayors and the two Torres Strait shire mayors twice a year—we have a lot of discussions. Do issues come out of that? Of course they do. There is some genuine discussion that goes on there. So I'm not going to say no to that, but I think that's a massive generalisation across the board, because there's a lot of communities where it works really well.

Senator SHOEBRIDGE: If you just look at some of the data, the data says that First Nations children in this state are more than 20 times as likely to be in a watchhouse right now in detention than a non-First Nations child. You don't think that's evidence of a systemic problem?

Supt Johnson: You've gone from talking about people making complaints to what our incarceration rates are. I'm fully aware what the numbers are for incarceration, but keep in mind we're a victim-centric organisation. When people make a complaint, we take action. We don't get to decide on who we do or don't arrest for something. The evidence takes us to where we end up in a court process and so on with incarcerations. We don't decide who gets incarcerated—that's part of the justice system. I hear what you're saying, and I agree with the figures, but from the perspective of police, that's our role. Our role is to protect life and property.

Senator SHOEBRIDGE: You look at these two things together—victims and families saying that there's systemic discrimination against them in the policing system and they don't feel safe coming to police, and then another data set that says First Nations children are 21 times more likely to be held in detention than non-First Nations children—and you don't see any connection between the two? You don't see how that massive over-policing of them and their families might also break down the—

Supt Johnson: I don't have all the people who have spoken to you and the information that you have to see how many people are talking about. I'd have to look at it case by case and what people are complaining about to see whether it's the same issue or similar issues across the board. I'm not making excuses; I'm simply saying that our job is to put people—offenders—before the court. As to what their race, genetics—whatever—it doesn't come to factor. Our job is to put people before the court.

Senator SHOEBRIDGE: And it just happens to be massively skewed against First Nations people? You just go wherever your force takes you? If it just happens to produce a massively racially biased outcome against First Nations peoples, that's just what—something we should accept?

Supt Johnson: I can only speak for myself. I'm not racially biased. Other people on the panel here, I'd suggest, are not racially biased. The individual—

Senator SHOEBRIDGE: It's the system.

Supt Johnson: I'm sorry, I'd have to look at it. I'd have to look at who you're talking about, look at their complaint history, which I don't have access to, and so on.

Senator SHOEBRIDGE: One of the things we've heard is a call for a basic minimum standard of policing for serious sexual violence and crimes of homicide. Would the Queensland police accept a clear legal obligation that in a case of serious sexual violence or homicide they must, at a minimum, take a statement from the victim or the victim's family, show them respect, take statements from material witnesses if available, and at least seek to interview the alleged perpetrator? Would you accept that as a basic minimum standard that the public should expect from police?

Supt Johnson: In 4½ years at Homicide, I did that on every occasion, and everyone that I know of in Homicide did that on every occasion. Perhaps Detective Hansen could speak further to that.

Senator SHOEBRIDGE: Would you resist it as a basic minimum standard?

Supt Johnson: I would say that is a basic minimum standard.

Senator SHOEBRIDGE: Would you accept it as a legally binding minimum standard of police?

Supt Johnson: That's our job.

Mr Hansen: Senator, I would insert that, in every homicide I've been involved in, that is the case.

Senator SHOEBRIDGE: So we're on common ground—that the police force would accept that as a basic minimum legal standard.

Mr Hansen: Yes.

Senator SHOEBRIDGE: You know there is no current legal obligation on police to do this?

Mr Hansen: No, but there would be an expectation, for putting it through the court, that that's what we would do.

Senator SHOEBRIDGE: I hear you say that about homicide, and I'm glad to hear it, Detective Inspector. What about for cases of serious sexual violence? Do you think the same standard should be accepted, and do you also accept that there's no resistance to making it a legal obligation in cases of serious sexual violence?

Mr Hansen: I'm not from that area and have never worked there, but, certainly, as a regional detective I would have that expectation. It's the same process. You've got to speak to family, you've got to speak to victims and you've got to speak to all witnesses and take that in statement format.

Senator SHOEBRIDGE: Again, Detective Inspector, I'm glad to hear that. But we've heard from multiple witnesses who say that, when they come forward to police in cases of serious sexual violence, they are disrespected. In many cases a statement is not even taken because they're disrespected by police. In some cases, even if a statement is taken, there's no follow-up. There's this sense of disempowerment and being retraumatised by the police response. Do you accept that there's an obligation for the police to hear that and to respond to it as a system? I might go to you, Inspector Bliss.

Ms Bliss: I've been a detective for a long period of time before getting my position—

Senator SHOEBRIDGE: I've read your bio.

Ms Bliss: in the First Nations unit. But as a child protection investigator—that's primarily my core business; that's what I used to do. Definitely, I think that there's more than just taking statements from an investigator point of view, particularly in that space and that landscape. It's more than just statements. It's about crime scene containment. It's about gathering the evidence to support that. But hearing this from the victims who have stepped forward and provided this information does concern me from an organisational point of view—that we have police out there that aren't being victim-centric, that aren't focused on our victims. It actually is concerning, and that's something that we need to be better on and, certainly, we need to look at our people if this is what's happening.

Senator SHOEBRIDGE: Again, Inspector Bliss, I don't get any resistance from you by saying that should be an obligatory requirement of police. Do I understand your evidence right—that it should be obligatory?

Ms Bliss: Absolutely.

Senator SHOEBRIDGE: From the evidence we've had, there seems to be a compelling case for it. If it needs to be established in legally binding obligations on police, as I understand the panel here we're not seeing resistance to that. Unless somebody wants to correct the record, we're not seeing resistance to that. Is that right?

Mr Kelly: The Police Service Administration Act does place onuses on police to investigate and carry out their duties. So the legislation is there. And then we have policies that also explain how you do investigations. Those materials are already in existence in Queensland. Again, it's case by case, but things should be investigated, no matter what they are, particularly serious offences as you've articulated.

Senator SHOEBRIDGE: Assistant Commissioner, it's not my understanding that the act puts that obligation on police. If you can identify the section that actually provides that obligation on police, please do.

Mr Kelly: It won't specifically talk about homicide or missing persons, but, as a duty, police have an obligation to investigate offences and uphold the law.

Senator SHOEBRIDGE: If you could point to the section that provides a statutory obligation on police to investigate matters, please do.

Supt Johnson: You're probably talking about the operations procedures manuals. It sounds like you're talking about them.

Senator SHOEBRIDGE: No, I'm asking Assistant Commissioner Kelly what he's talking about.

Mr Kelly: I'm happy to look at that act straightaway.

CHAIR: With your indulgence, Senator Shoebridge: just to give you a bit of an explanation, Assistant Commissioner, the previous witness referred to the merits of having a legally imposed minimum duty of care placed upon police that the victim of a crime or someone who alleges a crime would be able to enforce.

Senator SHOEBRIDGE: For the most serious crimes.

CHAIR: For the most serious crimes; we're talking about homicide, sexual assault, violence et cetera. So that's the context. I'm happy for you to answer Senator Shoebridge's question or take it on notice—

Mr Kelly: I can take it on notice.

CHAIR: in considering it in that specific context.

Mr Kelly: I was saying the Police Service Administration Act was put in place to make sure that police follow their duties—we can't list every duty in an act. Then it's supported by the commissioner's policy. Does that make sense?

CHAIR: Sure. But one of the questions is whether or not a victim would be able to themselves enforce that as between themselves and the Queensland Police Service.

Senator SHOEBRIDGE: I don't think it's controversial that there is no current legal capacity for a victim or the family member of a victim to compel the police to properly investigate even in the most serious cases. But if you can point to some evidence that is contrary to that, please do. You'd be aware that policies aren't legally enforceable by victims.

Mr Kelly: No; they're only enforceable within the organisation under our code of conduct.

Senator SHOEBRIDGE: You'd also be aware, I assume—I might put this to you, Mr Dewis—from your engagement with First Nations communities across the state that First Nations communities overwhelmingly have no faith in police investigating police. In fact, that's repeatedly said, isn't it—that they want to end the system whereby police investigate police.

Mr Dewis: As Superintendent Johnson has already indicated, that's a difficult question to answer on behalf of the whole First Nations community of Queensland. There is a theme of, 'That is a response that's put to that', but there are differing views amongst community. We have a diverse community, and particularly from my community there are very different views as well in regard to that.

Senator SHOEBRIDGE: I'm not saying 100 per cent of First Nations peoples have this; I'm saying that, overwhelmingly, the vast majority of First Nations peoples in this state that you would come across, that Inspector Bliss would come across and engage with, believe that police should not investigate police because they don't feel like that's fair.

Supt Johnson: Can I say that I think, and I have a fair bit of involvement—

Senator SHOEBRIDGE: Superintendent, we've brought Mr Dewis here because of his role in the First Nations Division; I might let him have the first go, and then I'm happy to go to you.

Mr Dewis: Without a full and frank analysis of that, I'm not in a position to give you an opinion on that. I cannot answer that question.

Senator SHOEBRIDGE: If we can't even establish these baselines, if there's no effort to establish systemic or racial bias—you say it's case by case, Superintendent—and if you don't have a handle on the broad opinion of First Nations peoples in Queensland, how can you address some of the systemic problems if it's all just case by case: 'Oh, I've found one person who disagrees with you'? How can you address the systemic problems if that's your answer: 'There's some bloke in Weipa who disagrees with you, so we're going to do nothing'?

Mr Dewis: On how we get a handle on what our community is saying: it is that broad community engagement, that partnership across Queensland, and speaking to all areas. We have a very large First Nations community, in the sense that all voices are respected and heard. Yes, there will be some people with that opinion, but you've asked me if that is overwhelming, and I'm not in a position to answer that question.

Senator SHOEBRIDGE: 'All voices will be respected and heard' is a get-out-of-jail-free card for police. If you can find one First Nations voice who says, 'Be tougher on crime; the kids deserve to be in jail', and if you can then say, 'We can just ignore the overwhelming opinion, the overwhelming voices from the rest of the First Nations communities, that they're the subject of racist policing', it's a get-out-of-jail-free card for police, isn't it?

Mr Dewis: You're asking for an opinion again. I'm not in a position to answer.

Senator SHOEBRIDGE: What proportion of the Queensland Police Service identify as First Nations?

Supt Johnson: I can give you the percentage there. Our organisation is an 18,000-plus organisation. Of the 18,000 organisation members, approximately 11,000 are police officers that are sworn. At the moment, as identified—and it's not mandatory for our members to identify; it's self-identification—it is 2.4 per cent of our staff members, which includes Torres Strait police liaison officers and so on. All staff members is 2.7 per cent. I think they are the two figures that you're after.

Senator SHOEBRIDGE: If you don't have it here, could you provide it on notice by rank—the 2.4 per cent in uniform?

Supt Johnson: I can if you like. From the stats we have here from the organisation, from 31 January this year 1.5 per cent of commissioned officers and two per cent of senior sergeants identify—so that's of the entire ranks; I'd have to find out how many senior sergeants or commissioned officers we have. There are 2.9 per cent of sergeants, 2.7 per cent of senior constables and 1.2 per cent of constables who identify, which is the largest cohort in our organisation.

Senator SHOEBRIDGE: What proportion of people charged by the Queensland Police are First Nations?

Supt Johnson: I'd have to take that on notice. I don't have that figure on me.

Senator SHOEBRIDGE: But we can say from that data that, apart from constables right at the bottom, the higher you go the less representation there is of First Nations people in Queensland Police. The closer you go to policy setting and resource allocation, the less First Nations people are found in Queensland Police. That's what the data says, isn't it?

Supt Johnson: The percentages are what they are. I've read them out.

Senator SHOEBRIDGE: There's nothing incorrect in my statement, is there—that the higher you go in the police and the more likely people are to have responsibility for policy settings and resource allocations, the less likely they are to be First Nations.

Supt Johnson: It's not mandatory for any sworn officer to identify as First Nations. We don't collect that data. That's a voluntary thing. Everyone's on their own journey on whether or not they identify. Our Working for Queensland survey—which was done by a large percentage of organisations—showed that, across the board, 4.5 per cent of officers identified as First Nations. What they tell our organisation—which, as I said, is not mandatory—doesn't match that figure that says 2.4.

Senator SHOEBRIDGE: If police don't feel safe telling you that they're First Nations, you've got an even bigger problem, haven't you? If only half the people who are First Nations feel safe telling you they're First Nations within the organisation, you've got one hell of a problem, haven't you?

Supt Johnson: The stats are what they are. I'm not going to comment on what I personally think about that.

CHAIR: Thank you, Senator Shoebridge.

Senator GREEN: I'll start with some general questions, and then I have some specific ones that I understand might need to be taken on notice for a more detailed response. I want to understand, initially, what structure

Queensland Police has in place to support families when an Indigenous person goes missing. How are families supported, communicated with and included in decision-making?

Mr Hansen: I'll answer that question. In relation to family liaison officers for missing persons, we have a section under our policy in chapter 12 of our operations procedures manual which outlines the roles and responsibilities of the investigating officer and how they interact and liaise with family members.

Senator GREEN: Sorry—from your answer, I'm not sure whether there's a different approach for First Nations families.

Mr Hansen: No, it's not. It's an approach for all families, but certainly on a case-by-case basis, if you're in a community, as such, or in cities, it may differ. Certainly, from my experience of communities, it's very different to how we interact with families in the south-east corner.

Senator GREEN: Sorry, but that's not an adequate situation at all.

CHAIR: Senator Green, we've got other witnesses at the table who want to add to that answer. I know you don't have the benefit of seeing them, so I'll try and make sure that anyone who's got information to respond to your questions as you ask them has an opportunity to give you their input as well.

Senator GREEN: Thank you, Chair.

Supt Johnson: Just to add to that and to what the detective inspector said, those investigations are managed by officers in the districts. Also, what is at their disposal—in particular to areas up north and out west or everywhere, for that matter—is our PLOs. That's our police liaison officers or Torres Strait Islander police liaison officers. That's certainly an option that's well known to all those areas to be able to engage with those members, to be part of the family liaison. Sometimes that's not possible for different reasons. It could also be due to conflict inside of communities and so on. I can also say that, from time to time when there have been issues, members from discrete communities and quite remote communities will reach into a network of First Nations people who we deal with in our area at First Nations Division, and we're able to progress investigations. That quite often happens at coronial matters and so on.

Senator GREEN: From your evidence, as I understand it, support for families of people who are missing or murdered is on a case-by-case basis, and there are no specific requirements or policies or procedures that enhance that support for First Nations families.

Mr Hansen: It's not directly for First Nations. It's for all missing persons. And certainly, for homicides, there's an external agency that we work very closely with, the Queensland Homicide Victims Support Group. They are a 24/7 organisation. We notify them at the beginning of an investigation. I have spoken to the CEO this week. He has advised me that his staff are culturally trained for their service delivery, and part of their reconciliation program that they're doing this year is to do further cultural training for First Nations for all their volunteers and service providers.

Senator GREEN: My specific question at the beginning was: how are families included in decision-making?

Mr Hansen: Is that in cases of homicide or missing persons?

Senator GREEN: Is that for any family? I ask that because I understand you don't have a different approach, but I'm curious to know how families are included in decision-making.

Mr Hansen: The investigating officer at the beginning will appoint a family liaison officer and identify a key point of contact within that family. They will take family concerns. We will advise them of how the investigation is progressing. For missing persons, it's a case that, before media is conducted, they consent to media. Homicides are very different in that we can't control the media for that side of it. One thing we have to be very careful of, as in all of these cases, for the family liaison is to make sure that it's not a case of telling domestic violence respondents information about the aggrieved. It's also, a lot of times, a case-by-case basis. I know I've used that term a bit today, but it's case-by-case on how much we can tell families in various situations because it could be something happening within the family unit that has resulted in this.

Senator GREEN: I have one more general question, and then I have specific questions about a couple of cases. If your approach to supporting families is on a case-by-case basis, how do you ensure that all families are receiving the same support and that no family falls through the cracks?

Mr Hansen: Within homicide, I can say that we appoint the family liaison officer and they work out of the investigation centre with the managers of the investigation, and we will advise them of what we need the family to know. Likewise, that family liaison officer will report back to us on concerns that the family have, and we will attempt to address that. On missing persons, again, we have 9,600 missing persons a year in Queensland. It's very different, how different officers in different regions will respond. But we have attempted to address that by

putting their roles and responsibilities as family liaison officers in our operations procedures manuals, and that is to hopefully get a unified response across the service.

Senator GREEN: I just want to ask you some questions about some cases that have been publicly reported but also have had a coroner's inquest—so the report from the coroner is publicly available. I obviously don't want to prejudice any ongoing investigations if there are any, and you may need to take some questions on notice. I wanted to ask you, first of all, about the investigation into the death of Elsie May Robertson. For context, I live in Cairns, and Ms Robertson was found dead in Cairns in 2013. There was a coroner's inquest into her death. Her death has been described as entirely preventable, which is awful when you're talking about a loved one. I wanted to know how the recommendations of the coroner's report have been actioned, specifically the ones made from the coroner's report into the death of Elsie May Robertson.

Mr Ede: Thank you for the question. With regard to the recommendation on training, it related to recommendation 138 from the *Not now, not ever* report and required us, the Queensland Police Service, to update our training with regard to domestic and family violence matters. We'll be reviewing them and undertaking investigations from a holistic nature. What I mean by that is moving it forward from an incident based investigation into an event based investigation. I can describe that from the concept that domestic violence runs over a period of time. As the senator indicated, there were a lot of previous interactions with the person that was eventually convicted of the murder of the victim on this occasion. It's looking at the history of that particular relationship and the incidents that have occurred over time and putting that towards a fulsome investigation to determine the nature of how a criminal prosecution or a protection regime can be applied to that person.

Prior to the deceased being located on that particular incident, there were previous interactions with the justice system with that particular individual. It's a matter of, with the history of the incidents, making sure a holistic investigation draws you to a better outcome in that time frame. So our training was upgraded to make sure that we were looking towards more holistic approaches—back in 2017, in particular. As the senator is probably aware, there was a response by government with regard to the closure of that particular recommendation as the training had been updated and the QPS response to moving away from incident based investigations was updated. I'm not sure if that fully answers your question.

Senator GREEN: It does in part. One of the significant features of the case was the response time. Did the recommendation around training go to the response time?

Mr Ede: That would have been the outcome through the discipline process that followed. I understand, regarding the response times, the call that came in to police communications in Cairns was at around nine o'clock that evening and that the police response on-scene was somewhere in the vicinity around 10.20 pm. So there was an hour and 20 minutes. That was the subject of an internal investigation, which was also evidenced in the inquest.

Senator GREEN: Have the Queensland police ever offered or issued an apology to Ms Robertson's family?

Mr Ede: I'm not aware if there was an apology offered to that family.

CHAIR: Can you take that on notice?

Mr Ede: I can look into it.

Senator GREEN: I have one more question, Chair, if that's okay.

CHAIR: Sure.

Senator GREEN: I'm confident that you will have to take this on notice, but there was also a coroner's inquest in 2022 into the disappearance of a woman—I'm not going to name her—from Cape York, from the township of Kowanyama. I'm just hoping maybe, on notice, QPS could answer the same questions, about the actions that have been taken in response to the coroner's report. Chair, I'll be guided by you about how we receive that information because I'm very conscious that there is an investigation underway and I don't want to prejudice that in any way.

CHAIR: Thank you, Senator Green. I might suggest that you take that on notice and reflect upon what you can advise us, given the status of your investigations. I think that would probably be the most prudent way to proceed in relation to that matter, if everyone's happy with that.

Mr Ede: Thank you.

Senator GREEN: And I will have some questions on notice that I'll put to QPS in relation to that case so that they can be dealt with in the same way.

CHAIR: Excellent. Thank you, Senator Green. Senator Cox, over to you.

Senator COX: Thank you to witnesses for appearing today. I echo the chair's comments in relation to the fact that Queensland Police did front up today to our inquiry. I relay my thanks. It didn't happen in my own jurisdiction, in Western Australia, but I'm glad that you're appearing today as witnesses. I also want to thank you for your opening statement. That provides a bit of a scaffolding for some of the questions that I have. In your opening statement—is it Superintendent Dewis?

Mr Dewis: Executive director.

Senator COX: Mr Dewis, you didn't mention the recent inquiries or reports—in particular, from Queensland, the *Aboriginal and Torres Strait Islander Women's Task Force on Violence report*, in 1999. Is there any reason that Queensland police don't refer to that report?

Mr Dewis: Could I just seek clarification on that? We mentioned, obviously, the Women's Safety and Justice Taskforce report *Hear her voice—report 2: women's and girls' experiences across the criminal justice system*. Are you asking why we mentioned that or whether we didn't mention it? Sorry, Senator; I just couldn't hear that.

CHAIR: Which report are you referring to, Senator Cox?

Senator COX: It was the *Aboriginal and Torres Strait Islander Women's Task Force on Violence report*, in 1999. The taskforce was chaired by Dr Boni Robertson. It was a very important report—and it now goes back 25 years—talking about the history of Aboriginal and Torres Strait Islander women in Queensland and the issues they've been raising for this period of time. I'm just wondering why it's not a reference point in this, in that you're framing it with the Aboriginal deaths in custody report, an important report from the royal commission, but this report goes to the heart of what this inquiry is about. So I'm just wondering why it's not a reference point. We don't put our intensive labour into an inquiry and taskforce for it not to be referenced ever again. That's just a question to Queensland police.

Mr Dewis: I acknowledge that question and acknowledge that great work done by Professor Robertson. But, particularly in the sense of currency, there's the Women's Safety and Justice Taskforce and the work for the commission of inquiry. Obviously, we're following through with previous issues highlighted. So there's the relevance of that in the current report. But the reason why we framed it and started with the Royal Commission into Aboriginal Deaths in Custody—just for context—is that, out of that, significant cultural change commenced with the Queensland Police Service, particularly with the police liaison officer program, as one of those key objectives that came forward from the Royal Commission in Aboriginal Deaths in Custody.

Senator COX: You'd probably agree, Mr Dewis, that it didn't just start in 1991; it started nearly 250 years ago for us. That report in particular sketches that out, so I just wanted to bring that to your attention.

Can you please highlight to me—and Senator Green and Senator Shoebridge have already asked some of this—what the particular police procedures are that take into account the cultural needs and differences of First Nations people? I know you mentioned that your operating procedures manual doesn't offer that. What we know is that in some of these cases of both missing and murdered women and children it's not just domestic violence; these are non-Indigenous men who are the perpetrators or offenders in these instances. Can you walk me through those policies and procedures that take into particular account the cultural needs of the victims and/or families of missing and murdered women and children?

CHAIR: Senator Cox, I'll go first to Assistant Commissioner Kelly.

Mr Kelly: I might just talk about the training that we've developed. It's multifaceted. It's layered training and it certainly focuses on domestic and family violence, First Nations and the broader cultural groups. Following the commission of inquiry—it actually started before the commission of inquiry, after a couple of coronial matters, the tragic deaths of Doreen Langham and Hannah Clarke and the children—the Queensland Police Service implemented a number of changes to training. For police recruits, we went from nine days domestic and family violence to 21 days, and we extended our program to include more scenarios, more understanding, in a victim-centric, trauma informed approach.

At the same time, we have implemented cultural training. There are three days; two days are for First Nations. It's about understanding history, intergenerational trauma, how police are potentially perceived, how we can do our job better, how we can communicate better with First Nations communities and the fact that women are overrepresented as respondents when we know that they're really the people most in need of protection. We started with three-day training for all police and all relevant staff members. We've trained over 13,000 people. This year we've continued that program. It's two days. Again, it includes how we can better interact and work with the community when they're victims of crime, particularly First Nations people.

When I say we've also layered that into our other training, I mean we're training all our frontline supervisors, leaders, people who work at our non-urgent call centre and our communication centres and all those people who

work in our vulnerable persons units. Under our definition of vulnerable persons, someone from First Nations is deemed to be vulnerable until the contrary is shown. So we're training the police in those skills and the understanding so that they can improve their approaches to investigations. This is all investigations—conducting their business in a victim-centric and trauma informed way.

We know we need to do more cultural training, so we've developed an online training package. I think we've had over 4,000 people already do that training package. From the middle of this year, we will start face-to-face training with all police in the police service for cultural training, particularly in relation to First Nations. We work with the First Nations divisions. It needs to be co-designed with First Nations communities. The training that we've delivered to police recruits—and I've got Acting Senior Sergeant Sean Flanagan here who led that for us—was developed with community to try and make sure that we were getting the right messages to our police recruits. So they start with that learning and understanding, and then we build on that training.

Recommendations 5 and 96 in the Women's Safety and Justice Taskforce report 2 talk about improving our responses at front counters in police stations for First Nations people who have been the victims of sexual offences. This is about building those skills so that people can operate in a way that we are looking after First Nations people—understanding and building trust with them to make them confident to report matters to us. I don't think the police liaison officer network was mentioned earlier. It has a high representation rate, obviously, for First Nations, from the numbers that Superintendent Johnson gave. There are over 200 positions. They're located throughout Queensland, and they are a very important connection with the community when these matters happen.

I know Inspector Hansen spoke about family liaison officers, but, in communities, the fact that a police liaison officer is going and reaching out to those families is particularly important. For all missing persons investigations, people should be talking to family regularly to get new information and to see whether they've heard from a family member or a friend. Those things should be in place, where people are updating reports, as Inspector Hansen said. Part of our training at the academy is not only, 'Hey, this is why a missing person is really important,' and doing a face to face and an online product and discussion exercise; there's a full day in the classroom about entering the report, linking and trying to start tasks to make sure things are investigated. That's then supervised by supervisors and officers in charge to make sure—as Inspector Hansen said, there are nearly 10,000 missing person reports a year—that all matters are investigated thoroughly.

At the end of our recruit training for missing persons, we also focus on some scenarios in their last two weeks to try and give them that real-life exposure. Some of those exposures are when you've gone to a job and it's a victim of a First Nations offence. How are you going to communicate with that person? How are you going to approach that particular incident? So training is particularly important. We've got to have supervision and a system of checking. That's, like I said, our key prime system for missing persons and other investigations as crime managers and officers in charge. If there's a particular policy—I did speak about the Police Service Administration Act, which is overarching. Section 2.3 of the Police Service Administration Act compels us to investigate offences. It's the training of how we do things with community that I think is important—with all people but, particularly, First Nations people and, as the population changes in terms of migration to Australia, other cultural groups.

CHAIR: Senator Cox.

Senator COX: Thank you, Assistant Commissioner Kelly. I've heard in other policing jurisdictions about having three days of cultural training and how appalling it is that we then start to call it cultural capability and cultural safety, in the sense that we think First Nations people can have some sort of trust and relationship with police in and across Australia. It's pretty disappointing that we're still at that stage. Thank you for trying. My interest is in the family liaison officers—

CHAIR: Sorry to interrupt, Senator Cox. I'm keenly aware that you don't have the ability to see the witnesses.

Senator COX: No, I don't.

CHAIR: My interruption is simply to say that, if someone at the table gets my eye and wants to contribute to the answer which has been provided to you, I'd like to give them the opportunity.

Senator COX: No problem.

CHAIR: Mr Dewis.

Mr Dewis: Thanks, Chair. Senator Cox, I would just like to add to what you've heard from Assistant Commissioner Kelly highlighting our training. I think it's important to share with you how we evolve or elevate that training. Also, when I talk to that piece, it's from a Queensland perspective and a whole-of-government perspective.

In the Public Sector Act in Queensland, under section 21, there is a responsibility for supporting and reframing the relationship with Aboriginal peoples and Torres Strait Islander peoples. Reframing the relationship has eight principles, and I'll go through them for you because there are important points to these principles. Section 21(2) reads:

- (a) recognising and honouring Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland; and
- (b) engaging in truth-telling about the shared history of all Australians; and
- (c) recognising the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination; and
- (d) promoting cultural safety and cultural capability at all levels of the public sector; and
- (e) working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them; and
- (f) ensuring the workforce and leadership of the entities are reflective of the community they serve, having regard to chapter 2 and chapter 3, part 3; and
- (g) promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples; and
- (h) supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.

The reason I've spoken to those eight principles is that all agencies or entities across government—and that's inclusive of the QPS—are required to complete a reframing the relationship plan. We're in the process of drafting ours and consulting with community as well, so we're not in a position to share that at this stage, but what I'm highlighting is that there is a significant cultural transformation that will occur within the Queensland Police Service with this plan. I'm saying that because the plan isn't just a plan; it has an accountable mechanism that's built into section 23 of the act, which requires the plan to be audited each year. It also requires a publishing of the plan and the audit, and requires, in response to the audit each year, a continuous improvement plan. QPS acknowledges that we have a lot of work to do with the cultural transformation, but it's continuous work and we're looking for that continuous quality improvement. This aligns to both Commonwealth and state strategies and plans, but reframing the relationship particularly is captured within Queensland's whole-of-government reconciliation action plan.

Senator COX: Thank you. I don't know who that was.

CHAIR: That was Mr Dewis.

Senator COX: Mr Dewis—thank you very much for that. It was an important framing. As a former police officer, I know that we can provide training and we can provide policy and procedure but, unless we follow this through on, as you said, quality improvement and processes, the cultural shift will never change. It's unfortunate that that continues in lots of our police forces across Australia, because it's to the detriment of First Nations people. It's wonderful that you've read me the wonderful Queensland public sector charter—I suppose that's what they might call it—but my office in particular still continues to grapple with complaints on a weekly basis about police jurisdictions not doing their job and not supporting the families of First Nations people, particularly First Nations women, who have been murdered. I think, if we had to self-determine, we wouldn't call on police forces across this country to support us.

So I speak from that experience in the Senate office in saying that we continue to see the aftermath of trauma for our communities and our families, who are still waiting for their women and their children to come home many, many decades on. The systemic failures are the things that we are tasked with in this inquiry to look at. So I think it's great that people are pulling together documents and have the best intentions with those, but, unless we see action and we see accountability mechanisms put into systems, we are not going to see that change—and definitely not in my lifetime.

I want to go to the question that I was going to ask, and that's about family liaison officers and the quality improvement process. I'm sorry that I can't see your name tags and I can't see who provided that evidence, but can you tell me how many of your family liaison officers are First Nations people?

CHAIR: So that question is about the percentage of police liaison officers who are First Nations.

Senator COX: No, it was about family liaison officers in homicide.

CHAIR: Sorry—family liaison officers.

Mr Hansen: There is not a specific group of family liaison officers in the QPS for that. Generally, they are a case officer for a missing person or appointed in an investigation centre, as part of one of our roles in homicide. So it will be different on every job. It's someone from the local district because, with the homicide unit, we're

based in Brisbane. If we're doing a job, for example, in Cairns, it will be someone from Cairns. That way, they're there on the ground and will be for a time and can liaise directly with the family.

CHAIR: Inspector Bliss had something to add, I think.

Ms Bliss: To add to Detective Inspector Hansen's response: if they are First Nations families or victims that have been affected by this crime and they're appointed, there is consideration about using our police liaison officers or our sworn First Nations officers as the ones appointed or assisting the family liaison officers that are appointed to those jobs to support that process. However, it needs to be very clear that, with our police liaison officers, it's actually not a function of theirs. So, being a family liaison officer is not a function in a police liaison officer's role. However, like Superintendent Johnson stated previously in this inquiry, sometimes there can be conflict or conflicts of interest if we appoint a First Nations identified police liaison officer to the particular crime, particularly if the victim or the families are First Nations, because it could be a family conflict. So they're the considerations that need to be taken, but they do consider utilising our police liaison officers to assist the family liaison officers for First Nations matters.

CHAIR: Thank you, Inspector Bliss. Superintendent Johnson had something to add, Senator Cox.

Supt Johnson: What I can say works well is that initial point of contact, where a First Nations or Torres Strait Islander PLO has contact with the family and introduces the designated family liaison officer. When that relationship starts to tag along, and trust is built, then you'll find that the PLO will generally step away from it, because it's not their wheelhouse; it's not their job. They'll step away and continue on with the work that they do. We see that has quite a high level of success, whether it's to do with homicide investigations or coronial matters and so on. It's a pretty well-known formula that works.

Senator COX: I wanted to query this. I think in your evidence already you alluded to the fact that family liaison officers, particularly in homicide cases, continue to work with the families and regularly update the terminology that you use. Is part of the quality assurance process that senior officers do check in with families to understand whether they've had everything that they've needed during the time? Particularly, I want to draw attention to pending court cases and trials, where families may travel from regional areas. Given that 11 of the 14 profiled cases out of Queensland all come from regional areas, you're going to have families who will be travelling there—probably to Brisbane. What's the QA process to make sure that families have proper wraparound support, and they're not just being fobbed off to external organisations where they do fall through the gaps?

Mr Hansen: We work very closely with the Queensland Homicide Victims' Support Group. That is something that we do in conjunction with them. We have regular meetings with them and update on cases. Brett Thompson, the CEO, will contact my office if there's any issue either with a family liaison officer or with the families towards police. We resolve any issues that way. Certainly, they provide all assistance to the families regarding transport and that through to victims of crime funding, and they will bring them here. They give them support from day 1 of the investigation, and that continues after the prosecution as well. Family liaison officers are something that I will concede are done differently on a personality basis, but it generally is an overview while the investigation is carrying on. It's something that we take very seriously, and it's an important role within our investigations.

Senator COX: Thank you, Mr Johnson. The point I'm trying to make is that some of our First Nations families will not feel comfortable talking directly to victims-of-crime services, particularly if they're mainstream services. My interest is: what's the culturally appropriate option—a community-controlled organisation—or something that is put in place to stop the people falling through the gaps in relation to the continuity of care and the duty of care that is required to ensure that families are able to manage? I think previous witnesses have told us the distressing circumstances in which they've had to talk to the police about having to clean up crime scenes and not being able to talk to anybody about that. That's because victims-of-crime services work from 8 am until 4 pm, as some of your policing divisions do also. They're not able to contact their family liaison officers. I see that there's probably a significant gap here in the system, where our families are not being supported. I'm just interested to hear where our Queensland police are covering that gap, if at all they've identified that.

Mr Hansen: I can't answer with regard to other jurisdictions, but we're a 24/7 jurisdiction. If a family liaison officer isn't available, certainly through the local district we would have someone else in place, unless there's a specific case.

CHAIR: Senator Waters and I both have questions, Senator Cox. We're proposing to split the time between us.

Senator COX: Yes, that's fine. I'm happy to put the rest of my questions on notice.

CHAIR: Good on you. Thank you.

Senator WATERS: Thank you very much for giving us your time today. Can I just come back to some of the training information that you provided to us; thanks, Assistant Commissioner Kelly. I jotted down that you said that the family and domestic violence training for new recruits had increased up to 21 days, which I was pleased to hear. That's for new recruits. Can I just check when the training for existing police officers, and what proportion of training for existing police, has been rolled out?

Mr Kelly: All police and relevant staff members—people who work on counters or in communication centres, so people who regularly have contact with members of the public. In 2022-23, there were almost 13,000 people who did the three-day family and domestic violence training. This training included a focus on vulnerable groups, which included First Nations people.

This year, we've started training everyone in another two-day training program. There is a greater focus on First Nations, but fundamentally it's about being victim-centric and trauma informed and understanding things from the victim's point of view. On top of that, all supervisors and other people who work in comms and Policelink are all doing, over a two-year period, five additional days of training. We've committed to doing annual family and domestic violence training going forward. Obviously, if there's new legislation brought in, that will be on top of it as well, potentially for coercive control or whatever new laws may be passed.

Senator WATERS: How long will the annual training go for?

Mr Kelly: It will be at least one day, but it just depends on the content. Initially, when we looked at the 2022-23 year, it was going to be two days, but the material presented that it needed to be three days, so we ran three days. The next year, we've run two days.

On top of that, we've also had some other trials of video recorded evidence in two districts. Those people and those districts, Ipswich and the Gold Coast, did two days of video recorded evidence, which is another good way of capturing evidence from witnesses. Rather than people being taken out of their homes, it can be done there at their homes or other places, and it's a more natural way to take a statement, rather than sitting there and typing a statement. So video recorded evidence is something we're currently trialling.

Importantly, moving forward, we've got a domestic and family violence command who are the subject matter experts. They work with the sector, and that's where Mr Ede works. They work with other groups, such as ANROWS, to try and build better training. ANROWS reviewed the package for that first training that I spoke about in 2022-23; they gave us some feedback that then helped us inform the next round of training.

Alan spoke about the cultural training, and he mentioned cultural training unit. At the police service, we had one PLO trainer, police liaison officer trainer. We've expanded that unit to a First Nations and cultural capability training unit, which will have nine people.

Senator WATERS: To train the 18,000 police—

Mr Kelly: Well, it won't be just them, because we're so dispersed across the state. By way of example, with this cultural training that we're going to undertake face to face from the middle of this year, we've asked for and got people who identify as current police members to be involved in the delivery of that training, because we see it as really important to have the right trainers. We normally train in a 'train the trainer' model. We bring all the trainers in, we train them—if it's a two-day package, they might do four days—and they'll go back and deliver the training. But, for this particular topic, we're going to keep the group smaller because we want to make sure that we've got the right people who have the right understanding of the community delivering that training.

Our First Nations training panel, which is a consultative panel, has three members from education and Queensland University. They look at our training package and give us advice as to whether that package is on theme and whether it's correct. As I mentioned, the cultural training that we developed for recruits was developed in consultation with local community members. Each district—not every district, but relevant police districts—will soon have someone who will help police with inductions in those more remote communities so that when police go there there will be a local trainer. This was one of the commission of inquiry recommendations. It's probably not so much training; it's induction. It's about inducting people into that community so that they have a full appreciation and understanding of the communities that they're going to work in.

Senator WATERS: Thanks for that good overview. Could you please take our notice to provide a little bit more detail, if you can, please. Maybe I'll just rattle off a few questions, and you can take them on notice, because unfortunately time is limited because we have so many questions for you. I just want you to reflect, please, and explain for me the discrepancy between the 21 days of training for new recruits, which sounds good to me, and the fewer days of training for existing police personnel. You said it was three days plus two, and then there'll be an extra five over two years, so that adds up to 10. Could you reflect, please, and explain to me why you're taking a different quantum in approach there.

Likewise, could you please provide on notice who's delivering the family and domestic violence training. You said ANROWS reviewed the content. Have you had any other organisations from the women's safety sector in particular review that content, and who is delivering that material? You said you train the trainer, but who does that initial training? In my view it's important that that trauma informed understanding of gender power dynamics underpins the delivery of the training. If you wouldn't mind, could you take all of that on notice, please, and also similar sorts of questions for your cultural training components.

I want to turn to a particular case. There was some media coverage of Ms Karen Iles's assault and the subsequent mishandling of the complaints that she made. There was a *Guardian* article that was written last December. In that article it notes that Ms Iles initially made her complaint in 2004. She didn't withdraw it at any time and she has never indicated that she wanted her complaint withdrawn or to not be pursued. The article notes that the case was reopened briefly in 2021 and then placed on hold again by police in January. I'd like to know why, and what's being done with that case. I'm not sure who's best to take that question. To the best that you can, is that case being actively pursued, and, if not, why not?

Mr Hansen: What offence, Senator?

Senator WATERS: The gang rape of a child.

CHAIR: Is anyone at the table aware of that case? Superintendent or Mr Dewis, could you take that on notice. The secretariat will provide you with a copy of the article and all the detail. The committee is keenly interested to know the status of that case from the perspective of the Queensland Police Service. If you need any further information from the committee or the secretariat in relation to the case so that you can undertake appropriate inquiries before coming back to us, please contact us through the secretariat, and we'll provide that additional information.

Senator WATERS: I do appreciate you taking that on notice. I would like a considered response, so I think it's appropriate that you've taken it on notice. Could I also ask you to address the contention that's made by one of our eminent women's safety workers, Ms Angela Lynch. She is now with the Queensland Sexual Assault Network, and she says that there's been an abject failure at every level in relation to police handling of that case. Could you please provide a response to that proposition in the course of responding to my earlier question about that case.

Do you have any complaint mechanisms, and what are they, where a victim-survivor or their family is dissatisfied with or concerned about a police response? What are the complaint mechanisms that exist for either victims or their families?

CHAIR: Mr Nixon has just put his hand up.

Senator WATERS: Would you like me to repeat the question?

Mr Nixon: Please.

Senator WATERS: What complaint mechanisms exist where victims or victim-survivors or their families are dissatisfied with or concerned with the police response—in particular, in relation to missing and murdered First Nations women?

Mr Nixon: I guess it applies to all standards of all complaints that come into our ethical standards command, which will review a complaint that is made. There are a number of different ways it can come into us. There's the formal sense that you can go through our police website, there are links that you can go through and there are phone numbers you can go to. Moreover, we will take complaints from any source. It could come from an advocate. It could come from a legal representative. It could come from a coronial outcome. It could come from an inquiry such as this. We will take a complaint from any area.

The next step is the assessment of that complaint. We'll receive the complaint and document that into our database, and from there we will conduct an assessment. That's a group of experienced people within our ethical standards command. There are a number of people in there who have the commissioner's delegated authority—the ability to deal with complaints under the Crime and Corruption Act. Collectively, we will get a briefing on the complaint and we'll make an assessment of whether it constitutes misconduct, whether it might be a client service matter, and we will make a direction as to how it should be dealt with from there. Assuming it meets a category of misconduct, we also having reporting obligations to the Crime and Corruption Commission, and they have their own oversight of every file that gets to them. It's just whether they choose to monitor it or not.

Senator WATERS: I understand they're a separate jurisdiction. I have just a few follow-up questions, and perhaps you could kindly take these on notice to provide a bit more detail for the committee. Do you have any specific complaints mechanisms that victims or their families can access rather than them just searching on a

website or perhaps informally making a verbal complaint to whomever is representing the police at the time? Are there any particular efforts that are made to let victims or their families know that if there is any source of dissatisfaction for them, they have a process they can go through?

Mr Nixon: That's a difficult question. There's not a specific form, if you like. That's going to be each one on its own merits. Apart from if we're dealing with a person who is dissatisfied, we can certainly provide them with the information, but there are certain reporting obligations on police. They have a statutory obligation to report matters where, if the complaint is made to them which, at its highest, would constitute misconduct then they are obligated to report a complaint to us. If they don't, they're subject to disciplinary action themselves.

Senator WATERS: If the complaint is not at the level of misconduct but dissatisfaction for some other reason that's not quite at that level, is there that same statutory obligation to act on that complaint?

Mr Nixon: Not to report it into the complaints system. Misconduct is the statutory obligation, but that's not to say our system doesn't allow for other, what is in the act, disciplinable conduct that is not misconduct. They could be things like client service issues. They could be things that don't reach or constitute the definition of misconduct but still may not be the best performance by police. There's definitely a mechanism for that to come into our system. Alternatively, there's also a mechanism for those to be dealt with quickly at a local level which may resolve something through the client service approach.

Senator WATERS: Pardon my ignorance about how the internal operations of policing work, but could you please provide on notice a bit more detail about what those mechanisms are and how accessible you are seeking to make them to victims and their families. I'm sure you've got a complicated process.

Mr Nixon: It is.

Senator WATERS: I'd like to understand what that is, but I'd also like to know what you're doing to make that process accessible to Queenslanders and, in particular, First Nations families and victims.

Mr Nixon: I can talk a little bit about that now if you like.

Senator WATERS: Yes, please. Thank you. That's all my time, I think.

Mr Nixon: There's a section within our Ethical Standards Command, and it was derived from the commission of inquiry and the criticisms that came out of there. The commission of inquiry didn't just look at domestic and family violence; it also looked at some other thematic matters. Those were racism, misogyny, sexism, homophobia and bullying. So we've created a unit within our command which deals specifically with that.

One of the earlier questions was around police investigating police. We've made this a central function area, because typically a lot of our complaints, through necessity, have to go back to different areas to be investigated. We deal with all these complaints centrally, so the decision-making is removed from the area where the incident occurred. All decision-making is removed from that area, and it's done by a single entity for consistency and transparency throughout the place.

Importantly, what we have is a senior support coordinator, a person who has specific academic skills and is highly qualified. That is where we are tangibly victim-centric and trauma informed. This person will reach out to victims of all those thematic matters, make sure that they've got the right support networks in place and support them. They're distinct from any investigation that occurs. They're about that victim-centric, trauma informed approach to make sure that the victim's interests are being looked after. At the moment—and they're completed, we're just in the final stages of the formatting—there are two different handbooks for people who seek to make a complaint: one for people internal to the QPS and the other for external people. Amongst some legislative explanation about things—why they might or might not occur—they've got the frequently asked questions section and a range of other information that, from experience, is the information being sought by people who are victims and complainants.

Senator WATERS: Would you mind tabling both the internal and the external handbooks? I think that would be useful information.

Mr Nixon: It's in draft format, but sure.

Senator WATERS: Thank you, and could you take on notice the time frames you're working to to finalise those documents.

Mr Nixon: Yes.

CHAIR: If you could take this on notice, even if you could give us an advance draft, if it hasn't been finalised, it just gives us an indication as to the work you're doing.

Mr Nixon: Sure.

Senator WATERS: Thank you.

CHAIR: Now this is my opportunity to ask questions, right at the end. We don't have much time, so feel free to take the questions that I ask you on notice. Detective Inspector Hansen, you referred to approximately 9,600 missing person reports. What percentage of that 9,600 would be First Nations people?

Mr Hansen: I've got the figures here for 2007 to 2023. There are 116,577, of which First Nations people are 47,107. We don't have the percentages here.

CHAIR: Sorry, just to clarify that: the base was 116,577?

Mr Hansen: Correct, yes.

CHAIR: And the number of First Nations people was 47,107?

Mr Hansen: That's correct, yes.

CHAIR: That is totally disproportionate to the percentage of First Nations people in our population, isn't it?

Mr Hansen: That's correct, yes.

CHAIR: I'd be interested if you could take it on notice to provide a breakdown of that year-by-year, so we could potentially get further information around demographics—what percentage are women, what percentage are children, age groups et cetera. That would be very useful, if you could take that on notice.

Mr Hansen: Will do.

CHAIR: I wanted to ask you about the victims of homicide program that you've got. Some of the feedback that we've received from families—and I'm speaking broadly across the country—is that there are issues that arise, sometimes, when one family member is the primary point of contact but there are other family members—brothers and sisters, aunts and uncles. How do you ensure that the whole extended family gets that support?

Mr Hansen: As in Queensland Homicide Victims' Support Group? They're sent to the next of kin directly, and they will scope out from there—and people can apply. Extended family can apply for support through that, and it'll just depend on government funding.

CHAIR: We've got very limited time now, but could you take on notice how you deal with that issue of, say, there are relatives on Palm Island, there are relatives in Townsville, there are relatives—Superintendent?

Supt Johnson: I can quickly say that, generally, we try to work out with the family a single point of contact. Families, we know, are fragmented and quite distant from one another, are not speaking and whatever else goes on, so that's what complicates it. Generally, the strategy would be to, as a family group, work out one point of contact and keep that person as the liaison so there is one message going into the family.

CHAIR: The problem is though, Superintendent, for the very reasons you outlined sometimes the message isn't conveyed to other members of the family.

Supt Johnson: That's a case by case, and that would be on notice.

CHAIR: Could you take that on notice as to how you deal practically with that issue. I'm sure you're aware of the issue, but how you deal practically with that issue because we have heard directly from families where they just—

Supt Johnson: It's difficult.

CHAIR: Yes, I appreciate that. Detective Inspector, how do you deal with cold cases? One of the issues that's been raised with us by families is they will go years without any contact. They have no idea who they should now be contacting, and then maybe out of the blue they get a phone call. How do you deal with real-life cases where you're dealing with the fluctuation of time? Time has passed, and you're picking up the file now to try and get an answer. Have you got any particular protocols with respect to dealing with older cases?

Mr Hansen: If we're picking up the file now, one of the first points of contact is to get in contact with the family. Certainly, the last place we want them finding out that we're looking into an investigation or that there have been some developments is through the media. We will contact them and inform them that we're reviewing the file at that stage. There have been a number of advances in forensics over the years, and so that gives us more opportunities. But the first thing we do is contact the family so that they're not caught unawares. Often when we contact the family, there's more information that's going to come forward. Families lose contact with other ones or will report other people, and there are things that may have slipped through the initial investigation. The family's always the first starting point for us.

In the cold case unit I've got 173 investigations for 12 detectives, and that goes back from the beginning of the QPS through to now. We're always looking at advances and how we can advance those investigations.

CHAIR: How do you select the cases which are investigated by that unit?

Mr Hansen: We look at advances in forensics, at witnesses, if a witness is still alive, what material is still there, coronial investigations and where there are suspects. We're just looking for new opportunities in those investigations.

CHAIR: What would happen if I'm a member of a family that lost a relative to murder and I haven't heard something from anyone for a number of years; what do I do?

Mr Hansen: Contact the cold case unit, contact us at homicide. What we're looking at doing—and we're doing a project at the moment to have all the rewards for all unsolved homicides and long-term missing persons unified at \$500,000 each—is going back. Firstly, if there was no reward, we'll make application for a reward to be published, and certainly before a reward gets published we're talking to the family. That will go out through the media and with the minister. But certainly the contact can come through us—Policelink, and looking on QPRIME, they will see where the file's at, who's got the file. If it's regionally, which is shouldn't be for a cold case, it'll come through to the cold case unit. A number of inquiries will come through to Crime Stoppers, and we'll respond to those as well.

CHAIR: Okay. Perhaps I could put a number of questions on notice for you quickly. Firstly, again, I'm picking up recurring themes that we've heard from families across multiple jurisdictions. Regarding that initial reporting stage, that initial experience at the front counter, when they pick up the phone to raise a concern—it has been addressed to some extent in the evidence today—I'd be very keen if, on reflection, you can provide further information, on notice, with respect to what quality assurance, quality control, you've got in place: systems to make sure that the experience of each Queenslander is the same at that initial reporting stage and that initial encounter stage. It is a recurring theme that we've had in terms of issues in that respect. So, I would like you to take that on notice.

Secondly, I'm interested if you could take on notice how you deal with cross-border issues, where someone, say, goes missing in Queensland and is then found deceased in New South Wales. What procedures and protocols do you have in dealing with those sorts of issues? Again, that is something that has come up during the course of the inquiry.

The next one is that I'm interested to know what procedures you've got in place with respect to the deployment of specialists—say, homicide investigators, particularly in the context of, say, Queensland regional. When are the specialists sent out to make sure the appropriate expertise is applied to a particular case? Again, take it on notice.

Mr Hansen: I can give you a very quick answer to that now.

CHAIR: Well, if you want to give me a quick answer to that—

Mr Hansen: We do three levels of deployment. We'll do level 1, where we take the investigation, under the direction of the deputy commissioner. Level 2 is where we do a joint investigation with the region. And level 3—say, for example, it's because of distance, with an offender in custody making admissions et cetera, and I will liaise with them via the phone or looking at our case system. But generally it's level 2, and we will deploy to all jobs if we're requested.

CHAIR: Is that documented somewhere?

Mr Hansen: Yes, it is.

CHAIR: Could you provide us with a copy of whatever it is that documents that?

Mr Hansen: Yes.

CHAIR: And this is my last question—and this is also to our friends who are sitting at the back of the room. A number of inquiries and commissions have been raised during the course of the evidence. It would be very useful, from my perspective and I'm sure the committee's perspective, if we could get some sort of collation of recommendations that have been made in relation to the Queensland Police Service or that touch upon the QPS and the status of putting into action steps to address those recommendations so we have some sort of a list, if you like, of what the status is of the implementation of any recommendations that have been made in relation to the inquiries that you, Mr Dewis, helpfully referred to in your opening statement. And if there's anything else—other recommendations from coronial inquests or something that has been touched upon that have been implemented or are in the process of being implemented, that would be very useful. We're dealing with a number of different jurisdictions, and it could well be that there are things in a Queensland context that aren't occurring in, say, Western Australia, and the WA police service didn't attend. So, perhaps you could take that on notice. I'm not sure who—Superintendent, can you be primarily responsible for taking that on notice?

Supt Johnson: I'll look forward to it. Thank you.

CHAIR: Sorry, but I'm sure the friends at the back will assist in that regard.

With that, I thank you for appearing. As Senator Cox said, we were profoundly disappointed that the WA police service did not attend—profoundly disappointed—and I think we made our view in that regard quite public.

We appreciate your attendance and thank all the witnesses who have appeared, including those witnesses who were at the back of the room and came forward to give helpful explanations. It is appreciated if you could come back to us in relation to those questions on notice by 12 March, but if you need more time to give us a fulsome response, we have a bit more time—just liaise with the secretariat. That would be very helpful.

Mr Dewis: On behalf of the QPS, we also thank you for the opportunity to appear today and to provide an opening statement and responses, as well as the questions on notice. The importance of the work that the committee is undertaking will allow us to reflect further and help our commitment to continuous quality improvement for First Nations peoples in Queensland.

CHAIR: Thank you, everyone.

Proceedings suspended from 11:51 to 12:01

FULLER, Mr Todd, KC, Director of Public Prosecutions, Office of the Director of Public Prosecutions, Department of Justice and Attorney-General, Queensland

CHAIR: I now welcome representatives from the Queensland Office of the Director of Public Prosecutions. Thank you for taking the time to speak with the committee today, and thank you also for the very full submission which you provided, which I found extraordinarily helpful. Mr Fuller, please convey our thanks to everyone who was involved in preparing that submission. It was very useful.

Mr Fuller: Thank you, Chair.

CHAIR: Information on parliamentary privilege and the protection of witnesses and evidence has been provided to you and is available from the secretariat. I remind senators and witnesses that the Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. I'm also keenly aware that, by virtue of your position, there may be areas where you will need to advise us that it isn't appropriate to provide detailed information, so please feel free to do so. Do you have anything to say about the capacity in which you appear?

Mr Fuller: I'm the Director of Public Prosecutions for Queensland as of yesterday, and I'm a King's Counsel.

CHAIR: Congratulations. You were acting before?

Mr Fuller: I was. I've been with the office for 35 years, so I've been there for a while.

CHAIR: Well, congratulations.

Mr Fuller: Thank you.

CHAIR: Would you like to make a brief opening statement before we go to questions?

Mr Fuller: I will. Thank you very much. Firstly, I'd like to thank you for the opportunity to appear before you and to assist the committee in any way that we can. On behalf of the office, I'd like to respectfully acknowledge the traditional owners of Meanjin, where we meet today, the Jagera/Yuggera and Turrbal peoples, and I also acknowledge the traditional owners of the lands throughout the state where we appear. We acknowledge their deep connection to the land and the waters, and I acknowledge their elders past and present. I'd also recognise those whose ongoing efforts are to protect and promote Aboriginal and Torres Strait Islander cultures that will leave a legacy for the future of their elders and leaders. I'd also acknowledge the First Nations people who are with us today, either in person or online.

We'd like to acknowledge the important issues the committee is examining under its terms of reference and the vulnerability and disadvantage suffered by First Nations people within the criminal justice system, both as victims and as offenders. We're aware that you've heard from directors of public prosecutions from New South Wales and are familiar with the statutory independence of the various offices of director of public prosecutions throughout this country. Therefore, I'm not in a position to comment on government policy. However, I am also aware that you've sat in Far North Queensland and have some idea of the vastness of our state. I can deal briefly with the operating environment in Queensland—though that's covered in our written submission—and the respective responsibilities, some of the legislation and some of the recent inquiries and their consequences. You'll note that in our submission we've addressed a number of topics raised by my New South Wales counterpart and have juxtaposed the position in the jurisdiction for your assistance.

I'd like to acknowledge the assistance of the staff of my office in preparing that written submission and the provision of the detail to the committee. I'd also like to acknowledge that the Women's Safety and Justice Taskforce has made a number of recommendations. As a result of that, we have embarked on a four-year program within our office to address some of those recommendations, which includes in the First Nations space. We've been fortunate to secure the assistance of Sarah Kay, who was the executive director on the Women's Safety and Justice Taskforce. The committee may be aware that the deputy director, Phil McCarthy KC, actually sat on the Women's Safety and Justice Taskforce. So we're acutely aware of the issues that were raised during the course of that and are acutely aware of the journey that we're on.

I call it a journey, because back in the late eighties and the early nineties the issue of victims having rights and engagement with victims and their families wasn't really known to the criminal law. It was a very legalistic situation. I'm aware of the legal background of the majority of the members of this committee. That has changed. We've had a series of legislation and the final version of that, the Victims of Crime Assistance Act, actually created a charter of victims' rights in Queensland. That charter relates to information and consultation, from our

perspective. That journey continues, with respect to the Women's Safety and Justice Taskforce and the recommendations. Indeed, you will have noted from the submission that the department has created a First Nations officer tasked with dealing with those particular issues. There is also a First Nations Innovation Office, which has been created by the Premier within the Department of Premier and Cabinet.

For the starting point for me, I would highlight the *Equal Treatment Benchbook*, which came out in 2016. It was created by the Supreme Court with respect to looking at disadvantage and vulnerable people within our courts. They have designated an entire chapter to First Nations people and have identified a number of things, which have been identified by the committee members and other people who've made submissions to this committee, with respect to the disadvantage with respect to language and culture that exists. You would note from our submission that we obviously have offices in Cairns and Townsville, which have a significant engagement with First Nations people. Our Townsville office, in particular, works with Mount Isa, which again has a significant First Nations component with respect to the matters that we deal with.

With respect to the questions that were posed by the committee in the document that was sent to us about our level of engagement, can I speak to a couple of things? Firstly, individualised justice is what we aim for. Therefore, when you speak of process and protocol, it's okay to have documentation with respect to that—it's about how you engage with the people involved. You've already heard from the police that in Queensland we're fortunate to have the Queensland Homicide Victims' Support Group. What occurred in Queensland around the time the Victims of Crime Assistance Act came in was there was a decision made by government that they would fund certain organisations to supply victim support. One of those funded organisations is the Queensland Homicide Victims' Support Group. They are a close partner of ours, as are a number of agencies, and upon receipt of files into our office, we engage with the people who've been affected. We're talking about homicides, in this instance. We deal directly with the families, and the police identify for us who are the appropriate people within the family group that we need to speak to. Unsurprisingly, there are times when there are schisms within family groups. There are individuals who wish to control the information with the family group or the decision-making, so we engage with the police to determine what the landscape is with respect to that, and then we speak with each of them. As part of our process, we supply them with information about the support groups which are available to engage with them. We provide that information to them, and, upon receiving consent from them, we then engage with those organisations and provide updates and information to them.

From our perspective, it's about identifying what the need is with respect to the victims and their family, and identifying what groups can assist with respect to that. Then it's actually a cascading level of information. There are some people who have a significant distrust of government organisations and want to minimise their interaction and contact with respect to us. There are others who have a healthy relationship with the police such that they want to receive their information and engage through that. And there are others who have their own support networks or engagement that they wish for us to provide that information through. Cairns is a really good example of that. We obviously have people travelling to remote and regional areas for the purpose of engaging with families, bringing people to Cairns to engage with them. It's about understanding the local networks that we're able to engage with. Queensland Homicide Victims Support Group actually have staff based in Cairns who assist us with that liaison. Obviously, having an office in the area gives us an overview of who the various people and supports are and how we can engage with them.

Townsville is a similar circumstance with respect to that. The committee may not have heard—there is an organisation called SART, Sexual Assault Response Team. It's a piloted group with respect to Townsville, which is funded, which involves continuity of care. From first responding and first response, there are counsellors engaged who then assist victims through the system with respect to that. There are what they call 'hot handovers'. When people are moving from one part of the system to the next, there is a hot handover within that system itself. Part of the Women's Safety and Justice Taskforce's recommendations was for an expansion of that type of model, to enable it to occur. As always, it's subject to funding and cooperation amongst varying organisations. In this case, its Health, Justice and the police that enable that to occur.

There were two other questions which were raised, one with respect to the media. As with the other ODPPs, we have a policy of not engaging with the media. We will respond to factual requests, but we do not advocate within the media, nor respond to criticisms or other things that are raised by the media with respect to that.

The third area that you asked about was our cultural capability and engagement. That is a work in process, but there are a couple of things that I'll note about that. Having offices in both Townsville and Cairns, we have staff in that area who are actually immersed in that. A number of our staff in the North Queensland office, whilst not of First Nations heritage themselves, have come from remote communities and have engaged with First Nations people for much of their lives. They also engage in the local community with respect to the First Nations

activities. The committee might like to be aware that there is a launch of the law year in the middle of the year, which engages the traditional owners with respect to the Supreme Court justice who sits up there, Justice Henry, and a ceremony, an engagement and a commitment on both sides with respect to that, which speaks of the healthy nature of the relationship between the elders in Cairns and the courts, which then flows down to some of the support and engagement that we engage with.

One of the recommendations of the Women's Safety and Justice Taskforce is greater cultural awareness within the staff of the ODPP, and we're partnering with the Queensland Police Service with respect to that, to leverage off some of their cultural experience and engagement, but also developing our own program. Part of that will come out of the First Nations office. As with the state government position with the path to treaty, we're also engaged in that space, looking back upon the conduct of our office and our prosecutions in the past with respect to looking at how we'll engage with the path to treaty and truth-telling in that space, particularly the stories in and around the communities themselves, so that we understand some of the history that leads to where we are today.

CHAIR: Thank you very much. I might start with some questions. I'm going to touch on some themes which have been raised by families of victims not just in the Queensland jurisdiction but across the whole of Australia—

Mr Fuller: I understand that.

CHAIR: some very common themes. One is in relation to the issue of formulation of charges. We've heard from a number of families that they felt there was insufficient consultation and insufficient communication with them in relation to decisions that were made that an accused should be charged with manslaughter as opposed to murder. Then, flowing from that, the sentence ultimately imposed led to a sense of injustice within the family, a sense that if this were another family of, say, European heritage it would be treated differently and deep concerns that the value of life is considered differently. They're very difficult and very sensitive issues, so I'm very interested to know, from your perspective, how the office deals with those sorts of sensitivities in terms of formulating charges and progressing a case, not just in the context of that particular question but in a broader context?

Mr Fuller: Yes, more generally—I understand that. The prosecutorial discretion is a broad one. Historically, it comes, obviously, as a power from the Crown in the United Kingdom. It moved from being a royal prerogative to, in fact, a sense of independence. The point of the independence of each of the directors of public prosecutions is to deal with that very vexed question about equality before the law.

I spoke about individualised justice. Each case needs to be dealt with in an appropriate way. An 'appropriate way' is a spectrum of things that can occur with respect to individual matters and cannot always meet everybody's needs with respect to it. We have written guidelines, which we provided with respect to the submission. We have a two-tier test, one of which is the reasonable prospects of success. That is that we have a reasonable prospect of convicting the person of the offence with which we proceed.

When we speak of prosecutorial discretion, we actually owe that both to the community and the victims—those people affected—and also to the defendant. It's an inappropriate exercise of the discretion to place somebody on trial who shouldn't be placed on trial and shouldn't be put at jeopardy of being convicted of a particular offence, so there's a legal assessment done with respect to how the matter can proceed. The difficulty, as always, is the contest between what the legislation says and what we need to prove versus the concept of what people expect the law to be. Use of the word 'murder' sits within a framework where people expect that, if one person kills another, that's the offence of murder, whereas you'd be aware that there are levels of that with respect to murder and manslaughter.

Our guidelines require us to engage and consult. There are usually two stages to that. The first stage is engaging with the family and explaining to them what the nature of our case is and what the difficulties are when we are considering a situation where we may be proceeding with manslaughter as opposed to murder. You'd be aware that in most instances the police will charge with an offence of murder because they're charging threshold is different to the consideration with respect to drafting an indictment and placing a person on trial. They don't have the reasonable prospects of success test that we do. We're to look at all of the evidence. Most of those matters will then result in submissions being made to us, where we're accepting pleas of manslaughter as against murder. Then there are issues around: what's the legal capability of us particularly proving an intention at the time of the offending?

The second stage of the consultation is that once a decision has been made in that space, the family is brought back in and we have lengthy discussions with them. Again, returning to the theme around the needs of victims, there are some people who don't want to engage with us at all, there are some people who want minimal engagement, and there are some people who require a lot of engagement, and we adjust ourselves to do that.

Particularly in the sorts of matters where we're adjusting down from a significant offence that has a significant impact, there's significant consultation. Consultation, however, is different to agreement. It's about letting people understand the basis for our reasoning and our decision-making and, in the end, the prosecutorial discretion rests with a decision-maker.

CHAIR: Mr Fuller, is that process of engagement and consultation before a decision is made? Then, after a decision is made, is that documented in terms of a policy and protocol? Do you keep records of adherence to that in particular cases? Is there QAQC?

Mr Fuller: Firstly, the guidelines dictate and require that. It then has to be documented. And then we have a governance process whereby we review adherence to our policies and guidelines. It's an auditing process; it doesn't go in and actually audit the decision which was made, but it audits that the senior people who are required to make decisions with respect to it engaged in the process and that they have documented their reasons for decision. We also have a complaints mechanism whereby people who are unhappy with the decision which is made can make a complaint, which is then elevated. In my previous role as the deputy, I reviewed all of those complaints, and we then required the decision-makers to provide information to us about the decision-making and level of engagement. In most instances the engagement took place, but it was understanding the engagement or perhaps being overwhelmed by the nature of the engagement. So one of the things we've been looking at is how we follow up after the second—people advising people of the decision and how that then occurs further. After that second consultation, after the decision has occurred, there's written documentation which is provided to them explaining what has occurred and what the outcome is.

CHAIR: In a scenario where, before a decision is made, the engagement is occurring with the family member and that family member is dissatisfied with where it's heading, is there an opportunity for the family member to say, 'Look, I'd like someone else senior to have a look at it or be part of the decision-making process,' before they're informed of the decision? Obviously, once they're informed of the decision, it's going to be very difficult, I suspect, to unwind it.

Mr Fuller: The system is that the lawyers making the decision and doing the engagement are required—in a case where it's murder being reduced to manslaughter, a memorandum has to come to the directorate. The directorate currently consists of two deputy directors and me as the director. One of the deputy directors then reviews it and either endorses or asks further questions about the matter before making a reference to the director. Often in contentious matters, the two deputies and I will sit down and discuss it with the senior lawyers involved. One of the things that they have to advise us about is what the family's view is with respect to it. On occasions when there is some impasse, one of the deputies or I will actually engage with the family to discuss what the decision-making process is, because ultimately the decision will fall with the director, so I am the decision-maker.

CHAIR: How do you deal with the practical issue—I raised this with the Queensland Police Service—where you might have family members in Townsville, family members on Palm Island or family members across the state? Some are brothers and sisters. Some are aunties and uncles. How do you make sure that you're communicating with as much of the extended family as possible?

Mr Fuller: Usually, we seek out the people within the extended family who are the spokespeople or the people who engage. I spoke earlier about us understanding what the landscape is with respect to that, and then creating opportunities for those people to engage with us personally, if possible—so whether our staff travel or we travel them to see us—and then with the extended family, whether they are online or engaging with us in some other way with respect to that. But you could imagine the logistics of managing that and then logistics of managing a number of people who may have a differing opinion or engagement with respect to that. I've been involved in a coronial hearing where we're actually in Cloncurry. Cloncurry is about an hour and a half or two hours south of Mount Isa. Apologies if I've misrepresented how far away it is. There was a death in custody, and there were a large number of family who were scattered throughout Queensland. The proceedings were live streamed to them and there were individual support people placed with each of their areas where it was live streamed to enable that to occur. In engaging with the communities, particularly on the cape, we can link in to each of the magistrates courts. For example, there are health facilities that have video link facilities. So our aim is to speak with those people, face to face if we can, even if it's by video link, so as to engage with respect to that.

In part, though, we also rely heavily on the support agencies to identify to us the people that we need to speak to and whether we need to speak to them individually or whether we can speak to them as a group.

CHAIR: One issue has arisen in the context of talking with families. Many of the families we've heard from who've attended in camera hearings—it's quite heartbreaking—wear T-shirts of loved ones or have symbols of their love for deceased members of their family, and on occasion we've had raised with us that family members have, say, gone to court wearing T-shirts in commemoration of loved ones and they've faced the indignity of

being told by bailiffs or whomever: 'You can't wear that in this court. You must leave.' I can only try to imagine how harrowing that is. How do you deal with those sorts of issues in terms of coronial proceedings or court proceedings to make sure that families understand how to approach that day—

Mr Fuller: Yes. It's a very difficult day for them.

CHAIR: when their case going to be considered?

Mr Fuller: With respect to that, there was a direction from the previous Chief Justice about people wearing things within court. So the bailiffs asking them to remove those sorts of things is about enforcing what the court rules are. We know what the rules are, so we speak to families before those days happen and tell them what they can and cannot do with respect to coming into court. Now, they can wear T-shirts and be outside the courtroom, but they won't be able to get into the court building. Obviously, there is an issue from that—

CHAIR: I should say that I understand the legalities and the reason for the rules, but the deeper question is the respectful engagement with the families themselves in dealing with the issue, rather than the underlying basis for the rule.

Mr Fuller: Yes. I understand that. The prosecutor who is conducting that proceeding will have met with the family prior to the proceeding occurring, and that's one of the issues that we talk about as a matter of course, to deal with that. We step them through what the process is going to be—what the court proceeding is going to be like. Most of these are sentence proceedings at the stage that we're getting to with respect to those, and we take them through what the proceeding is going to be like, what things are going to be said and what representations are going to be made by the other side, because it's important for them to know what things are going to be said about the member of their family who is deceased. We also speak about the protocols and the level of engagement. We also prepare them for the level of sentence that is likely to be imposed. So we have lengthy discussions with them about the factors—what we're going to ask for, what the defence are going to ask for and what the likely outcome is going to be—to prepare them for what is going to occur.

CHAIR: Alright. Senator Green, are you there?

Senator GREEN: Yes, I am, Chair. I don't have any questions for this witness.

CHAIR: I might ask one question that you can take on notice. You've made a rod for your own back because you've done such a great job in terms of preparing the written submission. I put this same question to the Queensland Police Service. The reports of a number of inquiries are being prepared that make recommendations to a number of agencies in Queensland. If you could provide a table of what recommendations have been made out of those inquiries touching upon the ODPP and what the status is of the implementation of those recommendations, that would be useful. Senator Waters, you have the call.

Senator WATERS: Thank you very much, Mr Fuller, for coming along, and congratulations on your appointment yesterday to your role. I've got some questions on behalf of Senator Cox. The first lot pertain to the review of the director's guidelines, which you've mentioned in your submission are currently under review. Is the impetus for that the recommendations of the taskforce that they be reviewed? I presume that's the reason for the review.

Mr Fuller: There are actually two: the royal commission into institutional abuse made some recommendations with respect to the conduct of matters involving children; and there was also a review by the Sentencing Advisory Council Queensland with respect to homicides involving infants, and it had a recommendation that we review some of our policies with respect to those. Both of those relate to the victim issues and our level of engagement with respect to victims.

Part of the disconnect in Queensland is that the Queensland Police Service conduct the committal proceedings or the Magistrates Court hearings with respect to most matters in the state. The ODPP, unlike New South Wales, for example, is engaged in only two or three areas in Ipswich and some matters in Brisbane and the Gold Coast, and occasionally the police service will ask us to step in and conduct proceedings at an earlier stage. So the families and victims are engaging with the Queensland Police Service up to a point—then it's committed up and then our office takes it over. There's an issue around—particularly in infant homicides—the period between the death of the child, the investigation and somebody being charged before it comes to our office and their engagement with us. The police are in a limited space as to the information they can provide. The Cusack report also asked that we do it, and we got to the point where we were almost done with that and then the Women's Safety and Justice Taskforce came out and made some recommendations with respect to what our guidelines should be.

Part of the problem with our guidelines is they have been piecemeal—amended over time—and so we're going end to end and removing some of the extra detail. We're recognising that the guidelines should in fact be

guidelines with processes and procedures that sit under them, where some processes and procedures have snuck into the guidelines. A guideline is more about the philosophy of what you want to do, so a guideline around engaging with people respectfully doesn't need everything in the guideline to say what 'respectful engagement' is. There needs to be a process.

Senator WATERS: I've got a follow-up question about the key issues that are being examined in the review of those guidelines.

Mr Fuller: You'll see in our submission the Women's Safety and Justice Taskforce recommendations that we are dealing with.

Senator WATERS: It's 69 and 47, I think.

Mr Fuller: Recommendation 41—domestic and family violence training for all legal staff—is out of the first report, and you'll see this on page 9 of the submission. Then there's a suggestion for review of the guidelines and development of additional guidance. Part of that is in the decision-making process, providing additional guidance to our lawyers as to the processes with respect to that. Sitting in under that is guidance around particularly family and domestic violence—the new coercive control offence which will be coming in—and our cultural capability.

Senator WATERS: You described those as the key issues that you're looking at in the review.

Mr Fuller: Yes.

Senator WATERS: How are First Nations issues being addressed to ensure that the updated guidelines better serve First Nations peoples?

Mr Fuller: For us, it's engagement with people with lived experience with respect to that, and engagement with appropriate experts to guide us with respect to the way that we should be engaging and increasing what our cultural capability should be, and—going back to the chair's question about our level of engagement—how we can effectively communicate and engage. You'll see that a number of those matters are dealt with in the equitable bench book, focusing particularly on the expert evidence that, with the change in legislation, we'll now be able to give to assist juries and our staff with respect to their engagement with First Nations peoples.

Senator WATERS: You mentioned that you're engaging with people with lived experience and with experts. Can you just give me a bit more information on specifically who you're consulting with on these guidelines as pertains to First Nations issues?

Mr Fuller: That will be part of the work that's done over the next four years with our implementation team. They'll be engaging with the First Nations office with respect to that and also with a number of advocacy groups.

Senator WATERS: Perhaps on notice, could you be a bit more specific about which groups? Or do you have them in your head already?

Mr Fuller: We haven't got to that stage of the engagement.

Senator WATERS: You said you're going to be reviewing the guidelines over a four-year period.

Mr Fuller: No. The Women's Safety and Justice Taskforce implementation team is over four years, and we've only just finished recruiting to that. So that will be rolled out. They're currently designing and implementing what our changes will be. One of those areas is the guidelines and the engagement with First Nations.

Senator WATERS: Okay. So you're still bedding that down?

Mr Fuller: Yes.

Senator WATERS: Of that four-year process, how long do you think the review of the guidelines will take? When are you hoping to have that complete?

Mr Fuller: I'd hope that that's done by the middle of next year.

Senator WATERS: I had a question about media, but you've already said in your opening statement that the policy of the office is just to not engage, except if there's a factual question. So thanks for frontloading that one. What information and advice are provided to First Nations victims of violence and their families about a variety of things: counselling, support services, legal services, communicating with each other and other support people about their case, victims of crime compensation, peer support groups and raising complaints? There's an awful lot in that list. You mentioned that you had what sounded like some kind of written down approach to all of those things. Could you elaborate on that for me to the best of your ability?

Mr Fuller: A file is received into the office. It's assigned to a victim liaison officer. Our victim liaison officers aren't counsellors; they're information providers. So information is then provided both in writing and online to the victims or their families. Included in that information are referral services that they can contact and engage with

and support agencies that are available to them and an opportunity to speak with us and engage with us directly at that point in time.

Senator WATERS: Can I just check: are they provided in language?

Mr Fuller: We have information sheets which are in language.

Senator WATERS: You said the offer was made to speak because obviously some people prefer verbal communication over written. Is there an attempt to proactively seek to convey that information verbally as well, or is it simply a written offer to say, 'Call us if you need'?

Mr Fuller: It depends is the answer to that. The issue is what information we receive from the police about the nature and level of engagement. There are people who are identified as having high needs or an inability to engage. Particularly our victim liaison officers in both Cairns and Townsville have connections within community, so they know who to speak to within community to see if there's further support or information required. Then, as the matter approaches and particularly if decisions are being made with respect to files, there's a need for consultation. That occurs verbally, whether that's face to face or over an electronic medium. Then, at that stage, there are a number of things that we speak to the person about.

There's obviously engagement with respect to the process and engagement with respect to support, particularly if there's an upcoming court event. If they haven't already picked up some support agencies, we find out whether they require that support or whether it's family members or other people that they'd like to attend with them. Particularly whenever we travel people, we always seek information from them as to who they would like to travel with them as support. We're completely uncomfortable with the idea of people travelling some distance by themselves, attending a traumatic event and then travelling home by themselves again. There's funding through Victim Assist Queensland with respect to that. They're also provided with details if they wish to complain about the individuals involved, the process or some of those other things. We also give them the opportunity to participate in a survey after the matter is completed, where they're asked a series of questions about their interactions with us, the support that we have provided and whether we've provided the information in a timely and effective manner to them.

Senator WATERS: How many people have utilised that survey option?

Mr Fuller: It's hard to tell. I think we're up in the two hundreds.

Senator WATERS: What sort of proportion would that be?

Mr Fuller: I think it's a low proportion. I think that it would certainly be in the single digits.

Senator WATERS: What's the feedback been, in general?

Mr Fuller: The outcome of the matter often dictates the nature of the response. But we have more positive responses than negative. We have people who are unhappy with the system and the fact that somebody has been acquitted. We have people who are unhappy with the level of sentence that was imposed. And we have people unhappy with the level of engagement with our office, because we didn't meet their needs. And there's a free-text field at the end of that in which they can detail to us what they thought with respect to that.

One of the issues we confront is continuity of people in matters, because matters are in the system for such a long period of time that they don't necessarily have the same point of contact. That's one of the things we're looking at out of the Women's Safety and Justice Taskforce. An independent review is going to be done of the victim liaison service and what we provide. The difficulty is that we're within a legal framework about the level of support we can supply, and under the charter our responsibility is about information, process, decision-making and consultation, where we're not in the support space. That's one of the issues: if we don't have an appropriate partner to engage with, then, once the matter's at an end, their engagement with us is at an end, placing them in a position where they're engaged with another service after it's completed, to see where it goes then.

Senator WATERS: Thank you. You mentioned that you've got a victim liaison officer in Cairns and in Townsville. Are they First Nations people?

Mr Fuller: No. I think we have one First Nations person. We have tried hard to attract people to those positions. Perhaps they're not remunerated at a level or are not of a nature that people want to be engaged and involved with them. We have two victim liaison officers in Cairns. We have two in Townsville.

Senator WATERS: So, one of those four is a First Nations person?

Mr Fuller: One of those if First Nations, yes—in Townsville.

Senator WATERS: Can I ask you to take on notice to provide a bit more information about what efforts you are making to engage First Nations people for those roles?

Mr Fuller: Yes.

Senator WATERS: And you speculated that perhaps it was the remuneration or some other reason. Can you give us a bit more detail on your thinking and what you've done to address those perceived barriers?

Mr Fuller: Yes.

Senator WATERS: Thank you. And I have just one last one. Again, this is Senator Cox's, through me. What are the policies and practices of prosecutors when liaising with First Nations victims of violence and their families, including the progress of investigations and cases, the basis for decisions and decision-making, and complaint mechanisms? You've given us a little bit of a flavour of that. Is there anything you can elaborate on that pertains to how frequently those policies and practices are updated or reviewed and who you consult with when you're undertaking those reviews or updates?

Mr Fuller: There are the guidelines, and they are constantly reviewed. And there are internal processes that are developed as issues arise with respect to the practice or procedure. But in the main the guidelines are the governing body of that level of interaction with respect to them.

Senator WATERS: Thanks very much.

CHAIR: I have just one final follow-up question, which was sparked by one of Senator Waters's questions, which reminded me of an issue that has been raised with us by some families, and that is guidance that families have been given with respect to communicating with each other in the context of a deeply traumatic, tragic event. At times it's been profoundly concerning that close family members have felt that they haven't been able to talk to each other about anything in relation to the passing of a loved one in the most horrific of circumstances. Do you have anything you can add in relation to that issue? Again, I understand the legal principles. But the reality is that there is a family dealing with a deeply traumatic event. So, do you have anything you can add about how that is dealt with by the ADPP and the extent to which you liaise with the Queensland Police Service to make sure that they're not giving directions that aren't necessarily as proportionate as perhaps they could be?

Mr Fuller: I was surprised to read that in the material with respect to that, because that's not an instruction that we give to any witness, particularly in family based situations. The issue is around witnesses discussing evidence they have given, particularly when they are under cross-examination or still giving their evidence. We're acutely aware that families will talk about matters and engage. Obviously, the risk is that somebody contaminates somebody else's recollection of an event, but that's an ordinary part of life. So it's certainly not an instruction that our prosecutors give to families who are involved. Bail undertakings are often of more concern to me, particularly in small communities where one family member has been charged with assaulting another family member and their bail condition has 'no contact' when they live in a remote rural community. A recent matter across my desk involved an uncle who was charged with causing a negligent injury to his nephew. They hadn't had any contact for nearly a year by the time that it came to us, and a representation was made as to how we could resolve it without it proceeding to trial. For a little seven-year-old guy, not to be able to hang out with his uncle—who he used to go fishing with—his cousins and other family members is a considerable concern.

CHAIR: Thank you very much, Mr Fuller, for that. You've taken a number of questions on notice; we appreciate you doing that. Are any of your team here?

Mr Fuller: They are.

CHAIR: Thank you, team, for your work on the submission. It was very impressive and very helpful, so I thank you very much. Thank you, Mr Fuller, for taking the time to give evidence today. We will now suspend for lunch.

Proceedings suspended from 12:47 to 14:48

BOYD-CAINE, Dr Tessa, Chief Executive Officer, Australia's National Research Organisation for Women's Safety

KIYINGI, Mr Kulumba, Senior Policy Officer, Queensland Indigenous Family Violence Legal Service

LLOYD, Dr Jane, Director, Research and Evaluations, Australia's National Research Organisation for Women's Safety

SCHWARTZ, Ms Thelma, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service

CHAIR: Welcome. Thank you for taking the time to speak with the committee today. Information on parliamentary privilege and the protection of witnesses has been provided to you. Ms Schwartz, do you have an opening statement?

Ms Schwartz: Yes, I do. Thank you very much for the opportunity for the Queensland Indigenous Family Violence Legal Service, QIFVLS, to speak to its submission—No. 3, formally, for the record. I'd like to start by acknowledging that, as a Torres Strait Islander woman, as part of my heritage, I'm proudly here on the lands of the Turrbal and Yuggera peoples in beautiful Meanjin, Brisbane—a wonderful place to be if you're a Queenslander! I'm with my colleague Kulumba.

QIFVLS, as an organisation, a proud Aboriginal and Torres Strait Islander community controlled organisation, represents over 90-plus Aboriginal and Torres Strait Islander communities in this great state, right up to the international border with Papua New Guinea. Our practice area as a family violence prevention and legal service is to support Aboriginal and Torres Strait Islander victims-survivors of domestic and family violence and sexual assault as they navigate the intersection with the justice system. In that context, we are specialists in the provision of services relating to domestic and family violence, child protection, family law, sexual assault and victims-of-crime compensation; in Queensland, it's the Victim Assist Queensland statutory scheme.

In the communities that we service, we have seen the impacts of domestic and family violence in all its manifestations and how our clients come into contact with that justice system—not just domestic and family violence but also child protection, the intersect with youth justice and youth crime and the overrepresentation of Aboriginal and Torres Strait Islander women in prisons. The data represents that there is a high correlation of our women in jails who have been victims-survivors who have been improperly misidentified. I understand that you've heard from the Queensland Police Service this morning; I had the privilege of hearing a little bit of that evidence this morning, as well as that of the DPP.

It's important to note, from our perspective, as one of the four legal assistance service providers in this country, alongside the ATSILS models, the CLCs and the legal aid commissions, that, as probably the minnow, we don't receive as much funding as the other legal assistance sector providers; we are right in the crosshairs. The expectation on my team—I currently have a team of 11 lawyers, including myself, to service 90-plus Aboriginal and Torres Strait Islander people communities—is insurmountable. But here we are, and we do it for the love of our communities. And we do it because we believe that we can end this scourge of violence impacting our communities.

It's important for me to put on the record that family violence within Indigenous communities needs to be understood as both the cause and effect of social disadvantage and intergenerational trauma. Family violence is not part of our culture and is not part of our way, nor is it limited to interactions only between Aboriginal and Torres Strait Islander peoples; our women experience family violence from both non-Indigenous and Aboriginal and Torres Strait Islander peoples. This in turn leads to our women having a disproportionate experience of family violence which is more than simply gender inequality; it is, rather, a wider context of marginalisation, which has been described as our national forum—which we're very grateful for. As both women and Aboriginal people, we experience multiple forms of discrimination and marginalisation.

In the algebra of power, intersectional discrimination is at best understood as a process of multiplication rather than addition. Rather than experience sexism and racism as being distinct and separate from one another, the two are often combined to form new and ugly forms of discrimination directed specifically at Aboriginal women. The net effect of that experience for an Aboriginal or Torres Strait Islander person in relation to family violence, therefore, is that it's interwoven with all spheres of disadvantage and inequality and remains one of the biggest challenges facing our children, families and communities.

This is why the nature of the evidence that you heard today from the QPS, I would have thought, was quite compelling. Likewise, in the context of the reform agenda that Queensland is going through, there are at least 388 recommendations out of both Women's Safety and Justice Taskforce reports, coupled with the commission of inquiry, that are looking at better addressing system responses to domestic and family violence victims. Are we

there yet? No, not anywhere near it. You then take the complexity of our national system and the National Plan to End Violence against Women and Children and, underneath that, the Aboriginal and Torres Strait Islander Action Plan to end violence against women and children. You can see the complexities. How is that resulting in safety on the ground for our women, who are dying at rates that are astronomical? I'm not going to repeat the data. The data is there. It's a shame, and I don't want to be taking part in another inquiry, with respect, that just pays lip service to those victims and survivors who are invisible. We're both overpoliced and underpoliced. Where is there justice for the women and children in this country who are Aboriginal or Torres Strait Islander? That's why QIFVLS is here, and I thank you for that opportunity.

CHAIR: Thank you, Ms Schwartz. I was looking at the map of Queensland in your submission and the fact that you've got eight offices, and I was trying to work out, as you no doubt do on a daily basis, how 11 lawyers can possibly deal with that geographical range and that workload. So thank you very much. Dr Tessa Boyd-Caine, do you have an opening statement? Over to you.

Dr Boyd-Caine: Thank you, Chair, and thank you to Thelma and QIFVLS for reminding us so powerfully of why we're here. I also want to begin by acknowledging the traditional owners of the lands on which we're meeting today and pay my respects to elders past and present. I also acknowledge the pain and the suffering experienced by missing and murdered First Nations women and children, their families and their communities.

I'm in day 7 of my role as CEO of ANROWS, so I'm here because we see the importance of the inquiry, but you'll forgive me if we need to take questions on notice. Jane has been acting CEO for the past five months, so I hope that we can do justice to your questions and really just reflect our commitment to the work.

CHAIR: Do you feel the load has been lifted, Dr Lloyd?

Dr Lloyd: Not yet.

CHAIR: Over to you, Dr Boyd-Caine.

Dr Boyd-Caine: Just to be clear about who we are and why we're here, ANROWS is a national charity. We were established under Australia's National Plan to Reduce Violence against Women and their Children 2010-2022, and now we continue that partnership with all governments in support of the evidence base to end violence against women and children. So we join the hearing in that capacity and we offer you the knowledge that we hold, but we also recognise, as non-Indigenous women in a non-Indigenous led organisation, that our privilege means we don't have direct experience of the institutional or personal racism that Aboriginal and Torres Strait Islander women and children, particularly in this country, continue to experience. I note that because, while we offer you the knowledge about the evidence base that exists, we can never hold the expertise of lived experience in that context.

With that caveat and opener, I'll hand over to Jane just to give you a bit of a summary of the evidence base, and then we look forward to your questions.

Dr Lloyd: ANROWS generates evidence in many ways. We develop and implement the Australian National Research Agenda, and the reason that I'm pointing that out is that it focuses on where the research priorities should be if we're to end violence against women and children in Australia, but it also talks about how evidence should be produced. We conduct the National Community Attitudes towards Violence against Women Survey, which is a periodic survey that's conducted every four years and measures the attitudes. There are about 19,000 people in the sample from last year, of whom 442 people identify as Aboriginal and Torres Strait Islander people. We hold grants rounds and have funding rounds where we draw on the expertise of the research community more broadly, and we conduct evaluations. We're currently conducting an evaluation into the men's behaviour change programs in the Northern Territory, for example. We've got about six evaluations. All of those things generate the evidence as part of our work. What that tells us is about the determinants of domestic, family and sexual violence and also about the system response to that.

As you will have heard, particularly from the victims-survivors, there are systemic, complex, intersecting factors that lead to violence against First Nations women and children—missing and abducted women and children, sexual violence and murder. That is shaped by the ongoing racism and colonisation and the disadvantage and trauma that are experienced. Those factors shape the violence not only of people but of the system itself in the responses that we have through our services such as police but also through our policy responses and the number of inquiries we have with First Nations communities. So it's the violence that people experience as individuals but also the system violence, I think, that contributes to that.

In terms of the responses, I think the word is 'power'—the inequitable distribution of power. There are also some of the system barriers to accessing support—the distrust of police and some parts of the legal system, for

example. What are some of the ways that we can implement more effective, respectful, culturally sensitive policing of domestic, family and sexual violence in First Nations communities?

We've heard about the misidentification of First Nations women, in particular, as perpetrators. They may be using self-defence or may not appear as the ideal victim, and police may come in at a point in time and not see the broad range of factors that are contributing. That in turn contributes to the high rate of incarceration, which in turn contributes to the intergenerational trauma from being separated from your children and having your connection with them disrupted. We have funded research that has looked particularly at Indigenous women who are incarcerated, 80 per cent of whom were mothers. There are the language barriers and the issue of the services not being available in some of the more remote communities, but there is also the lack of communication, whether it's because of the model of a service or because the service is being provided in English. It's not just the ones we think of; it's also housing and broader services.

There is also growing evidence about the need for evidence based services for First Nations male perpetrators. Such services are underresourced, particularly in rural and remote areas, and broader services are needed to address substance use, mental illness and some of the neurological diversity.

First Nations communities have been calling for culturally safe, strength based, community led responses for some time. To operationalise this, First Nations organisations need dedicated resourcing to ensure that First Nations research receives that institutional support. At ANROWS, we're committed to supporting First Nations led research. We're continuing to build the evidence base, and we really see ourselves as allies and being able to work in partnership with First Nations researchers, organisations and communities. So we're pleased to be here to assist the committee today.

CHAIR: Thank you, Dr Lloyd. I'm going to go to Senator Waters first, and then I'm going to go to Senator Green and then Senator Shoebridge. If there's any time left, I'll ask a few questions.

Senator WATERS: Thanks, Chair, and thank you all so much not just for giving us your time today but for the importance of the work that you do and the beautiful way you've articulated this intersectional and deeply overwhelming issue of violence against women—violence against First Nations women in particular. I acknowledge the weight of the work that you do. Obviously, as a non-First Nations person, I acknowledge that I can never actually understand the depth of that trauma. We will do our best, in the service of justice, to try to reduce the barriers and improve justice and safety.

With that said, placing on record my agreement with and endorsement of all of the statements that you've made so far, my first question is to QIFVLS and Ms Schwartz in particular. I note the 11 lawyers you've got and the 90-plus communities that you service. What proportion of help can you provide based on the funding you have? That's an awkward way of phrasing it. You obviously won't have enough funding to meet demand. Can you give us a sense of how much unmet demand there is and how many more folk you could help if you had the funding you needed?

Ms Schwartz: Thanks for that, Senator. Part of the problem we have currently goes to data. We see that real issue with data—understanding data, data sub sets. It was spoken to recently in the Productivity Commissioner's report around data, which I believe was released last week. Let's talk about the National Agreement on Closing the Gap, priority reform 4. Our data is driven and controlled through our funding agreement with the National Indigenous Australians Agency, NIAA. Our data collection is based on outputs—these numbers: new clients, new cases, legal advices—

Senator WATERS: NLAP?

Ms Schwartz: No, currently we sit right outside of NLAP, so we are awaiting with curiosity the release of the report from Dr Mundy, which I believe is due at the end of this month. We have spoken with Dr Mundy, particularly about our concerns about being subsumed into NLAP if our funding is then at the mercy of being divided into the legal aids, the ATSILS and the CLCs, which are much bigger than us and who don't have at their heart a model that addresses early intervention and prevention; that works with a client, a victim-survivor, in a trauma informed and a culturally appropriate manner to address not only that legal issue but what's actually driven them to come into contact with us in the first place.

That's a fact I see across my service map. My client base is predominantly women. Over 90 per cent of my clients are women. They come to us fleeing the impacts of domestic and family violence, with nothing more than their kids. What do they need? I need a house. We're going to Maslow's hierarchy of needs: I need a shelter, food and clothing. How do I get that? You're in community. I see you guys here; every month you're here. We stretch our travel budget to be there every month where we can.

What we've experienced with the drying up of lawyers is not just QIFVLS related. We're seeing it within the legal assistance sector broadly. We've spoken about these concerns to Dr Mundy. A reflection of that drying up of lawyers can be seen in what is being experienced in Alice Springs, with Aboriginal and Torres Strait Islander people being left to their own devices to self-represent in criminal courts. Where are the bloody lawyers going—excuse my French—to do this work? I get very emotional and upset when I look at the level of need, when someone takes that brave step to come forward saying: 'Actually, I need your help. I'm getting sick and tired of being controlled, every aspect of my life managed, having the bejesus beaten out of me. I want to do something.'

Of course I get frustrated. We've had to pivot—so advice clinics. We're running these on the telephone with our officers, what staff I've got in offices to get clients in. Then we're working with who's on the ground, because the preferred method is face-to-face contact. You can build relationships with people. Not necessarily over the phone, or on Skype—it doesn't work like that, particularly in the context of traumas that victims-survivors experience. They're trying to build a relationship with someone they don't know, and then you expect them to talk about high levels of sexual violence on top of it. That's not going to happen automatically.

I'm hoping that gives you a bit of the context of what we do, what we try to do and how we provide a valuable service as a family violence prevention legal service—but you can see the stretch. We can only stretch so far. We don't do any criminal law representation work; that's not within our funding remit. Particularly for women who use retaliatory violence, they would be represented by an ATSILS or legal aid. We're not funded to do that, which can pose problems because some of our clients have used retaliatory violence. All of that work we've done, particularly in the context where they've been misidentified by police—we then have to hand that person over to the other legal service provider, who may not have the same degree of care, connection or knowledge. You then expose that client to having to retell that whole story again. And—particularly if there are elements of sexual violence—who wants to keep talking about a sexual assault or rape, strangulation, all of that, again and again and again? And we haven't even got to court. We haven't even got to prosecuting that matter. Sorry, Kulumba. Have I missed something? Please go ahead.

Mr Kiyingi: I just wanted to add a brief point. One of our submissions to the National Legal Assistance Partnership review did reference the priority reforms under the National Agreement on Closing the Gap—so, looking at priority reform 1, around shared decision-making partnership; priority reform 2, in particular, which we are concerned about, which is investment in the community controlled sector; and priority reform 3, which is quite important in terms of the transformation of mainstream institutions. Ms Schwartz mentioned priority reform 4 as well, regarding data governance. Where we are particularly concerned around priority reform 2 is, as Ms Schwartz mentioned—our particular model, where at the moment we are stretched in terms of having 11 lawyers, but our system, or our particular model, relies on both the lawyer and identified case management officer. All of our case management officers are identified positions. And I guess it's a dynamic duo of sorts—to meet both legal and non-legal needs, ensuring that we're providing that holistic wraparound cultural support. That's where this inquiry may provide an opportunity to really reflect on the priority reforms and what steps we can make in terms of priority reform 3, in terms of transforming the way mainstream institutions are run. So that's in terms of police practices, but also looking at how we invest and fund the community controlled sector to ensure self-determination.

Senator WATERS: Thank you. I couldn't agree more. I've had a little bit to do with Djirra, which I think is your sister organisation, the Victorian version of QIFVLS. And I've asked in other estimates about what will happen to the non-legal aspects of the support you provide to your clients if your funding moves from NIAA into NLAP, which is obviously legally focused. That issue is certainly on a number of our radars, and that wraparound whole-of-person support is so crucial in this area. I hope that those other identified so-called priorities can be given life to and that decisions about funding be made with those in mind.

I'm conscious that I have a lot more questions than I have time available. Thank you for your strong recommendations, particularly about data collection. I strongly support recommendation 14; that the process for collection and the processes for sharing be better articulated and driven by Aboriginal and Torres Strait Islander community controlled organisations. I strongly support that and the need for better data collection generally. That's a nice segue to hand over to you, ANROWS. Thank you for the work that you do in trying to improve our understanding and the evidentiary basis for what we can then make better decisions on.

I'm interested in your evaluation of the men's behaviour change programs. Could you perhaps, on notice—if you've got something to hand that you've already done—provide that to us, because I think that's a bit of an underserved area that could provide some real benefit.

We heard from the Queensland Police Service this morning, and they said that ANROWS had reviewed their domestic and family violence training. So I'm interested to know—if you're able to disclose to us—how good or

bad was it? Did you have to make lots of suggestions? Did they take on board your feedback? What sort of lived experience was involved in creating that training? And do you have any concerns about their train-the-trainer model? I had some concerns about that, because subtleties can get lost. And I'm worried, if those folk who are on-training people don't have the expertise that you have or that other women's safety organisations might have, that there will be some lost-in-translation issues.

Dr Boyd-Caine: Thanks, Senator Waters. We were here for some of that hearing and had considered what might be of interest to the committee. We could take part of that on notice but also give you part of what we would want you to be thinking about, which is that reviewing the materials, which is what we have done, is only one part of ensuring the effectiveness of the work. And so there's a whole lot that goes into some of the questions that you asked yourself about who's delivering the training, what's the cultural competency and a whole lot of other factors that we don't have line of sight over. And then, of course, the evaluation to impact. Our reflection of the literature and the evidence is that there is a lot of evidence about some things, but the really key questions about what works, the really key questions about what difference is being made—there is not yet evaluation to answer some of those questions. That would be the broad insight that we would give the committee. We would be really pleased to take on notice some of the detail about what we were able to see and what our assessment was.

Senator WATERS: Can I just congratulate you on your appointment, too. I hope you really thrive in the role; it's a very important one.

Dr Boyd-Caine: Thank you.

Senator WATERS: Thanks, Chair.

CHAIR: Thank you, Senator Waters. Senator Green?

Senator GREEN: I do have a couple of questions. Thank you very much for the opportunity. Thank you for all of your evidence. Particularly, can I say thank you for your really detailed submission. It was very helpful, particularly the recommendations that you've put forward. I just wanted to ask about a couple of those, if I may. I know you've gone to this, but if you could step it out a little bit further so we have a record of what experts say about this issue. I'm interested in the identification of domestic violence primary aggressors—you referred to it in recommendation 6—and the women in those circumstances who are victims-survivors being misidentified by police as the aggressors. I just wanted to understand why you think that happens still to this day by police. We have looked at some cases where that was a factor in police investigations and failings in police investigations. I want to get some insight into why that manifests itself in the relationships police have with Indigenous people. Beyond recommendation 6, what are some of the things that we could be looking at to address it?

Ms Schwartz: I'm going to go straight into the Judge Richards commission of inquiry into police responses to domestic and family violence. She found, emphatically, evidence of not only sexism and misogyny but of racism within QPS. Now, if you have within an institution that is there to serve community and to protect victims, whether you're a victim of a property crime or a victim of an assault, these embedded issues of sexism, misogyny and racism, the flow-on impact on Aboriginal and Torres Strait Islander peoples is obviously going to be an issue of trust, or lack thereof. She found that quite strongly. She's got a dedicated chapter in relation to Aboriginal and Torres Strait Islander peoples. What she found also within was those brave Aboriginal and Torres Strait Islander police officers, serving and non, who stood up and called out what had been going on within that police service. I note today that the police commissioner has indicated her intent to resign as of March. You can see the turmoil currently going forward in the QPS.

Now, I think it is trite to say that there is no such thing as racism within policing in Queensland. My communities and those I represent fear making complaints to police—they fear it—and I've opened with we're overpoliced and underpoliced. We're overpolicing in relation to being charged with offences—and pretty minor offences that see us being incarcerated, and in some instances we die in there. I think the Dhu case comes to mind in Victoria. I'm not making this up. It's there. How many more of these?

We've had the Royal Commission into Aboriginal Deaths in Custody, going right back, and we still come back to these same issues. Why are police not getting to the heart and culture, the rot, that's in there? We've identified it, and Judge Richards, in those 78 recommendations, stepped out what needed to occur to drive out and cut that cancer out. Those recommendations, in theory, were accepted by the Queensland government. An investment package of 100 million was committed to invest in victim liaison officers, high-risk teams and co-responder models where police are working with Aboriginal and Torres Strait Islander peoples, people who specialise in domestic and family violence responses. Have we seen that in action? No, we haven't—other than trials.

So I'm here to say that there is still a mistrust. There are case studies that I've put in the submission from QIFVLS. Those are based on fact. They've been de-identified. They were the same case studies that I spoke to

when I gave evidence to the commission of inquiry. This is a commonplace occurrence with QIFVLS. When we do speak out, we're not the ideal victim—firstly, because we're Indigenous; we're not going to be believed, because, if we have called up in the past, there's an assumption made, 'Oh, here we go again. Why should I give you any assistance?'

These are the realities of our communities, the realities of why women will choose to stay, and choose to put up with that belting, with the control and with the domination. Because, when we do call police, when those brave women have made the call to get in touch with police, there is a real fear that those children are going to be taken, and they are taken. They're taken out of community, and they're placed in out-of-home care. You can see the correlation with the alarming rates of overrepresentation of Aboriginal and Torres Strait Islander children in out-of-home care. Have a look at the SNAICC Family Matters Report and the recent data from last year's report. That speaks to that; there's your evidence base.

You can see that I have a level of frustration here, because there's a plethora of evidence, and we keep coming back to, 'Well, how do we weed out and address the core issues?' I could hear in the evidence being given by the QPS this morning that there are attempts. But, with respect, having QPS deliver what they believe is 'cultural capability training' is not the intent of Judge Richards recommendations. She expressly called on Aboriginal and Torres Strait Islander community controlled organisations, and experts, to come in and deliver that training. And we do that in relation to the five-day specialist course. In relation to access to police recruits, I'm not in that space; I don't know how they deliver training to police recruits or who has vetted that training. But there are ways that they can start improving culture, and they haven't taken it. So I'm hoping that answers your question, Senator.

Senator GREEN: Thank you. That leads me into my next question very helpfully. If the training that police are receiving is not adequate, what training do they need to receive and when? At what stage of their policing do they need to receive it? I appreciate that the answer might be 'on numerous occasions'.

Ms Schwartz: That's a brilliant question, and it was something that the Women's Safety and Justice Taskforce looked at in their first report, looking at the criminalisation of coercive control in Queensland. I was a member of that task force. In relation to the necessity for training, it needs to start when they are recruits, and it needs to occur throughout their course as police officers. This isn't a one-off; this isn't just self-managed, where they're just tuning into a webinar and ticking a box, or where we're all sharing screens and all sharing responses, which were some of the findings in the evidence base from the task force.

This is ongoing and it's measured. And you've got to build the capacity by bringing in experts within the field. You can see that in the five-day course, where there are a number of different experts who've been brought in to deliver skilling that's needed to QPS, to build their capacity, especially when we're shifting the paradigm. We're now talking about coercive control. We're now looking at: 'Hang on. We've got to move away from incident based reporting—that whole, "that's all I'm seeing when I come up to a crime scene"—to, "I need to now step back and look at this relationship across a continuum. I need to be aware of all these different things. I need to call in. Have they contacted QPS before? What am I missing here? Who is the true victim here?"' The person who might be quiet and controlled and calm may be the aggressor, and that is the case study that I've put in the submission from QIFVLS, where we've seen the retaliatory act of violence. They've acted because they've finally snapped.

CHAIR: Senator Green, I think Dr Boyd-Caine or Dr Lloyd had something to add.

Dr Lloyd: Yes. I would just add that the evidence would suggest that training is important but not sufficient in cultural change in any system. Having leadership that demonstrates what you're trying to embody would be one: having a theory of change so that you have a shared understanding of the problem that you're trying to solve but also the different activities and mechanisms through which you are going to get that outcome. So it would never just be training alone, and you would need to have a way of tracking and monitoring your progress. You need a whole theory of change, whatever system you're dealing with.

CHAIR: Okay. Thank you. Can I just say to our witnesses: if I'm looking at my phone it's because I'm trying to organise senators who are in and out of connection.

Senator Shoebridge interjecting—

CHAIR: I didn't use that verb, Senator Shoebridge, though I'm not saying it's inappropriate. Senator Green, any more questions?

Senator GREEN: No. I was just about to say that, to assist you in handling those other senators, I'll end there. Thank you.

CHAIR: Very kind of you, Senator Green. Senator Cox, you've joined us again. You've got a question?

Senator COX: I do. Thank you very much, Chair. Can I thank both of your organisations for the work that you undertake within our communities, and particularly in the fine state of Queensland—under difficult circumstance, I know—in covering the width and breadth of your state with the limited resources that you have. I also acknowledge the extremely important role of ANROWS. I had the pleasure of serving on the first national council, to the Rudd government back in 2008, during your development. So I've followed your work very intensely—which shows you how far I've been in the game and how long.

But my question really goes to the heart of one of the things we've heard many, many times in this inquiry: the trauma that exists for all of our families and the intense amount of emotional labour that it takes for our families to carry this, both as victims directly of missing and murdered women and children and from the intergenerational impacts. I didn't hear this particularly well responded to by your police service this morning. Can you tell me if there's any work that's underway—apart from the five-day training that I've just heard about—or any recommendations you think we could go to that would look at best practice, either nationally or globally, that might give us some insight into that?

Ms Schwartz: Thank you, Senator, for that question. I think that is a missing link in the puzzle. This isn't to take away from the gravity of what we're discussing here, but there is a lack of appreciation of the impact of trauma on victims-survivors of any form of domestic and family violence. You can see that in the lack of an appropriate response and the manner in which victims-survivors are treated. What we see in Queensland, when I look at the outcomes more broadly of the second *Hear her voice* report by the Women's Safety and Justice Taskforce, is a review of the entirety of the system that we have and the manner in which a victim-survivor interacts with that system, because the system, as it currently is, is highly traumatic. Victims-survivors are not party to proceedings. It's about them, without them—with respect. Where is their advocacy?

I know that the DPP were here this morning speaking to the role of the victim liaison officer, but the director only spoke to the fact that there is one Aboriginal and Torres Strait Islander victim liaison officer. Who is going to be there to assist a victim-survivor to navigate a system like that? How does the system respond and react to the fact that sometimes justice for a victim-survivor is actually being able to go in to a police officer, and that police officer treating her with humanity and dignity and taking her statement in a private manner? She feels relieved that someone has actually listened to her, given her the time of day—and that is all she wants. That's what justice looks like to her. But for those victims who go through the entirety—if we're talking about sexual violence, right through to the very end—they may not get that conviction of a perpetrator. That trauma is then impacted, and it flows back. What was the justice there? Can you see justice in effect? Kulumba and I were speaking about this—and I will hand over to him—around the victims advocate.

Mr Kiyangi: One of the recommendations from the Women's Safety and Justice Taskforce's *Hear her voice: Report Two*, recommendation 9, was the implementation of a professional victims advocate service to provide culturally safe and trauma informed support individualised for victims-survivors. A different viewpoint or different slant that we could put on it from the perspective of a community controlled organisation is that, whilst working with government—whether it's to be with Victim Assist Queensland or with the DPP—there should also be the opportunity for a First Nations victim-survivor to engage with a victims advocate from a community controlled organisation. I think that would also go some way to realising some of the priority reforms in terms of that shared decision-making, self-determination and investment in community controlled organisations, just realising that community controlled organisations that are on the ground in the community may have that ability to provide that support.

CHAIR: Did ANROWS have something to add in that respect?

Dr Boyd-Caine: Thank you, Senator Cox, for your input to our work over time. It wasn't clear whether you were asking particularly about Queensland police. So I just wanted to speak to some of the work that we do in partnership with the Healing Foundation, which is really about building workforce capacity and capability right across specialist domestic, family and sexual violence services in Queensland, including women's health and wellbeing services. What's really important about that partnership, first and foremost, is the community-controlled context set by the Healing Foundation, which has a very strong focus on healing as part of that response to trauma. Also, importantly, it's a partnership involving a community controlled organisation where the work that we're doing is with non-Indigenous as well as community controlled organisations. Another way to think about what it looks like to be building that preparedness, that capacity and that capability right across the service system—precisely to your question, Senator Cox, about how we are ensuring that responsiveness to the impacts of trauma.

Senator COX: I did want to speak specifically to the evidence we had this morning in relation to the Northern Ireland model of police complaints. I think it's a really important point that the legal service just brought up

around people having confidence to be able to report to police. They're not going to report to the police if it's police investigating police. That's why I broadened it to not just a national perspective on research but also a global perspective around what some of those best practices look like—obviously with an intersectional lens on them to look at how that might work for First Nations communities—having an independent organisation or commission at that national level to help us cut through what we currently see in jurisdictions, which is individual police forces investigating their peers or colleagues, which is not a good model.

We've seen how that's worked in a deficit way towards First Nations communities.

CHAIR: Thank you, Senator Cox. Just before I give the witnesses an opportunity to respond, I should say we had evidence this morning from Ms Karen Iles of Violet Co Legal and Consulting, and Miss Iles raised the Northern Ireland complaints model in her evidence. I'm interested to hear your comments now, but also feel free to take on notice and provide any further comments you have. Ms Schwartz?

Ms Schwartz: Yes. Thank you for that, Chair, and Senator Cox. I absolutely agree; police should not be investigating police. If you needed an evidence base, particularly in Queensland, have a look at Judge Richards' findings in the commission of inquiry into domestic and family violence responses. She strongly called for in Recommendations 68 to 74 inclusive, an independent police integrity unit—sitting within the CCC, I believe—investigating these complaints. There is no confidence in that system. We have also called for, in our submissions, a standing task force as one of our recommendations, with the power to investigate cases of missing and murdered women and also police practices, given that policing sits within the ambit of states and territories. I think we do need a coordinated response here. Given that we're seeing a coordination of responses—or uniformity around domestic and family violence and coercive control—given that domestic and family violence, sexual violence is not confined to state and territory borders.

Mr Kiyingi: If I may briefly add, the recommendation for a standing task force was based on the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls. That was Calls For Justice, recommendation 9.9, relating to a national task force to reinvestigate. So that's the basis for our recommendation.

CHAIR: I'm very impressed how across you are all the different reports and recommendations, I must say. Dr Boyd-Caine, do you have anything further to add on that? No. Thank you. Senator Cox, is that all from you at the moment?

Senator COX: Just a follow up question. In that vein—and thank you both for mentioning that—I think one of the other critical things is about policy and procedures. Are you aware of any research, practice or findings looking at specific codes of practice or operating procedures around the differences when we look at cases of missing and murdered women and children and responding to violence? Currently, most police jurisdictions operate on one code of practice, and they don't see any intersectional approach in that. Is that happening in Queensland? Is that something that you're pushing forward with that no-one's listening to? Or, if you hear of any other work in that area, are you able to shed any light on that?

Ms Schwartz: I might need to take that one on notice. I'm not too sure if there is an appetite within Queensland to review the police operational standards manual in the context of all the reform initiatives that are currently on foot. I can't remember off the top of my head what Judge Richards' recommendations were that may speak to best practice. I'm just looking to Mr Kiyingi to see if he might be able to add any more on this.

Mr Kiyingi: I'm sorry; I have to take that on notice.

CHAIR: Dr Boyd-Caine or Dr Lloyd, Anything to add?

Dr Boyd-Caine: We'd be happy to take that on notice.

CHAIR: Happy for you to take that on notice.

Dr Boyd-Caine: We haven't had a lot of focus on policing—best practice or otherwise.

CHAIR: Excellent. Senator Cox?

Senator COX: That's fine. Thank you, Chair.

CHAIR: Thank you. Senator Shoebridge, we are running behind time, so if you only have one or two questions—

Senator SHOEBRIDGE: I have two questions.

CHAIR: Okay. Thank you.

Senator SHOEBRIDGE: Thanks very much for your work. There's a pattern in all the submissions. In WA, First Nations communities don't trust WA police and don't trust WA police oversight. In Victoria, New South Wales and Queensland it's the same pattern. In every state you hear the same breakdown in trust with the police

and little if any confidence at all in police oversight. One of the recommendations that was put to us this morning was having a national police oversight body so that you have some distance between the state and territory police and you have genuinely institutionally independent oversight. Has that at all featured in your thoughts, Ms Schwartz or Dr Lloyd?

Dr Lloyd: I would say two things. One, I would recommend to you a research article by Kyllie Cripps, who talks about the impunity of policing failures. She reviewed the 151 coronial court investigations over a 20-year period. That came out after our submission. It's an Indigenous researcher looking at Indigenous cases and the role of policing in that.

I know that your question is around the national body and the role of that. I would say having some power, with Indigenous led responses to the missing and murdered women and children, would be important whether at a national or a jurisdictional level. So I feel like it's the structure. The evidence would suggest it's the structure of how that's organised. It's not just where the deckchair is, if you know what I'm saying.

Senator SHOEBRIDGE: Yes, I understand. Ms Schwartz?

Ms Schwartz: I always come back to: if we're adding another layer of police, where are we going?

Senator SHOEBRIDGE: To be clear: the submission came from Ms Iles. It wasn't about another layer of police; it was a layer of some institution that's independent of police and the state and territory governments which will at least have a degree of institutional distance from the police that they're trying to oversight. It was definitely not another layer of police.

Ms Schwartz: Whilst I understand and appreciate, probably, the independence of an office to oversight, to call out systemic barriers, and to look at and be an evidence based capture, I get very worried about the investment in bodies that are toothless tigers. If you are going to invest in a body—and I'm assuming that, if we're setting up such a body, it would be an independent statutory office and there would need to be a budget attached to it—what are we actually going to achieve that is going to benefit victims-survivors, particularly Aboriginal and Torres Strait Islander victims, in regional and remote communities? I always come back to this.

I absolutely agree: police cannot, with all due respect to police, investigate themselves confidently. I have no confidence in that system. They need an external body of review. But how do we actually stay on top and have oversight of what they are doing? One only has to open up a newspaper on any given day and there is a story of some crisis, a lack of policing responses—whatever it is. I think that's where I'm sitting on it. I'd probably want more detail, and I'd like to know how it's going to benefit my clients.

Senator SHOEBRIDGE: I 100 per cent agree with you. You just create a national commissioner, give them a staff of four people and a \$15,000 travel budget—that's not going to fix anything. I agree with you, and I could point to a number of examples.

I was testing the Queensland Police Service about another recommendation that came from Ms Iles, which was having a legal obligation in cases of serious sexual assault or homicide. A minimum set of standards to treat the complainant and the victims families with respect; take a statement to contact; contact and take, if possible, statements from key material witnesses; and seek to get in contact with the perpetrator and take a statement from the perpetrator as a legally required minimum standard, perhaps by way of a duty of care to victims. Surprisingly, Queensland Police said they would be comfortable with that. If that gave a right to victims and families, do you think it might go a modest step in the right direction?

Ms Schwartz: Whilst I don't disagree with setting minimum standards, the trick, with respect, comes down to enforceability. Where is that action going to be enforceable? Who's going to oversight this? What will be the damages, so to speak? If you find that there has been a breach or a failure, what then is going to be—

Senator SHOEBRIDGE: Duty of care, there'd be a tortious claim for damages.

Ms Schwartz: That's correct. So are we then going to be logged down in litigation, civil litigation, given the failure of the state—because they are a state institute. I mean no disrespect to the Human Rights Commission. We have a human rights act. We have, in theory, a number of rights in Queensland.

Senator SHOEBRIDGE: I don't think anyone was thinking—

Ms Schwartz: Let's look about enforceability. I come down to enforceability and these toothless tigers. It's great creating rights, but what about action and enforceability? And when I look at a victim-survivor, who's traumatised enough—my client group will say: 'Stuff it. I'm going to walk away. This is too much. And now I've got to sue them on top of it?'

Senator SHOEBRIDGE: Well, no, you don't have to. But, for the first time ever, you could. And if it was taken as strategic litigation it might be one element to drive cultural change. For the first time ever you could sue them for their failures, as opposed to leaving them with impunity.

Ms Schwartz: It is, with respect, one element of the toolkit. I don't believe it should be seen as a silver bullet. To embed and see real cultural change, you would need to add it on to a number of things to see change within the QPS.

CHAIR: Dr Boyd-Caine, Dr Lloyd, do you have anything you want to add in relation to that discussion?

Dr Lloyd: Yes. I would support Karen's seven recommendations. I think the evidence would say that it is not just the recommendations but also how they are implemented and enforced.

CHAIR: Thank you. Thank you to all the witnesses for appearing today. Thank you to ANROWS for the important work you do. It often comes before our committee. Ms Schwartz and Mr Kiyangi, thank you so much for appearing today. Can I give our best wishes to your 11 lawyers and to the case managers they're working side by side with. Please convey to them how much we appreciate the work they do under very difficult circumstances. That concludes today's public proceedings. The committee has agreed that answers to questions taken on notice at this hearing should be returned by close of business Tuesday 12 March 2024. I thank all witnesses who have given evidence to the committee today. Thanks also to broadcasting and to the secretariat.

Resolved that these proceedings be published.

Committee adjourned at 15:49



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Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Via Email: FirstNationswomenchildren.sen@aph.gov.au

21 December 2022

Dear Committee Secretary,

Re: Submission to Missing and Murdered First Nations Women and Children Senate Inquiry

Violet Co Legal & Consulting (**Violet Co**) welcomes the opportunity to contribute to the Senate Inquiry into Missing and Murdered First Nations Women and Children.

Violet Co is a social enterprise and Indigenous business founded by Karen Iles, Principal Solicitor and Director. The practice focuses on the rights of Women and First Nations peoples. We regularly advise and represent women, particularly Aboriginal and Torres Strait Islander women, in matters relating to sexual assault, sexual harassment, issues regarding police accountability and discrimination.

Throughout this submission we use the terms "murdered" and "presumed murdered". We, at Violet Co, challenge the description and category of Aboriginal and Torres Strait Islander women as "missing". Language is important. We seek to challenge the social framing and assumptions surrounding the term "missing"; which fail to highlight the roles of perpetrators of violence and the institutions that enable this violence through lack of adequate investigation. "Missing" is an isolating gaze placed on victims, it frames victims as the primary party to their own victimisation and, for First Nations people, it inflames egregious stereotypes of 'walkabout' - the assumption that First Nations people live transient lives and, therefore, concerns about our wellbeing are not worth investigating.¹

Our women and children are not "missing" - they have not abandoned their families, communities and lives - they are the victims of violence and murder that we say have often not been adequately investigated by our police services.

¹ 'Vanished: The Unsolved Cases of missing First Nations Women' 2022 SBSNews Accessed at: <https://www.sbs.com.au/news/the-feed/creative/vanished-the-unsolved-cases-of-missing-first-nations-women/w9fsk4m99>



MEMBER OF
THE LAW SOCIETY
OF NEW SOUTH WALES





It's reported anecdotally that police responses to concerns about the wellbeing of First Nations women are treated 'casually'² and we argue that this is symptomatic of a broader institutional failure of policing, especially in response to First Nations women and children experiencing violence.

We argue that deficits in police accountability and response impact on the ability of legal and judicial processes to deliver justice for victims, their families and their broader community. These failures then build upon and exacerbate existing unresolved, intergenerational trauma as a result of historical and ongoing violence from the state and its apparatus, such as the police.

Our submission addresses particularly terms B, C and F in the Inquiry Terms of Reference:

B: "the current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children"

C: "the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children"

F: "the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children"

Our submission is grounded in the following lived experience:

1. The personal experience of Karen Iles, Principal Solicitor of Violet Co
2. The experience of our clients
3. Nationally profiled deaths of Aboriginal women and children

² Ibid



Case study: Karen Iles

Karen Iles is a solicitor and Aboriginal woman descended from the Dharug Nation. Earlier this year, Karen established a law reform campaign in light of her experience as a victim of child sexual assault and the shortcomings of responses by police in both New South Wales and Queensland.

As detailed in an investigation by the Guardian³, since her first report in 2004, police in both jurisdictions have, to the best of our knowledge, failed to investigate any of her claims. Despite many attempted follow-ups, 18 years later no one has ever been interviewed or held accountable for these crimes.

Karen had to learn that, despite community perception, police are not obliged to investigate her allegations and that there is no duty that compels them to do so.⁴ She has lived experience of the shortcomings of internal police conduct investigations through making formal complaints to bodies such as the Law Enforcement Conduct Commission in New South Wales and Police Link in Queensland, processes which do not guarantee investigation of the original claim and further extends the interaction between vulnerable peoples and a traumatising institution.

In light of her professional experience as a solicitor, she identifies the key institutional barriers to justice for victims of violence as a lack of a positive legal duty of care from police⁵, no minimum duty of investigation into allegations of violence, lack of independent police conduct investigations⁶ and no national strategy to create consistency across state and territory police jurisdictions.⁷

These processes with Police often cause re-traumatisation and significant harm to First Nation victims/survivors, while not conducting an adequate response to violence.

Karen's experiences over decades highlights the systemic issues within our police forces and the difficulties to hold police to account especially in regards to crimes involving gender based violence. The attitudes and behaviours of police have been examined in Queensland by the Independent Commission of Inquiry into Queensland Police

³ 'Unspeakable trauma': police in Queensland and NSW failed to investigate alleged gang rape of 14-year-old girl, records show 4 OCT 2022 The Guardian accessed at <https://www.theguardian.com/australia-news/2022/oct/04/unspeakable-trauma-police-in-queensland-and-nsw-failed-to-investigate-alleged-gang-of-14-year-old-girl-records-show>

⁴ Factsheet No. 19 Reporting Crime to NSW Police & Police Discretion to Investigate 10 SEP 2021 Redfern Legal Centre accessed at <https://rlc.org.au/sites/default/files/attachments/100921-RLC-ppfs19-fs-reporting-crime.pdf>

⁵ The duty of care owed by police: a useful restatement 20 JAN 2022 Weightmans accessed at <https://www.weightmans.com/insights/the-duty-of-care-owed-by-police-a-useful-restatement/>

⁶ 'Devastating' outcomes for woman abused by police officer husband after Ibac failures, report finds 11 OCT 2022 The Guardian accessed at <https://www.theguardian.com/australia-news/2022/oct/11/devastating-outcomes-for-woman-abused-by-police-officer-husband-after-ibac-failures-report-finds>

⁷ Factsheet No. 19 Reporting Crime to NSW Police & Police Discretion to Investigate 10 SEP 2021 Redfern Legal Centre accessed at <https://rlc.org.au/sites/default/files/attachments/100921-RLC-ppfs19-fs-reporting-crime.pdf>



Service responses to domestic and family violence (**QLD Inquiry**).⁸ The findings and recommendations from her Honour Judge Deborah Richards are indicative of how Police view Aboriginal and Torres Strait Islander victims of gender-based and family violence. We know that perpetrators of these crimes often escalate their violence resulting in deaths of their victims.

While the aforementioned Inquiry findings are particular to Queensland, we say the findings and recommendations ought to be considered as indicative of police responses, culture, practice and behaviours across Australia. We applaud the Queensland Attorney General and the Queensland government for initiating this inquiry and urge all other States and Territories to have the courage to understand the experiences of Aboriginal and Torres Strait Islander women, children and communities in their interactions with Police.

The findings and recommendations of the Inquiry from her Honour Judge Deborah Richards are particularly pertinent to this Inquiry and we urge the Committee to consider these in your investigations.

Case study: Our clients

Our clients at Violet Co tend to consist of victims of gender and race based violence such as sexual assault. Through our work we repeatedly hold space for First Nations victims of violence to process their interaction with the police and our clients have overwhelmingly identified responses by police as ‘traumatic’, ‘misogynist’, ‘racist’, ‘condescending’, ‘gaslighting’ and ‘disempowering’. Beyond this anecdotal evidence numerous studies also reflect the experience of alienation by police following experiences of violence.⁹

Numerous clients have disclosed to us their suicidal states that they attribute directly to the insensitive and inappropriate conduct of Police. Our client’s disclosures are similar to those that are contained in the testimonies of witnesses and family members of women in Queensland who have taken their own lives, or attempted to take their own lives, due to the way that police have conducted, or not, investigations. We also note the experiences of “Kate” who in, NSW, took her own life after many months of interactions with police regarding her complaints of sexual assault against a high profile politician.¹⁰

This has impacted and influenced the advice we provide to our clients, particularly First Nation clients, regarding issues and expectations of reporting violence, access to justice and remedies. This is to fulfil our obligations as

⁸ ‘A Call For Change’: Commission of Inquiry into Queensland Police Service responses to domestic and family violence 21 NOV 2022 Accessed at: <https://www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf>

⁹ Challenging misconceptions about sexual offending: creating an evidence based resource for police and legal practitioners 6 SEP 2017 Australian Institute of Family Studies, Victoria Police accessed at <https://apo.org.au/node/107216>

¹⁰ ‘NSW police never started investigating Christian Porter rape allegation, internal review reveals’ 20 SEP 2021 The Guardian Accessed at: <https://www.theguardian.com/australia-news/2021/sep/20/nsw-police-never-started-investigating-christian-porter-allegation-internal-review-reveals>



solicitors under the *Solicitor Conduct Rules*¹¹ to assist our clients to, “...understand relevant legal issues and to make informed choices...”.¹²

Many of our clients also experience being disbelieved, whether by friends, family or the police.¹³ Continuously combatting victim-blaming sentiments within their social spheres further aggravates the distress of police inaction or inadequate investigation.

This amongst several other factors can deter First Nations women from reporting violence,¹⁴ in an exceptionally underreported area of crime and contributes to the trauma already experienced by First Nations women.

While Violet Co does not currently represent families of murdered or presumed murdered women or children, we do have Aboriginal clients who are impacted by the murder or presumed murder of women and children in their immediate and extended kinship.

Case study: Nationally profiled deaths of Aboriginal women and children

Social media, alongside other forms of media, have been consistently utilised by First Nations peoples to raise awareness around First Nations issues, especially about instances of violence occurring against First Nations women and children. Using these platforms and tools, Indigenous peoples complement existing forms of political activism and engage in broadening expressions of politics and cultural processes such as Sorry Business.¹⁵

Often these forms of media communication expose police failure as key areas of concern for First Nations relations of victims of violence.

In 2022, vigils around the nation reflected on the murder of Cassius Turvey and demanded justice for the family of the Noongar/Yamatji schoolboy. Mechelle Turvey, Cassius’s mother, has publicly questioned the police response in the days following the violent attack on her son,

¹¹ *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015* (NSW) accessed at <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2015-0244#sec.7>

¹² Ibid, Rule 7.1.

¹³ ‘One in five Australians thinks women who say they were abused often make up or exaggerate claims of abuse or rape – the highest of any western nation’ 04 MAR 2022 Ipsos and Global Institute for Women’s Leadership Accessed at <https://www.ipsos.com/en-au/one-five-australians-thinks-women-who-say-they-were-abused-often-make-or-exaggerate-claims-abuse-or>

¹⁴ Barriers prevent Aboriginal and Torres Strait Islander women from reporting family violence 15 DEC 2020 The University of Melbourne accessed at <https://www.unimelb.edu.au/newsroom/news/2020/december/barriers-prevent-aboriginal-and-torres-strait-islander-women-from-reporting-family-violence>

¹⁵ ‘Social Media Mob: Being Indigenous Online’ 2018 Macquarie University Accessed at: https://research-management.mq.edu.au/ws/portalfiles/portal/85013179/MQU_SocialMediaMob_report_Carlson_Frazer.pdf

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“We did not hear from any detectives, no police. Nothing. For five full days. That was their opportunity. That was their window.”¹⁶

Apart from taking a brief statement from Cassius on the night he was admitted to hospital, Ms Turvey claims there were no further attempts to retrieve a more comprehensive statement for multiple days before his passing. To the best of our knowledge, Western Australian police have a similar discretion to not investigate a crime like police in New South Wales and we believe that creating firmer expectations of police conduct nationally would generate more adequate responses to experiences of violence like Cassius’.

Only a few weeks later, First Nations people nationally were grieving the loss of another Noongyar community member. Ms Miller was attacked with a brick at a shopping centre, which ultimately resulted in the death of her and her unborn child.¹⁷

Through these nationally profiled deaths, First Nations people have been able to highlight ongoing violence experienced by women and children in our community. Through these channels, First Nations family members who are now forced to be advocates for their deceased loved one such as Ms Turvey, also use these platforms to question the effectiveness of police in responding to this violence.

It is a monthly occurrence that the stories of murdered, and presumed murdered, Aboriginal women and children hit social media - many are not even reported in the mainstream media.

The impact of this is that First Nations women and children, and their communities can feel invisibilised and that access to justice is beyond reach. With so many examples month after month of the police and our justice system failing to do even the most basic police work, why would First Nations people report crimes to police? This is an unacceptable justice gap.

¹⁶ Cassius Turvey killing: mother questions why police took only a brief statement before he died 28 OCT 2022 The Guardian accessed at <https://www.theguardian.com/australia-news/2022/oct/28/cassius-turvey-killing-mother-questions-why-police-took-only-a-brief-statement-before-he-died>

¹⁷ ‘Grieving family pays tribute to pregnant woman who died in Perth after being hit by concrete block’ 03 DEC 2022 The Guardian Accessed at: <https://www.theguardian.com/australia-news/2022/dec/03/grieving-family-pays-tribute-to-pregnant-woman-who-died-in-perth-after-being-hit-by-concrete-block>



B - “the current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children”

The problem

Socially and through the media, we can see a discrepancy in response to the murders and disappearances of First Nations women and children in comparison to non-First Nations women and children. When cases of white children occur, such as William Tyrrell and Cleo Smith, they make headlines and have increased police commitment over a longer period of time, whereas the abduction and murder of First Nations child Charles Mullaley receive little national attention or police commitment.¹⁸

Our proposal

Police are the gatekeepers to our justice system. Currently police have discretion into what they choose to investigate, and how. They are instructed by codes of conduct and operating procedures that are not transparent, or legally enforceable for victims and their families.

From the QLD Inquiry we understand that police, like all institutions, workplaces and our society, contain bias. In Queensland her Honour characterised police in that state as having systemic misogynist and racist views.

Steps must be taken to change the culture of police. Culture is deep rooted and intergenerational. It has an unbroken link to the “Australian Wars” (reference) and the murders (uninvestigated and unprosecuted) of hundreds of thousands of Aboriginal and Torres Strait Islander people in this country - often by State and Territory police and military forces. The abduction and rape of Aboriginal and Torres Strait women and children, without impunity or justice, has been a constant since the first days of colonisation.

Recommendation 1: Creation of new and alternative police forces

Alternative policing models that create a deliberate break in the institution, and intergenerational culture contained in our police forces, is urgently needed.

¹⁸ ‘First Nations kids make up about 20% of missing children, but get a fraction of the media coverage’ 18 NOV 2021 The Conversation Accessed at:
<https://theconversation.com/first-nations-kids-make-up-about-20-of-missing-children-but-get-a-fraction-of-the-media-coverage-171666>



C - “the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children”

Defined terms

The institutional legislation, policies and practises our submission concerns the powers and responsibilities of police to respond to experiences of violence. This submission focuses specifically on sexual violence, within the terms of reference “all forms of violence”, and we focus primarily on sexual violence as this is the lived experience our Principal Solicitor and clients can contribute to the Senate Inquiry. This is further detailed in our case study sessions on Karen Iles and our clients story.

The problem

Through the lived experience of Karen, our clients and the national Indigenous community, we can understand that the reality of police interaction does not match general community expectations. Generally, the community is taught socially to trust police in times of need and that the role of police is to investigate allegations of wrong-doing. Legislation and policy fail to live up to these expectations and, instead, the institution becomes an enabler of violence, a retraumatising space for victims and confusing to navigate across jurisdictions.

Our proposal

Law reform is required to match the institution of policing to community expectations.

We propose changes to the law to impose a legally enforceable police duty of care and create minimum legal duties of investigation especially for serious crimes such as murder, manslaughter and aggravated child sex crimes. This alteration to existing legislative frameworks will better reflect community expectations of police and the role of the state in protecting the public from crime.

Recommendation 2: A duty of care that police should owe victims

A duty of care to victim survivors will compel police responses to align to community expectations and provide access to justice.

The gross, and on occasion willful neglect, negligence of police (driven by the attitudes and responses demonstrated in the QLD Inquiry) in investigating crimes against Aboriginal and Torres Strait Islander women and children, must end.

A duty of care will compel police to act appropriately, address systemic issues within police forces, and give victim/survivors recourse.

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This duty must extend beyond unenforceable instruments such as codes of conduct, operating procedures and charters of victims rights. These instruments are not enabling victims to hold police to account.

Recommendation 3: A legally enforceable minimum standard of investigation

A minimum standard of investigation, that is legally enforceable, can codify simple expectations such as interviewing victims, witnesses and, when appropriate, alleged perpetrators, gathering evidence and properly retaining evidence.

This duty must extend beyond unenforceable instruments such as codes of conduct, operating procedures and charters of victims rights. These instruments are not enabling victims to hold police to account.

Recommendation 4: Independent complaint and review mechanisms regarding police conduct

When police fail to meet a duty of care or a minimum standard of investigation and conduct there must be independent and transparent complaint and review mechanisms, to ensure that police meet their legal and ethical obligations to the community.

Our community expects this.

Police investigating police, often in the same local area command, is an unacceptable conflict of interest. This practice is out of step with community expectations, and out of step with workplace law in Australia.

Independent police complaint bodies are urgently required in each State and Territory.

Her Honour Judge Deborah Richards in the QLD Inquiry has recommended:

“Within 18 months, the Queensland Government establish the Police Integrity Unit as an independent and separate unit of the Crime and Corruption Commission to deal with all complaints in relation to police. The Police Integrity Unit must, at a minimum:

- be led by a Senior Executive Officer who is a civilian
- provide for whistleblower protections
- include a victim advocate
- include identified positions for First Nations staff in the intake and victim advocacy teams
- include civilian investigators, and transition to a predominately civilianised model as soon as possible
- implement an adequate complaints management system, including fit for purpose data collection and reporting, including providing for aggregate trends analysis
- publicly report annually on activities and outcomes.”

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These bodies must be independent from reporting into police structures, and police Commissioners. They must be staffed by legally qualified professionals who have not previously worked for Police, and hence will not carry police culture into this body.

We recommend:

- Lawyers and investigators who are specifically competent in Aboriginal and Torres Strait Islander experiences of racism and gender-based violence
- A victim-centred, trauma informed, approach to ensuring that victims are not blamed, patronised and seen as “the problem”
- If an adverse finding against police conduct, duty of care, or investigation standards, is found that this complaints body is equipped to conduct the criminal investigation itself - rather than referring it back to Police to reinvestigate. Referring back to police further retraumatises and entrenches trauma in victims - many of whom say that dealing with police is more traumatic than the crime itself. The model in Northern Ireland may be instructive for Australian jurisdictions.

Recommendation 5: A National Framework

A national framework that ensures consistency in police response across jurisdictions is equally important. While we appreciate that legislated police powers and responsibilities are State and Territory based, we believe there must be a greater commitment to uniformity across jurisdictions. This will especially be appreciated by cases that occur across state and territory lines, where differences in police process can be incredibly confusing and distressing to victims. This is occurring in other areas of the criminal law in regards to state and territory coordination regarding coercive control.

F - “the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children”

See our proposals above in full.

List the recommendations

- Recommendation 1: Creation of new and alternative police forces
- Recommendation 2: A duty of care that police should owe victims
- Recommendation 3: A legally enforceable minimum standard of investigation
- Recommendation 4: Independent complaint and review mechanisms regarding police conduct
- Recommendation 5: A National Framework

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Summary

Police responses are at the core of the issue of murdered and presumed murdered First Nations women and children.

We must ensure that First Nations people in this country have access to justice and that the justice system is culturally competent and understands gender-based violence. Victims and their families must be heard, believed, and action must be taken.

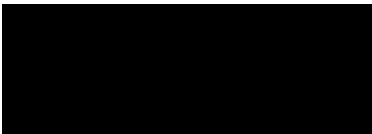

The experiences of women, and Aboriginal and Torres Strait Islander women, in reporting sexual assault to police, and the police responses to these reports of concerns for the safety and wellbeing of First Nations women and children are indicative of a systemic problem with Australian policing.

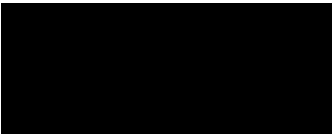

We suggest a number of reforms to help make our community safer and reduce the retraumatisation the police put victims through. We can structurally amend these harmful institutional practices, in particular reference to experiences of sexual violence against children, by:

1. Creation of new and alternative police forces to break away from the intergenerational culture of racism and misogyny.
2. Changes to the law to impose a police duty of care to victims/survivors.
3. Changes to the law to impose a minimum standard of investigation.
4. The creation of independent complaints and police conduct review mechanisms that are effective and transparent.
5. A national framework that values consistency across police jurisdictions.

Violet Co Legal & Consulting is grateful for the opportunity to contribute to the Senate Inquiry. We would welcome the opportunity to give verbal testimony at this inquiry. We would be pleased to extend that invitation to our clients. are also available and welcome the opportunity to give evidence to the Senate Inquiry, we can also extend the invitation to give evidence to our clients.

Kind regards,


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Australian police and policing

'Unspeakable trauma': police in Queensland and NSW failed to investigate alleged gang rape of 14-year-old girl, records show

Exclusive: A senior officer told Karen Iles they believed her statement, including names, photos, maps and diary excerpts, had been destroyed

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Ben Smee

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Tue 4 Oct 2022 03.30 AEDT

Police in Queensland and New South Wales failed to investigate a series of alleged sexual assaults against a 14-year-old girl, lost key documents related to the case, and later told the alleged victim that her formal statement had been “destroyed”, a Guardian Australia investigation has found.

Legal sources say one of the allegations - a gang-rape attack by up to 15 teenagers and adult men in a Gold Coast hotel room in 1993 - is among the most serious ever reported to authorities in Australia.

Karen Iles came forward in 2004, in her early 20s, and made a statement to NSW police. It contained names, photographs and other identifying features of her alleged attackers; maps and locations of the alleged assaults; the names of witnesses and a co-victim; and contemporaneous evidence from her childhood diary.

Police records released under freedom of information laws show the case was assigned to Queensland detectives, but soon stalled due to inaction by officers in NSW. It then appears to have simply been forgotten in both states for more than a decade.

There is no evidence that a substantive investigation ever took place, or that named suspects and witnesses were ever interviewed or contacted.

In 2018, Queensland police told Iles they believed case documents, including her 2004 statement, had been shredded a few years earlier. A copy of the statement was unearthed last year, with no explanation.

Iles has waived her legal right to anonymity, in the belief that sharing her experience will help hold police to account.

"I naively expected that when I went to police as a 24-year-old that they would do something. That they would interview the boys and men who raped me. That they would contact my co-victim and witnesses. None of that ever happened," she said.

"The experience of reporting such unspeakable crimes, and having absolutely nothing done, makes you feel completely disbelieved.

"The sexual assaults themselves I have processed to a degree. It's the police that have caused me the most unspeakable trauma."

Diary details young girl's feelings of shame

In September 1993, aged 14, Iles and her family went on holidays to the Gold Coast. During the trip she says she met a group of older teenagers on the beach and would run into them regularly.



📷 'I've lost my goal in life': Karen Iles as a girl, at about the age she was attacked. Photograph: Supplied by Karen Iles

In her statement, Iles alleges she was the victim of two sexual assaults by members of the group, who she guessed were aged about 18 and 20.

"I was very confused at the time so I didn't tell anyone," she says in the statement.

The following day, Iles alleges she was lured to an apartment in a nearby complex and raped by up to 15 teenagers and older men, including men she believes were members of a gang.

The incident is described in detail - for more than six pages - in the police statement. It is difficult to read.

As well as significant detail about the allegations, the statement also includes contemporaneous pages from Iles's teenage diary describing a young girl's shame at being attacked, fears she might be pregnant, and the breakdown of her relationship with her parents. One entry soon after the attack says: "I've lost my goal in life."

"I have not reported these matters before because I have been ashamed of that incident and embarrassed," she says in the police statement.

"When the event initially happened I was called a slut and it was such a bad experience I wanted to block it out of my life."

Iles alleges two more subsequent assaults by members of the same group occurred in NSW but these are not in her statement; she says she was advised by NSW police

at the time not to include them.

Stalled between two states

Entries in police records systems – obtained via freedom of information laws – show what occurred after Iles walked into Redfern police station in March 2004 to make her statement.

A case file was initially sent to detectives from a Gold Coast child abuse team, and some basic notes were entered into the state records system. Officers then requested their NSW counterparts to “carry out some inquiries” necessary to identify potential suspects.



📷 'I can find the perpetrators, named in my statement, on Facebook,' says Karen Iles. Photograph: David Kelly/The Guardian

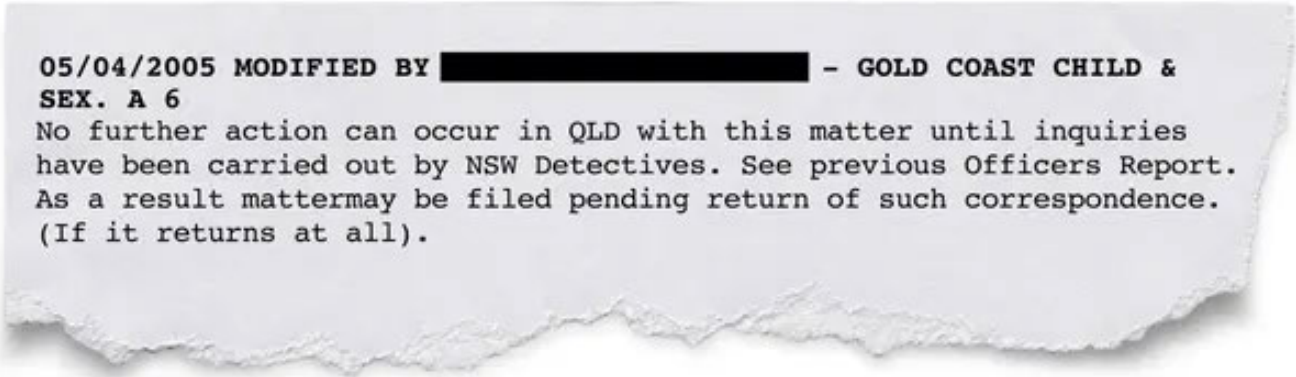
Months later, Queensland police were still waiting. An entry from September says “operational needs have restricted [an unnamed NSW detective] from being in a position to accommodate the complainant”.

“[The detective] is to conduct a photo identification ... with the complainant and the investigation cannot proceed until this is addressed.”

In April 2005, having not heard back for more than a year, Queensland police put the case on hold. They took no further action for another 13 years. The detectives assigned to investigate no longer work for the QPS.

The final entry in the Queensland police system from 2005 says: “No further action can occur in Queensland with this matter until inquiries have been carried out by

NSW detectives. As a result [the] matter may be filed pending return of such correspondence. (If it returns at all).”



05/04/2005 MODIFIED BY [REDACTED] - GOLD COAST CHILD & SEX. A 6
No further action can occur in QLD with this matter until inquiries have been carried out by NSW Detectives. See previous Officers Report. As a result matter may be filed pending return of such correspondence. (If it returns at all).

📷 An entry in the Queensland police system from April 2005 Photograph: Supplied

NSW police records contain no reference to any inquiries being made in the state, subsequent to the file being sent to Queensland in 2004.

‘Surely they could try a little harder’

Research shows most historic victims take more than 20 years to come forward. At 24, Iles approached police at a much younger age than most historical complainants.

The process is also retraumatising. At some points in her life, Iles has been determined to seek justice and has actively followed up with police; at others, she has not felt able to prompt police to progress in the case.

She has never withdrawn her complaint or indicated to police that she didn’t want it pursued.

In 2018, Iles sought information from police in Queensland and NSW about the outcome of the investigation.

When she contacted Queensland police, they told her that her file was still listed as pending in the police system, but that administration staff at Coolangatta police station had inexplicably shredded her statement and other information in a case file.

Emails from a senior constable said he could find “no documentation” related to her complaint.

“As to why it was destroyed I am not sure and that is the information I received from the current administration officer. There are doubts as to the accuracy of that as well as there is no way of validating that information.”

A letter from the NSW police said they had undertaken “extensive searches” for information but that a case file “did not contain any documentation”.

"I acknowledge that an error in record keeping has resulted in a copy of your statement no longer being available from the NSW Police," the letter said.

Iles says being told police had destroyed the statement was "devastating". In August 2021, she again resolved to pursue the matter and was told by a Queensland police officer she would have to make a new statement if she wanted police to investigate.

Later in 2021, without explanation, police located a copy of Iles's 2004 statement and sent it to her lawyer.

The case was reopened briefly in 2021, then placed on hold again by police in January. The Queensland police service said in a statement they had shelved the matter after "inquiries failed to yield further evidence in order to proceed".

Police claimed they had attempted unsuccessfully to contact Iles's lawyer about the case in January. The law firm says it responded to police promptly.

"They've got plenty of material that has never been acted on," Iles says.

"I can find the perpetrators, named in my statement, on Facebook. Surely they can arrange to interview them. Surely they could try a little harder for such a serious set of crimes."

Holding police to account

Angela Lynch from the Queensland Sexual Assault Network accused police of "an abject failure at every level" in relation to their handling of the case.

"This should have been a priority for any police officer. This is an allegation of a violent attack with multiple offenders, and Karen was a child at the time," Lynch said.

"Sexual assault services across Queensland have reports continuously from victims of violence about a lack of communication from police. Sometimes victims of violence aren't told that matters are not proceeding, they receive a perfunctory response, or they just never hear from police again.

"This is an issue of widespread concern, but despite the rhetoric, it's clear our system does not treat sexual violence as a priority."



📷 'Should have been a priority': Angela Lynch from the Queensland Sexual Assault Network says the police response to Karen Iles's case was 'an abject failure'. Photograph: Mick Tsikas/AAP

The Queensland police service sent a response confirming Iles had been advised incorrectly that her statement was destroyed.

“The ... file and statement have not been destroyed and the QPS continues to retain a copy. The QPS apologises unreservedly for any emotional distress this misinformation may have caused.”

The case remains technically open in Queensland, but is not being actively investigated.

NSW police said they had conducted a review of the matter in December 2021.

“NSW Police understand that reporting sexual assault can be distressing and traumatic for victims - and it is always the choice of an individual whether to proceed with an investigation or not,” they said in a statement.

Iles says she wants police held to account.

“I expect, as I think many in our community would, that police at the very least should have a minimum duty to investigate,” Iles said.

“Especially for very serious crimes against children, such as aggravated sexual assault and gang rape. I think people would be horrified to think their child would be treated this way by police.

“As a 14-year-old I kicked, screamed and fought back. I was held down and gagged.

“If we are going to change young boys’ and men’s attitudes towards sexual assault, to get them to act respectfully towards women and to use consent, then women must have confidence that if they report to police at the very least they will be taken seriously.”

Information and support for anyone affected by rape or sexual abuse issues is available from the following organisations. In Australia, support is available at [1800Respect](#) (1800 737 732). In the UK, [Rape Crisis](#) offers support on 0808 802 9999. In the US, [Rainn](#) offers support on 800-656-4673. Other international helplines can be found at ibiblio.org/rcip/internl.html

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