



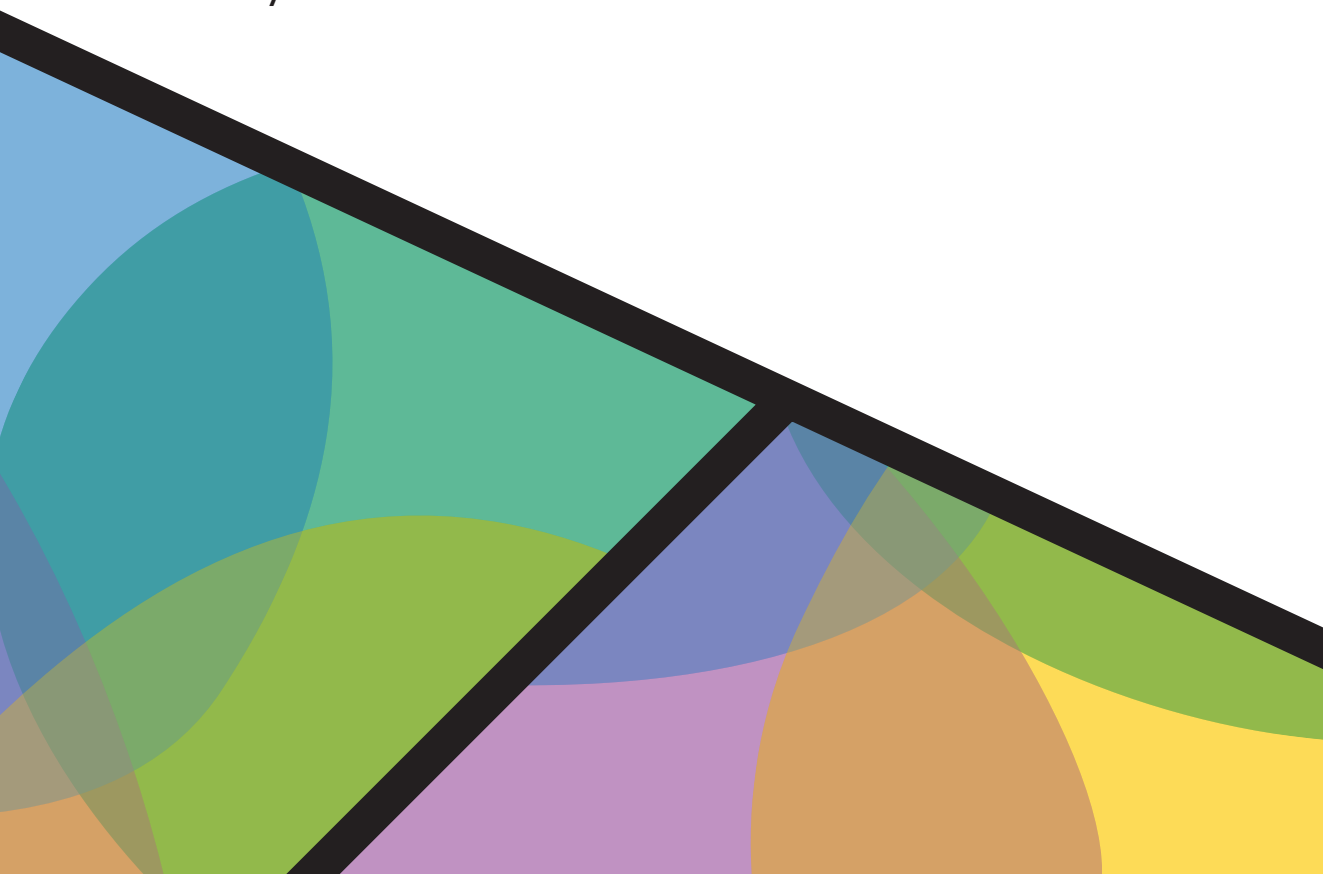
Australian Government

Australian Law Reform Commission

SUMMARY REPORT

SAFE, INFORMED, SUPPORTED: REFORMING JUSTICE RESPONSES TO SEXUAL VIOLENCE

ALRC Report 143
January 2025



Note on content

This report relates to sexual violence, which may be confronting or cause distress to some readers. Please be aware that free and confidential support is available through:

- 1800 RESPECT, call 1800 737 732 or visit www.1800Respect.org.au
- Full Stop Australia, call 1800 385 578 or visit www.fullstop.org.au
- Lifeline, call 13 11 14 or visit www.lifeline.org.au
- 13YARN, call 13 92 76 or visit www.13yarn.org.au
- Kids Helpline, call 1800 55 1800 or visit www.kidshelpline.com.au
- Compass, call 1800 353 374 or visit www.compass.info
- Rainbow Sexual, Domestic and Family Violence Helpline, call 1800 497 212 or visit <https://fullstop.org.au/get-help/our-services>

If you are, or someone else is, in immediate danger, call 000.

If you are deaf and/or find it hard hearing or speaking with people on the phone, the National Relay Service (NRS) can help. Contact via your preferred option or call 1800 555 660.

Acknowledgement of Country

The Australian Law Reform Commission acknowledges the Traditional Owners and Custodians of Country throughout Australia and their continuing connection to land, sea, and community. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders past and present. In particular, we acknowledge the Traditional Custodians of the lands on which our offices are based: the Wurundjeri people of the Kulin Nation for our Melbourne office; and the Jagera people and Turrbal people for our Brisbane office. We acknowledge the contributions made to this Inquiry by First Nations people who have experienced sexual violence, First Nations advocates, and Aboriginal Community Controlled Organisations.

Acknowledgement of people who have experienced sexual violence

The Australian Law Reform Commission acknowledges the courage, resilience, and generosity of people who have experienced sexual violence who shared their insights and experiences with us. Their voices, advice, and contributions have been pivotal to the recommendations made to achieve just outcomes and improve the justice system's responses to sexual violence. We are particularly grateful to members of the Expert Advisory Group whose commitment and expertise have been central to this Inquiry.

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ABOUT THIS INQUIRY



About this Inquiry

Context

1. Sexual violence is one of the most common and serious harms confronting Australia today. One in five women and one in 16 men over the age of 15 have experienced sexual violence.¹ About one in three girls and one in seven boys experience child sexual abuse.² Some groups, such as First Nations women, women with disability, and migrant women, experience sexual violence at much higher rates.³ The harm caused by sexual violence to individuals, families, and society, is significant.⁴

2. When it comes to sexual violence and the justice system,⁵ both what the ALRC has heard and the available data indicates significant challenges. For example, 9 out of 10 women who have experienced sexual violence do not report to the police.⁶ Where there is engagement with the justice system, that engagement is usually short-lived. In at least some Australian jurisdictions, between 75–85% of reports to police do not proceed to charge.⁷ Even fewer reports proceed to court. Once in court, many people report experiencing the justice system as retraumatising.

3. Ending sexual violence requires substantial action from almost every government system. Accordingly, the *National Plan to End Violence against Women and Children 2022–32* ‘commits to 10 years of sustained action, effort and partnership across sectors and levels of government’.⁸

1 Australian Bureau of Statistics, ‘Personal Safety, Australia: 2021–22 Financial Year’ <www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

2 Divna Haslam et al, *The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study* (Australian Child Maltreatment Study, Queensland University of Technology, 2023) 17, 19.

3 See **Chapter 2** of the Final Report.

4 See **Chapter 2** of the Final Report.

5 In this Summary Report and the Final Report, the justice system is defined as the system that responds to criminal offences, civil unlawfulness, and other harms. It can include the courts, tribunals, regulators, police, solicitors, prosecutors, and counsel. The term is used broadly to include justice pathways such as restorative justice and victims of crime schemes. When referring to the system that responds to criminal offences, the report generally uses the term ‘criminal justice system’. The ALRC acknowledges that the justice system does not always feel just, or bring about just outcomes.

6 Australian Bureau of Statistics, ‘Personal Safety, Australia: 2016’ <www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/2016>.

7 Sarah Bright et al, *Attrition of Sexual Offence Incidents through the Victorian Criminal Justice System: 2021 Update* (Crime Statistics Agency, 2021); Brigitte Gilbert, *Attrition of Sexual Assaults from the New South Wales Criminal Justice System* (Bureau Brief No 170, NSW Bureau of Crime Statistics and Research, May 2024) 4.

8 Department of Social Services (Cth), *National Plan to End Violence Against Women and Children 2022–2032* (2022) 18.

The ALRC's task

4. The Terms of Reference ask the ALRC to focus on the justice system and the critical role it can play in responding to sexual violence. The justice system is often the only pathway for people who experience sexual violence to have access to just outcomes. It is the means through which people who have experienced sexual violence can have the harm remedied, the people responsible held to account, and where society sends a message that it recognises and condemns this serious harm.

5. This Inquiry is about improving the justice system's response to sexual violence. The recommendations made are directed to enhancing access to justice for people who have experienced sexual violence, supporting their engagement with the justice system, providing justice outcomes that better meet their needs and improving their experience of the justice system by eliminating ill-treatment and minimising retraumatisation. The Inquiry has included consideration of a range of topics, such as:

- evidence laws, court processes, and jury directions;
- consent laws;
- police and prosecution mechanisms;
- training and professional development for people who work in the justice system;
- support and services for people who have experienced sexual violence;
- alternatives to the criminal justice process, including civil and restorative processes;
- the impacts of laws and legal frameworks on groups that are disproportionately reflected in sexual violence statistics; and
- the rights of an accused person to a fair trial.

6. In conducting this Inquiry, the ALRC was supported by an Australian Government convened lived-experience Expert Advisory Group, comprising people who have experienced sexual violence and advocates. The ALRC is particularly grateful to all members of the Expert Advisory Group for the insights they have provided across the Inquiry.

What the ALRC concluded

7. Few people who experience sexual violence engage with the justice system. For individuals and society to benefit from the justice system, people who have experienced sexual violence need to have greater access to the system, and the just outcomes it is capable of providing.

8. The ALRC considers under-engagement with the justice system to be the most significant problem with the justice system's response to sexual violence. Low

trust and underuse of the justice system by those who have experienced sexual violence is understandable because:

- Significant barriers to engagement with the justice system persist.
- People who have experienced sexual violence are not given the opportunity to engage with the justice system in a safe, informed, and supported way.
- When people who have experienced sexual violence do engage with the justice system, they often encounter myths and misconceptions about sexual violence, and experience ill-treatment and retraumatisation.
- There are too few justice options realistically available to meet the diverse justice needs of people who have experienced sexual violence.

9. Sexual violence — a serious harm — frequently occurs without leaving a trace on the justice system. This means that people who have experienced sexual violence often shoulder the harm's impacts without having the opportunity for a just outcome. People who use sexual violence often face no consequence for their actions. In society, sexual violence often remains invisible — it is not recorded, recognised, or renounced. Community safety is not enhanced.

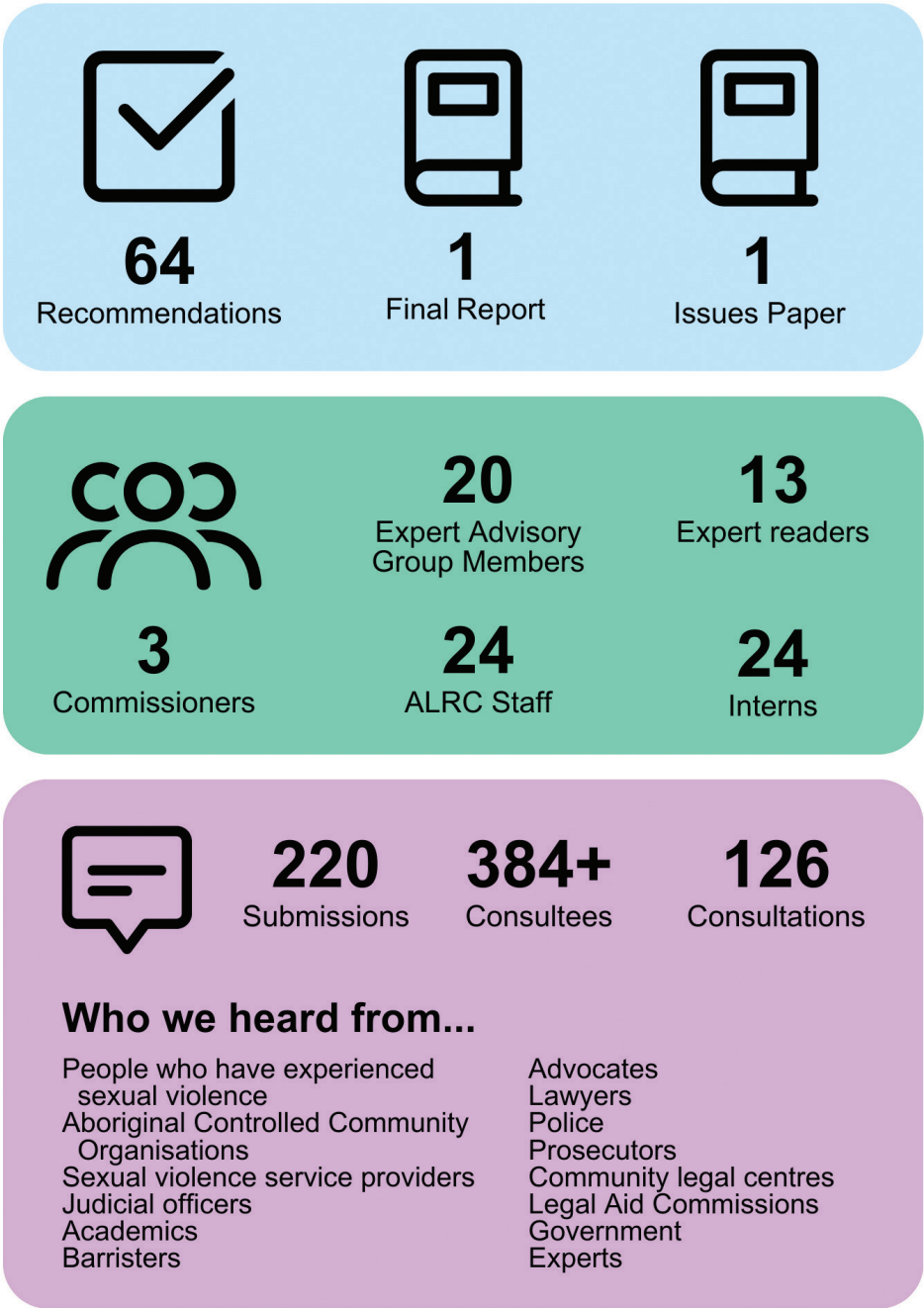
10. It is the ALRC's view that the justice system is failing to meet the twin goals of access to justice and accountability: it is not supporting those who have experienced sexual violence to engage with the justice system, nor holding those who use sexual violence to account. From the community's perspective, bringing people who use sexual violence to account under the law is a fundamental requirement of a society governed by the rule of law.

11. These problems demand that the justice system be more accessible, more accountable, provide appropriate support, avoid ill-treatment and harm, and better meet the diverse justice needs of people who have experienced sexual violence. All of that can and should be done without compromising the rights of a person accused of sexual violence to a fair trial.

12. The ALRC's recommended reforms seek to ensure that more people who have experienced sexual violence can access the justice system, meaningfully engage with it, and reach a just outcome. Broadly speaking, implementing the reforms would result in the greater realisation of the justice system's critical role in responding to the harm of sexual violence, bringing benefits to people who have experienced sexual violence, as well as providing a fairer, more respectful, and safer society.

Snapshot: key statistics

Figure 1: Key statistics relating to this Inquiry



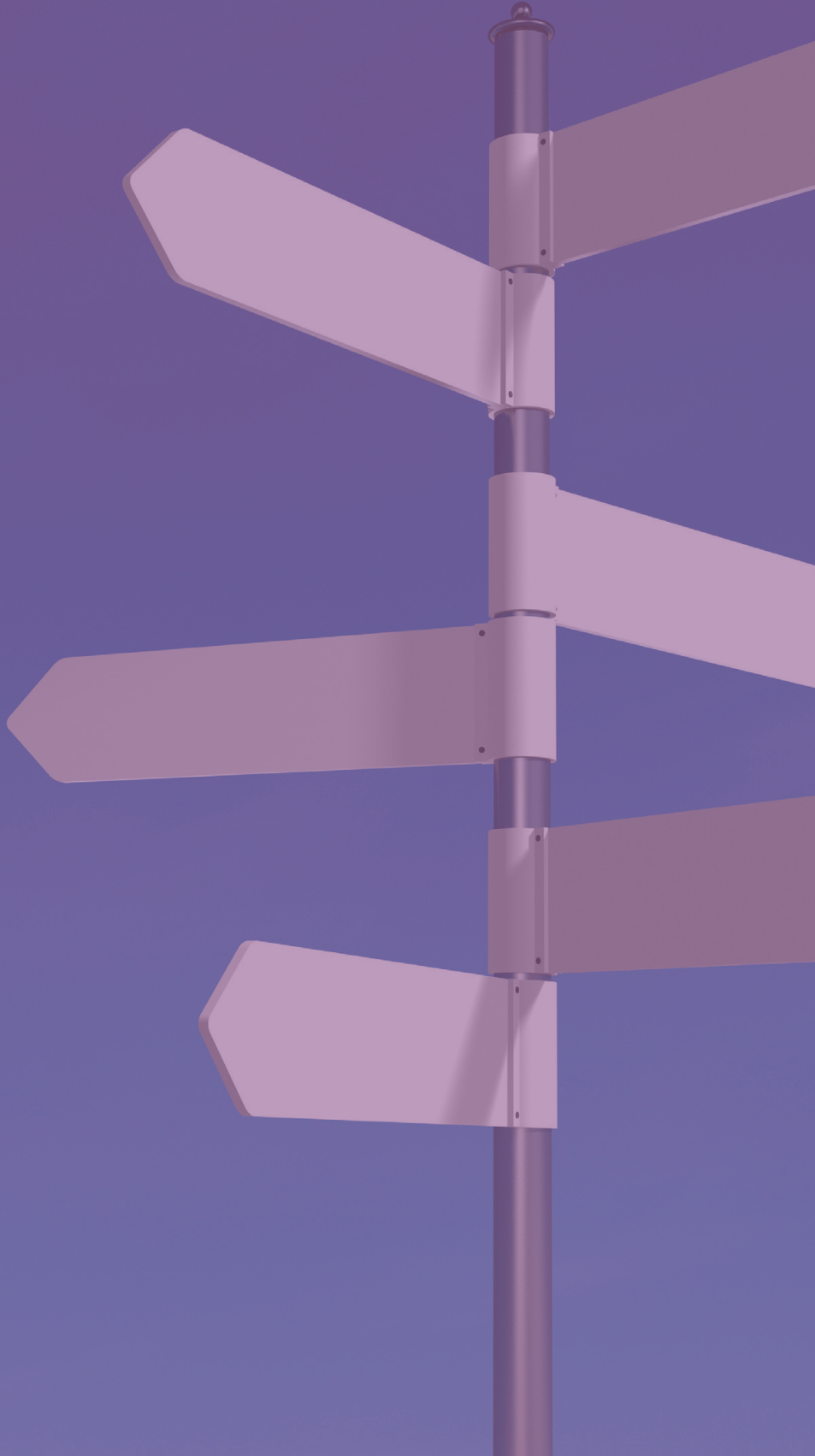
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In responding to this violence, as First Nations women and girls have reiterated, mainstream systems continue to create harm and make women reluctant to access supports and services available or contact police and courts when violence occurs.

Thus, our current systems and institutes are compromising the safety of victims.

”

AN OVERVIEW



What the ALRC recommended — an overview

13. In the Final Report, the ALRC makes 64 recommendations. In doing so, we apply key reform principles, discussed below, to centre the rights, diverse needs, and choices of people who have experienced sexual violence. The ALRC has also been careful to consider the rights of people accused of sexual violence. The recommendations do not change the right of the accused person in a criminal trial to a fair trial — this includes the presumption of innocence, the beyond reasonable doubt standard of proof, and the right to silence.

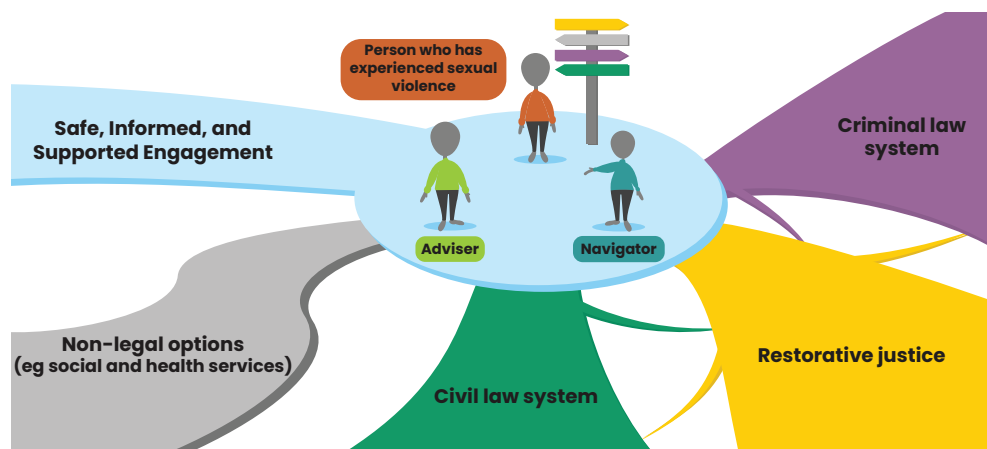
14. The recommendations in the Final Report fall into three categories:

- addressing barriers to access and engagement with the justice system;
- improving the criminal justice system's accountability and justice system processes; and
- expanding justice pathways and the remedies available.

Addressing barriers to access and engagement with the justice system

15. An important step in increasing access to justice for people who have experienced sexual violence is removing the barriers they face to accessing and engaging with the justice system. For many reasons, people who experience sexual violence may not want to take the first step to engage with the justice system. They may not trust the justice system, or they may find it too daunting. They may expect to be treated poorly. They may think that the justice system has nothing to offer them. They may not have access to the basic information and support most people need to make an informed decision as to how to engage with the justice system. From their standpoint, there might be little to gain, and much to lose. By addressing these barriers — by making sure there is meaningful opportunity to engage with the justice system, more support, better treatment if someone chooses to engage with it, and more pathways for seeking a just outcome — engagement with the justice system, and access to justice, could be significantly increased.

Figure 2: Pathways that could respond to sexual violence



16. A key barrier to access is feeling concerned about engaging with police or other authorities. People who have experienced sexual violence may stop engaging or ‘withdraw’ from the justice system after disclosing their experience because of a lack of support.⁹ The ALRC addresses a number of these access and engagement barriers, including through recommendations to:

- Support people who have experienced sexual violence taking the first step to engage with the justice system — Safe, Informed, and Supported engagement would support accessible entry points for people who have experienced sexual violence to engage, and gain access to information, advice, and support (**Recommendation 1**).
- Make legal advice available to every person who has experienced sexual violence — Independent Legal Services would give people who have experienced sexual violence advice about criminal and other justice pathways that centres their rights, needs, and interests, so that they can make informed choices about engaging with the justice system (**Recommendation 1**). This advice would continue to be available in the criminal justice process if a person chooses to report sexual violence to the police (**Recommendations 9–10**).
- Make support available throughout the criminal justice process — A major barrier the ALRC heard about in this Inquiry is the fragmented responses to sexual violence across different legal and non-legal processes. Justice System Navigators would walk alongside and guide complainants through the criminal justice and related justice processes and service systems (**Recommendation 1**).

⁹ KPMG and Centre for Innovative Justice, RMIT, *‘This Is My Story. It’s Your Case, But It’s My Story’: Interview Study* (NSW Bureau of Crime Statistics and Research, July 2023); Jodie Murphy-Oikonen et al, ‘Unfounded Sexual Assault: Women’s Experiences of Not Being Believed by the Police’ (2022) 37(11–12) *Journal of Interpersonal Violence* NP8916, NP8935.

- Increase publicly available information about sexual violence and the justice system — Public education about consent (**Recommendation 38**) and clearer and more accessible information from police, Offices of the Directors of Public Prosecutions, and courts (**Recommendation 20**) about what to expect from the criminal justice system would help address information barriers people who have experienced sexual violence face when accessing the justice system.

17. Another barrier to engaging with the justice system is how people who have experienced sexual violence are treated when they do engage with it. Reasons people who have experienced sexual violence ‘withdraw’ from a criminal case after reporting include ‘defeatist’ police attitudes,¹⁰ having little or no say in policing decisions,¹¹ and a fear of how they would be treated in the trial.¹² To address this barrier, the ALRC makes recommendations to improve how people who have experienced sexual violence are treated by police, prosecutors, and courts. This includes recommendations to:

- improve education and training for those who work in the justice system (**Recommendations 11–17** and **46**);
- strengthen police and prosecution guidelines (**Recommendations 18** and **19**);
- ensure that laws which prohibit inappropriate questioning during cross-examination are properly applied (**Recommendations 40** and **41**); and
- encourage the use of ground rules hearings to set ground rules to assist complainants to give their best evidence (**Recommendation 32**).

18. Making other justice pathways more accessible could also reduce barriers to accessing and engaging with the justice system or justice responses more broadly. Sexual violence is a crime and many of the Final Report’s recommendations aim to improve the criminal justice system so that more people who experience sexual violence are likely to engage with it. However, the ALRC also recognises that people who have experienced sexual violence have diverse justice needs. They may view access to ‘justice’ as something different to access to the criminal justice pathway. Some may want different outcomes to what the criminal justice pathway can deliver. For example, while some would like to see the person responsible for sexual violence made accountable by going to prison, others might prefer them to understand and apologise for the harm they caused.¹³ Having a range of justice pathways that can meet these different needs provides greater opportunity for people who have experienced sexual violence to access justice. The ALRC makes recommendations to expand the justice pathways available to people who have experienced sexual violence, including to:

10 Rachael Burgin and Jacqui Tassone, *Beyond Reasonable Doubt? Understanding Police Attrition of Reported Sexual Offences in the ACT* (Swinburne University of Technology, 2024) 90.

11 Ibid 89.

12 KPMG and Centre for Innovative Justice, RMIT (n 9) 62.

13 See, eg, A McIntosh, *Submission 131*; Centre for Innovative Justice, *Submission 216*.

- make sexual harassment justice pathways (which cover all forms of unwelcome conduct of a sexual nature) more accessible — by prohibiting sexual harassment in any area of public activity (or universally), and not just in contexts like education or employment (**Recommendations 48 and 49**); reducing financial barriers to bringing legal proceedings about sexual harassment and giving expanded access to cheaper and quicker tribunal processes (**Recommendations 52 and 55**); and by shifting the burden of, and responsibility for, addressing sexual harassment from individuals to organisations and regulatory bodies, including by expanding the contexts in which a duty to eliminate sexual harassment applies, and enhancing compliance with both that duty and the prohibition on sexual harassment (**Recommendations 48, 51, 53, and 55**);
- make the restorative justice pathway more accessible — by legislating for restorative justice in sexual violence matters so this pathway is widely available (**Recommendations 58 and 60**); and
- make the victims of crime financial assistance scheme pathway more accessible — by removing aspects of victims of crime financial assistance schemes that disadvantage people who have experienced sexual violence, such as time limits and a requirement to report to police (**Recommendations 56 and 57**).

Strengthening justice pathways and the remedies available

19. To increase access to justice, the recommendations in the Final Report strengthen the justice pathways and the remedies available by strengthening the processes in other justice pathways. The ALRC recommends:

- improvements to process and evidentiary rules in civil justice proceedings (**Recommendation 46**); and
- developing guidelines for the safe delivery of restorative justice (**Recommendation 61**).

20. The recommendations in the Final Report also increase the range of remedies available in other justice pathways, to support recovery and healing. The ALRC recommends:

- expanding the range of orders that can be made when a court finds that someone has been sexually harassed, beyond awarding compensation (**Recommendations 50 and 54**);
- ensuring therapeutic treatment programs are available for people responsible for sexual violence, in restorative justice processes (**Recommendation 64**); and
- consideration of recognition statements and meetings in victims of crime financial assistance schemes (**Recommendation 56**).

21. The aim of these recommendations is to increase access to justice by giving people who have experienced sexual violence options to assess and address their

justice needs. The recommendations are made in the context of strong oversight and transparency applying to these pathways. They are also made to recognise the strong evidence base that some people who experience sexual violence do not want a criminal justice system pathway, and this choice should be respected.

Strengthening the criminal justice system's accountability and outcomes

22. While there has been progress in some areas, the criminal process too often fails to achieve just outcomes in sexual violence matters, damaging the trust people have in the criminal justice system. The ALRC heard from many people who have experienced sexual violence who felt that they could not trust that the system would be fair or protect them from further harm. The rate at which matters 'drop out' of the criminal justice system is very high and indicates that the system needs to do better to deliver just outcomes.

23. The recommendations in the Final Report aim to increase access to justice by strengthening the criminal justice system's accountability to rebuild trust in the system and improve its outcomes. The recommendations aim to:

- increase understanding of the systemic reasons sexual violence matters drop out of the system (**Recommendation 4**);
- improve data about how cases are progressing through the criminal justice system (**Recommendation 5**); and
- provide complainants of sexual violence with legal knowledge, support, and advocacy through independent advice and legal representation in the criminal justice process (**Recommendation 9**).

24. The recommendations also aim to improve evidence in criminal and civil proceedings to support just outcomes. Currently, the interpretation of evidence presented in sexual violence matters may be affected by myths and misconceptions that continue to influence the criminal and civil justice systems. The recommendations aim to challenge these myths and misconceptions by correcting problematic beliefs that juries might hold about sexual violence through the directions that judges give to juries (**Recommendations 21 and 22**), and expert evidence (**Recommendations 23–25 and 46**). The recommendations also aim to support the best possible evidence being used in criminal proceedings — for example, by improving recorded police interviews through a taskforce to establish a national quality assurance framework for interviewing complainants (**Recommendation 26**).

Addressing the experiences and needs of groups disproportionately reflected in sexual violence statistics

25. The Terms of Reference ask the ALRC to consider the impact of laws and legal frameworks on groups that are disproportionately reflected in sexual violence statistics. As discussed in **Chapter 3** of the Final Report, these groups often face

unique and compounding barriers to accessing justice. We understand that in reality, people very often belong to, and have the experiences of, more than one group.

26. The ALRC makes a range of recommendations to address the access and engagement barriers faced by these groups. In making these recommendations, the ALRC was informed by the input of those who both belong to and represent these groups, provided in consultations and submissions. The recommendations aim to ensure that:

- everyone who discloses sexual violence, will receive Safe, Informed, and Supported engagement, including through connections with specialist or culturally appropriate services and outreach to closed institutions (**Recommendation 1**);
- information about the criminal justice process from police, Offices of the Directors of Public Prosecutions, and courts is accessible to people with different communication needs and in different languages (**Recommendation 20**);
- public education on consent reaches all groups in the community (**Recommendation 38**);
- police and prosecution guidelines include processes for responding to complainants who are from groups disproportionately reflected in sexual violence statistics (**Recommendations 18 and 19**);
- data published on attrition includes demographic information about groups which are disproportionately reflected in sexual violence statistics (**Recommendation 5**);
- victims' rights charters require justice agencies to be responsive to the specific needs of groups disproportionately reflected in sexual violence statistics (**Recommendation 8**);
- people who work in the justice system are educated about practices which address the experiences and needs of groups disproportionately reflected in sexual violence statistics (**Recommendation 11**);
- intermediaries are available to help children and people with communication needs to give their best evidence (**Recommendations 31 and 46**);
- there are more and better trained interpreters available across Australia, including First Nations interpreters (**Recommendation 33**); and
- First Nations communities are supported to design and implement a restorative justice model that works for their communities (**Recommendation 63**).

27. The recommendations reflect specific issues the ALRC was able to address within the timeframe provided for this Inquiry. However, there are other promising approaches to reform that were also suggested. In **Chapter 19** of the Final Report, the ALRC discusses other ideas to address the access and engagement barriers to just outcomes faced by these groups.

28. It is important to note, however, that the unique and compounding barriers faced by groups disproportionately reflected in sexual violence statistics demands

a response the ALRC could not develop within this Inquiry's scope and timeframe. Building trust and confidence in and engagement with the justice system is central to improving justice responses to sexual violence. The ALRC formed the view that meaningfully addressing barriers to engagement and just outcomes requires a broader and more lengthy examination of the issues, and a focus on the whole justice system, rather than only focusing on sexual violence. This is because for many of the groups listed in our Terms of Reference, distrust in and disengaging with the justice system arises from long standing and whole-of-justice system problems. In addition, there is already a significant body of research, expertise, and advocacy examining the barriers experienced by groups that are disproportionately reflected in sexual violence statistics, and developing tailored solutions.¹⁴

The ALRC's approach to reform

29. In addition to the Terms of Reference and the evidence base outlined in the Final Report, the ALRC has been guided by the unique characteristics of sexual violence, a number of reform principles, and what we heard from people who have experienced sexual violence. Each of those matters is dealt with in more detail in the introduction to the Final Report (**Chapter 1**).

Sexual violence as a unique harm

30. The ALRC's recommendations address sexual violence as a unique harm. Unlike other crimes, sexual violence is linked to persistent myths and stereotypes.¹⁵ These incorrect beliefs affect how people understand what sexual violence is, as well as how people who experience it respond.

31. These impacts can create barriers for people who have experienced sexual violence to report sexual violence and seek help.¹⁶ They can also affect outcomes in sexual violence matters by influencing how police, prosecutors, and jurors deal with sexual violence cases, as well as affect the experiences of complainants in the criminal justice system.¹⁷

14 See, eg, Heather Wolbers and Hayley Boxall, *Online Dating App Facilitated Sexual Violence Victimisation among People with Disability* (Australian Institute of Criminology, 2024) <www.aic.gov.au/publications/tandi/tandi695>; Donna Chung et al, *Preventing Sexual Violence against Young Women from African Backgrounds* (Australian Institute of Criminology, 2018) <www.aic.gov.au/publications/tandi/tandi540>; Marie Segrave et al, *Migrant and Refugee Women in Australia: A Study of Sexual Harassment in the Workplace* (Research Report Issue 6, ANROWS, August 2023).

15 See, eg, Denise Leivore, *Non-Reporting and Hidden Recording of Sexual Assault: An International Literature Review* (Australian Institute of Criminology, 2003).

16 Ibid 29–30; Nina Hudson et al, *Understanding Adult Sexual Assault Matters: Insights from Research and Practice: An Educational Resource for the Justice Sector* (Australian Institute of Family Studies, Attorney-General's Department (Cth), 2024) 9.

17 Hudson et al (n 16) 10. See also **Chapter 4** of the Final Report.

32. The experience of complainants in the justice system is also affected by the unique nature of sexual violence in the evidentiary sense. Often the only evidence in a sexual violence matter is the evidence given by the complainant and the accused person.¹⁸ Discrediting a witness is common in criminal trials, but 'sexual assault complainants endure a level of scrutiny and personal attack unknown in other cases',¹⁹ which can be more distressing, especially given the highly intimate nature of the harm. A study has shown that they may be at a higher risk than other victims of crime of being retraumatised by the criminal justice system.²⁰

33. As discussed in **Chapter 2** of the Final Report, sexual violence is also a distinct harm, because people who experience it are often harmed by someone they know.

34. The ALRC engages with the unique nature of sexual violence through recommendations that aim to make sure that:

- people who experience sexual violence have enough information, and feel believed and supported when they disclose or report sexual violence;
- decision making, processes, and practices in the criminal justice system are informed by research about myths and misconceptions relating to sexual violence;
- processes and practices in the criminal justice system that could perpetuate myths and misconceptions about sexual violence are limited;
- there are multiple pathways for responding to sexual violence that can apply to the various contexts in which it occurs; and
- there are a range of flexible remedies to address the diverse justice needs of people who have experienced sexual violence, some of which would be shaped by sexual violence being a relationship-based crime.

Reform principles and understandings that informed the Inquiry

35. The ALRC has been guided by four overarching principles and understandings in developing its recommendations. We have been guided by rule of law principles and by an acceptance that it is important when considering reform to take into account diversity of experiences, the need for a trauma-informed approach, and the usefulness of harmonising laws about sexual violence across Australia. The ALRC has also considered the fundamental principles of international law and human rights relevant to this Inquiry.

18 Ibid 42; Julia Quilter and Luke McNamara, *Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis* (Crime and Justice Bulletin No 259, NSW Bureau of Crime Statistics and Research, 2023) 16–17. See also **Chapter 4** of the Final Report.

19 With You We Can, *Submission 132* citing Erin Gardner Schenk and David L Shakes, 'Into the Wild Blue Yonder of Legal Representation for Victims of Sexual Assault: Can U.S. State Courts Learn from the Military' (2016) 6(1) *University of Denver Criminal Law Review* 9.

20 Kerstin Braun, 'Legal Representation for Sexual Assault Victims - Possibilities for Law Reform?' (2014) 25(3) *Current Issues in Criminal Justice* 819, 821.

Rule of law principles

36. The rule of law is a core concept in systems of law such as Australia's. The ALRC considers that the rule of law includes the right to a fair trial, equality before the law and access to justice, and accountability before the law.

Right to a fair trial

37. The right to a fair trial is a central pillar of the common law adversarial justice system. In Australia, the right to a fair trial is reflected in both legislation and common law. It is also part of the rule of law:

It is important to bear in mind the status of the right to a fair trial. It is a universal norm. It requires that we do not allow any individual to be condemned unless he has been fairly tried in accordance with the law and the rule of law.²¹

38. The principles underpinning the right to a fair trial for the accused include the presumption of innocence;²² the privilege against self-incrimination;²³ the right to be tried without unreasonable delay;²⁴ the right to examine witnesses;²⁵ and the right to legal representation.²⁶ The ALRC's recommendations do not question or interfere with any of these rights.

39. However, the recommendations also acknowledge that part of the right to a fair trial is for the criminal justice system to support complainants as much as possible without limiting the accused person's fair trial rights.²⁷ More recent case law and commentary recognise that a fair trial must consider the interests of those who have been wronged, and the public generally.²⁸ The ALRC's recommendations take into account these different interests to support just outcomes in sexual violence matters.

Access to justice

40. Another rule of law principle guiding the recommendations is access to justice. Ensuring equality before the law means that all people are entitled to be treated equally before the law.²⁹ In practice, this principle involves providing access to justice

21 *R v Special Adjudicator; Ex parte Ullah* [2004] UKHL 26 [44].

22 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(2).

23 Including the right to silence: *Sorby v Commonwealth* (1983) 152 CLR 281, 288.

24 *R v Mills* (2011) 252 FLR 295.

25 *Lee v The Queen* (1998) 195 CLR 594 [32].

26 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(3)(d).

27 Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Hart, 2008) 247.

28 Jeremy Gans, *Criminal Process and Human Rights* (Federation Press, 1st ed, 2011) 509–10; Doak (n 27) 28.

29 Equality before the law originates from the Magna Carta which, in 1215, introduced the principle that all citizens, including those in power, should be equally and fairly ruled by the law.

through law and legal institutions such as lawyers and courts, or broader legal and social pathways.³⁰

41. All people who are wronged, including those who have experienced sexual violence, are entitled to access justice. In the case of people who have experienced sexual violence, the lack of access to justice is highlighted by an overwhelming lack of engagement with the justice system. To promote access to justice, the ALRC's recommendations aim to address this, as well as other barriers in accessing and engaging with the justice system, such as a lack of support, or financial or language barriers. The ALRC's recommendations also aim to expand and strengthen available pathways and remedies to increase access to justice.

Accountability before the law

42. In the area of gender-based violence, the *National Plan to End Violence Against Women and Children 2022–2023* states that, 'holding people who choose to use violence accountable means the responsibility to stop using violence belongs to the person using it'.³¹

43. As discussed in **Chapter 2** of the Final Report, accountability is a key justice need of people who have experienced sexual violence. People who have experienced sexual violence can view accountability in different ways, with some wanting the person responsible to be punished,³² and others preferring that they are held accountable in other ways.³³

44. A system that effectively holds people who use violence to account is crucial for upholding the rule of law. Without it, sexual violence can occur with no consequence, leaving people who have used sexual violence undeterred. While deterrence cannot on its own end sexual violence, it is an important tool to reduce its occurrence and denounce sexual violence.

45. The broad aims of the ALRC's recommendations — to address barriers to access and engagement with the justice system, to strengthen the criminal justice system's accountability and processes, and to expand justice pathways and the remedies available — all make it more likely that people who use sexual violence will be held accountable. Importantly, the recommendations take a broad approach to accountability, with processes such as restorative justice providing opportunities for people who have experienced sexual violence to be heard and believed, and for people who have used violence to take personal responsibility for their violence and make amends (**Recommendations 58–64**).

30 Bronwyn Naylor, 'Equality Before the Law: Mission Impossible? A Review of the Australian Law Reform Commission's Report Equality Before the Law' (1997) 23 *Monash University Law Review* 423.

31 Department of Social Services (Cth) (n 8) 73.

32 See, eg, Name withheld, *Submission 77*; C Oddie, *Submission 145*.

33 See, eg, A McIntosh, *Submission 131*; Not published, *Submission 171*; Centre for Innovative Justice, *Submission 216*.

Diversity of experiences

46. The Terms of Reference ask the ALRC to consider the impacts of laws and legal frameworks on groups that are disproportionately reflected in sexual violence statistics, and those with identities ‘intersecting’ across these groups.

47. The following principles have guided the ALRC’s approach in this Inquiry to understand the diversity of experiences and promote just outcomes for everyone who has experienced sexual violence:

- People have diverse experiences of sexual violence, the justice system, and supports.
- People have diverse experiences because their identities, such as gender, race, disability, or socioeconomic status, can overlap to influence how the justice system responds — for example, a First Nations woman might face both racial discrimination and gender inequality, which means she may face a unique set of challenges.
- Other factors such as structural, historical, and cultural factors also shape and compound the challenges a person might face — for example, cultural stigma may affect whether people from newly arrived communities report sexual violence, and historical and ongoing harms caused by colonisation may affect whether First Nations people report sexual violence.
- These identities and factors combined can result in some people who have experienced sexual violence facing ‘barriers to support and safety that other women [and people more generally] do not experience’.³⁴
- Understanding this context can help with understanding how the justice system responds to sexual violence and the diverse barriers to just outcomes that people experience.

A trauma-informed approach to delivering justice

48. The Terms of Reference ask the ALRC to take a trauma-informed approach to this Inquiry.

49. ‘Trauma’ is an overarching term to refer to an event, or series of events or circumstances, experienced by individuals or groups that increases their risk of physical or psychological harm.³⁵ Trauma can impact a person in a range of ways,

³⁴ Department of Social Services (Cth) (n 8) 129.

³⁵ Substance Abuse and Mental Health Services Administration, *SAMHSA’s Concept of Trauma and Guidance for a Trauma Informed Approach* (Substance Abuse and Mental Health Services Administration, 2014).

including through a loss of feelings, sense of self, and control.³⁶ It is formally acknowledged as causing various acute or chronic psychiatric disorders, such as post-traumatic stress disorder (PTSD) and acute stress disorder (ASD).³⁷

50. In the sexual violence context, taking a trauma-informed approach means recognising and addressing the barriers that may face people who have been through traumatic events. Trauma-informed responses to sexual violence are informed by an understanding of the impact of trauma and being a victim of trauma, how this may affect a person's ability to engage, and what is needed to reduce and prevent retraumatisation.³⁸

51. Ensuring that reforms to justice responses are trauma-informed can support access and engagement with the justice system. On the other hand, if justice responses are not trauma-informed, they may cause further harm.

52. Specific principles have been used to guide trauma-informed practice for people who have experienced sexual violence. These include:

- identifying recovery from trauma as a main goal;
- aiming to maximise the choices and control people who have experienced sexual violence have over their recovery;
- creating an atmosphere that is respectful of the need for safety, respect, and acceptance;
- minimising the risk of retraumatisation; and
- striving to be culturally competent and to understand people who have experienced sexual violence in the context of their life experiences and cultural background.³⁹

53. The principles above underpin many of the ALRC's recommendations, such as recommendations to provide more legal and practical support to people who have experienced sexual violence (**Recommendations 1** and **9**), to improve police and prosecution practices (**Recommendations 11–13, 18** and **19**), to ensure that there are avenues to question and provide feedback to the justice system (**Recommendations 4** and **6**), and to strengthen justice pathways so that they provide more avenues for recovery (**Recommendations 56** and **58–60**).

36 Alice Miller, *For Your Own Good: Hidden Cruelty in Child-Rearing and the Roots of Violence* (Noonday, 3rd ed, 1993).

37 American Psychiatric Association (ed), *Diagnostic and Statistical Manual of Mental Disorders: DSM-5-TR* (American Psychiatric Association Publishing, 5th ed, text revision, 2022).

38 Victims of Crime Commissioner (Vic), *Silenced and Sidelined: Systemic Inquiry into Victim Participation in the Justice System* (2023) 14. See also Sarah Kendall, 'The Trauma-Informed Trial: A Conceptual Framework to Guide Practice' (2024) 43(3) *University of Queensland Law Journal* 319.

39 Denise E Elliott et al, 'Trauma-informed or Trauma-denied: Principles and Implementation of Trauma-informed Services for Women' (2005) 33(4) *Journal of Community Psychology* 461.

Harmonisation

54. The Terms of Reference ask the ALRC to have regard to the Australian Government's commitment to strengthen and harmonise sexual assault and consent laws.

55. Harmonisation can be defined as the process of making individual state or territory laws more uniform or complementary.⁴⁰ While uniformity can be an outcome of harmonisation, it is also a different concept — uniformity can be defined as either pursuing identical substantive, and sometimes procedural, law;⁴¹ or administering justice in a uniform way.⁴²

56. Currently, responses to sexual violence vary depending on where someone lives in Australia. Laws and practices can differ across states and territories — some states may have stronger legal protections on some issues, for example. This is a predictable situation, given sexual violence laws are largely state and territory laws, and each jurisdiction has developed these laws and practices independently of each other.

57. Harmonisation is a helpful aim of reform because there are benefits to greater harmonisation in responding to sexual violence. A major benefit is supporting equality before the law and equal access to justice around Australia. For example, especially in substantive law, harmonised consent laws set a consistent standard for Australian society (see **Chapter 11** of the Final Report).⁴³ The laws that protect against sexual offences, and hold people accountable for committing these offences, would apply to all people in the same way, and not just to some of them.⁴⁴ Further, harmonisation can set a minimum or best practice standard in approaches towards responding to sexual violence. Harmonisation might also help support the interoperability of laws, where legal processes apply across jurisdictions, which could help support cross-jurisdictional cases and cooperation between criminal justice agencies.

40 Brian Opeskin, 'The Architecture of Public Health Law Reform: Harmonisation of Law in a Federal System' (1998) 22(2) *Melbourne University Law Review* 337, 338–9.

41 Ibid 338–9; Uniformity is sometimes used as a synonym of harmonisation, especially in the field of private international law: Dongwook Chun, 'Patent Law Harmonization in the Age of Globalization: The Necessity and Strategy for a Pragmatic Outcome' (2011) 93(2) *Journal of Patent Trademark Office Society* 127, 137. As a result, the conceptual divide between uniformity, harmonisation, and consistency are sometimes ambiguous: Guzyal Hill, *National Uniform Legislation* (Springer Nature Singapore, 2022) 23–39.

42 Arthur Taylor von Mehren, 'Choice of Law and the Problem of Justice' [1977] (Spring) *Law and Contemporary Problems* 27, 28.

43 Guzyal Hill and Jonathan Crowe, 'Harmonising Sexual Consent Law in Australia: Goals, Risks and Challenges' (2023) 49(3) *Monash University Law Review* 1, 4–5.

44 Ibid 6.

58. However, efforts to harmonise must be considered against its challenges and risks. These include that:

- Strict harmonisation can ignore the local contexts of jurisdictions. For example, slightly different laws may be needed in jurisdictions with fewer people and lower resources.⁴⁵
- Substantive equality before the law may require some diversity in laws, based on local circumstances, to facilitate access to justice for people with diverse experiences and needs.
- The process of harmonisation, if implemented without thorough research, can run the risk of ‘levelling down’ the law to a ‘less progressive’ standard, where more advanced jurisdictions, are expected to adopt laws favoured by less advanced jurisdictions to reach agreement.⁴⁶
- Harmonisation can take a long time and be costly, especially as it can require agreement among nine jurisdictions.⁴⁷
- Harmonisation may discourage jurisdictions from trialling new laws, and stifle innovation,⁴⁸ undermining the useful role that ‘competitive federalism’ has in law reform.⁴⁹

59. Further, even if black letter law is harmonised, complete harmonisation is likely an impossible aim. The law is likely to develop differently when it is interpreted locally. This is an important part of the law developing, so that it is applied in a way that is fit for purpose for the local community.

60. The ALRC views harmonisation, to achieve broad consistency, as a helpful aim. This is especially so where best practices can be identified and replicated across jurisdictions. However, the degree of harmonisation should be balanced against the need to account for local circumstances, as well as the challenges and risks of harmonisation highlighted above (see **Chapters 11** and **12** of the Final Report). More consistent justice outcomes across Australian jurisdictions may not require the costs associated with strict harmonisation or uniformity — even if states and territory laws have some legislative differences between them, they could achieve the same goal.

International law and human rights

61. In performing its functions, the ALRC must aim to ensure that its recommendations are consistent with Australia’s international obligations as far as practicable.⁵⁰ In this Inquiry, the ALRC considered various international obligations relating to justice responses to sexual violence. Relevant treaties considered in this

45 Opeskin (n 40) 358.

46 Hill and Crowe (n 43) 8, 10–11.

47 Opeskin (n 40) 358.

48 Ibid 357–8.

49 Hill (n 41) 68; Hill and Crowe (n 43) 11.

50 *Australian Law Reform Commission Act 1996* (Cth) s 24(1)(b).

Report include the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); *Convention on the Rights of the Child* (CRC); *Convention on the Rights of Persons with Disabilities* (CRPD); the *International Covenant on Civil and Political Rights* (ICCPR); and the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

62. Other relevant international materials include the *Declaration on the Elimination of Violence against Women*; the Beijing Declaration and Platform for Action; the United Nations *Declaration on the Rights of Indigenous Peoples* (UNDRIP); and interpretive guidance from United Nations treaty bodies, and concluding observations made by treaty bodies.

63. The ALRC's recommendations were especially influenced by how the Committee on the Elimination of Discrimination against Women has interpreted CEDAW to require that effective legal measures, including criminal, civil, employment, or administrative sanctions be implemented in domestic laws to punish sexual violence, and to redress the wrongs caused to women who are subject to sexual violence.⁵¹

What the ALRC heard from people who have experienced sexual violence

64. The ALRC was also guided by what people who have experienced sexual violence told us they wanted or needed from the justice system ('justice needs'). Drawing on the 220 submissions the ALRC received from people who experienced sexual violence, **Chapter 2** of the Final Report sets out the importance of:

- having information and communication;
- being able to participate, make choices and have a voice;
- feeling validated and recognised;
- having the person responsible for harm be accountable and for the criminal justice system to be accountable as well; and
- feeling or being safe.

51 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child* (2019) on *Harmful Practices*, CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1 (8 May 2019).

Snapshot: Examples of what we heard throughout the Inquiry

Figure 3: What we heard

"The prospect of going to the police and possible criminal justice proceedings scared me profoundly at that time, and even back then I was acutely aware that the criminal justice system frequently fails to provide justice for sexual offences. I was also unsure about what the process would be like, having heard time and time again that going through the criminal justice system is often traumatising and degrading for victims."

J Crous, Submission 141

"I think speaking to someone independent of the police first, or in place of, would be beneficial. Someone who provides support and information in a confidential setting to help make an informed decision."

Name withheld,
Submission 135

"The process of remembering the abuse triggered by telling the story and gathering evidence was difficult and disruptive to my day to day life. But, the act of speaking out about the assault and taking legal action was an act of self validation. It was fulfilling in my need to stand up and take action to receive some acknowledgement from the state of the suffering and be counted as a victim-survivor."

Name withheld, Submission 43

"It was vital for me that the perpetrator be held accountable for his crime and that my voice be heard in the process."

A McIntosh, Submission 131

"In many ways, my experience with the police and legal system was far worse, and far more traumatic, than the violence I was subjected to."

D Villafaña, Submission 182

"I had to ask all the questions about the process and no one ever followed up with me at any point ... This was incredibly frustrating as it felt like nothing was happening even though it was. I also got the impression that I was the least important person in the situation and they did not care whether I got closure for this event. I didn't matter in the process."

Name withheld, Submission 12

"Many victim survivors do [not] report their experience to anyone, including police. For Aboriginal and Torres Strait Islander women this is further exacerbated by a range of complex barriers ..."

National Aboriginal and Torres Strait Islander Women's Alliance, Submission 105

"... underreporting is partly due to a lack of confidence in the police's ability to respond appropriately, exacerbated by underlying issues of ableism and sexism that lead to the routine dismissal of complaints – particularly from women with cognitive or psychosocial disabilities."

Women With Disabilities Australia & People with Disability Australia, Submission 192

"The experience a victim-survivor has the first time they report sexual violence is critical. This can determine whether they decide to move forward in the justice system, and how supported they feel doing so."

Full Stop Australia, Submission 214

"The presumption of innocence, the right to silence, the right to a trial by jury, the burden of proof resting on the prosecution, and the criminal standard of proof (beyond reasonable doubt) are all essential to the integrity of the criminal justice system. There is a substantial risk that any dilution of these core principles will result in the community losing confidence that the criminal justice system can provide an accused person with a fair trial."

Law Council of Australia, Submission 215

"The current lack of choices for those harmed by sexual abuse means that pathways for justice look constrained, are not trauma responsive, intersectional, or survivor-centred and in our experience and observed expertise – participation in criminal justice processes often cause further harm to all parties, usually most to the person harmed. Not only this, many people harmed are not wanting the form of justice offered by the criminal justice system."

Transforming Justice Australia, Submission 185

"The court process can be difficult and disempowering for a lot of complainants, who have very little control of what occurs once the complaint has been made to police. Having independent representation, someone who can give them advice about their own rights and liaise with the prosecution if necessary, could ease some of that concern."

NT Director of Public Prosecutions, Submission 143

Ongoing reform to the response to sexual violence

65. As stated in the *National Plan to End Violence against Women and Children 2022–2023*, to achieve the aim of ending violence against women and children, jurisdictions must all be ‘pulling in the same direction’.⁵² We have ensured our recommendations align with the National Plan’s objectives, particularly in relation to the ‘response’ domain, which focuses on ‘efforts and programs used to address existing violence’. This includes improving ‘justice responses to all forms of gender-based violence’.⁵³

66. These reform efforts sometimes overlap with the areas in the Terms of Reference, such as strengthening consent laws and improving support for people who have experienced sexual violence. As required by the Terms of Reference, the ALRC builds on the work of many reports, inquiries, and plans that have recently considered improving justice responses to sexual violence. The ALRC has also carefully considered how the Final Report’s recommendations will fit with how the justice system already works, and reforms which are already underway.

67. For example, the recommendation on Safe, Informed, and Supported engagement builds on and complements the work sexual assault services have been doing for decades (**Recommendation 1**), as well as work underway in some jurisdictions,⁵⁴ and federally funded efforts to improve responses to sexual violence disclosures.⁵⁵ The recommendations on Independent Legal Services consider federally funded services that are being piloted in the Australian Capital Territory, Victoria and Western Australia (**Recommendations 1** and **9**).⁵⁶ The recommendations on restorative justice legislation reflect that some states already have or are developing restorative justice legislation (**Recommendations 58–60**).⁵⁷ The ALRC does not make recommendations on technology-facilitated violence or

52 Department of Social Services (Cth) (n 8) 16.

53 Ibid 21.

54 For example, the 2024–25 Queensland budget provided for the development of integrated inter-agency responses to support people who have experienced sexual violence.

55 This includes funding in the 2024–25 Australian Government budget to fund accredited training on sexual violence responses for doctors, nurses, and frontline workers; and \$253.4 million in funding over five years from 2023–24 for 1800RESPECT, a national service for people affected by domestic, family, and sexual violence, which provides counselling, information, and referrals. There is also a national information and referral service to support people who have experienced sexual child sexual abuse being developed.

56 The Australian Government provided funding over three years from 2023–24 to pilot a new service model in these jurisdictions to provide people who have experienced sexual violence with greater access to legal support.

57 See, eg, *Crimes (Restorative Justice) Act 2004* (ACT); *Dispute Resolution Centres Act 1990* (Qld).

intervention orders, as these areas are the subject of current reform efforts.⁵⁸

68. The ALRC's recommendations also complement reform efforts to address family violence, given the overlap between family and sexual violence (see **Chapter 2** of the Final Report). For example, the early-stage Independent Legal Services and Justice System Navigators (**Recommendation 1**) would support people who have experienced both sexual and family violence in relation to the range of systems they might be dealing with, such as intervention orders, family law, and child protection systems. Recommendations to improve police guidelines include a consideration of how family and sexual violence intersect (**Recommendation 18**). Recommendations on consent include a category that acknowledges the dynamics of family violence in the list of circumstances where there is no consent (**Recommendation 37**).

The Inquiry's process

The Expert Advisory Group

69. The Inquiry was expertly informed by a group of 20 advocates for people who have experienced sexual violence, most of whom have lived experience of sexual violence themselves (the Expert Advisory Group). The Expert Advisory Group comprised people from different backgrounds, most of whom belonged to one or more of the groups disproportionately reflected in sexual violence statistics. The Australian Government Attorney-General's Department convened the Expert Advisory Group.

70. Through the Expert Advisory Group, the ALRC could hear directly from people who had firsthand experience of the justice response to sexual violence. Group members gave their own views about the issues in the Inquiry, rather than agreeing on a single view. The ALRC heard both common and different views across group members.

71. The ALRC formally met with the Expert Advisory Group four times. The ALRC also met with Group members in smaller meetings, one-on-one, or as part of consultations with other stakeholders. The ALRC received written input from some Expert Advisory Group members, including submissions.

72. The ALRC sincerely thanks the Expert Advisory Group for their expertise, commitment, and the significant effort they put into the Inquiry. This Report has been much enhanced by their thoughtful guidance and input.

⁵⁸ The Australian Government is introducing reforms to address gender-based violence committed online and funding a national review of family and domestic violence order frameworks: Commonwealth of Australia, *Budget 2024–25 (Women's Budget Statement)* (2024) 21.

Submissions and consultations

73. On 17 April 2024, the ALRC released an Issues Paper to invite submissions to inform the ALRC's recommendations. The ALRC received 220 submissions in response to the Issues Paper. While the ALRC usually publishes its draft proposals, this was not possible because of the Inquiry's tight timeframes. The ALRC instead conducted targeted consultation on the draft proposals (discussed below).

74. The ALRC ran two major consultation phases with community organisations, support services, academics and experts, courts, lawyers, judges, police, government, and people with experience of sexual violence. The people the ALRC consulted with were from all Australian states and territories, the United Kingdom, and Canada. Consultations were mostly held online.

75. The first consultation phase focused on understanding how justice responses to sexual violence currently work in practice, the problems related to that, and how those problems could be solved. The ALRC conducted 89 consultations in this phase.

76. The second phase of consultation focused on testing the ALRC's draft proposals. Consultations were targeted to fit the Inquiry's short timeframe. The ALRC sent selected draft proposals to specific individuals and groups based on their area of expertise. This approach was taken to avoid overwhelming them with too much material in a short timeframe, to help encourage more meaningful engagement. Some draft proposals were shared via email rather than discussed in consultations. The ALRC conducted 37 consultations and received 124 written responses in this phase.

77. Some consultations were conducted as roundtables to explore specific themes. The ALRC held roundtables about independent legal services, evidence laws, and sexual harassment, for example. Some roundtables focused on the experiences of the groups listed in the Terms of Reference as being disproportionately reflected in sexual violence statistics. These roundtables involved and were about the experiences of First Nations people; people from culturally and linguistically diverse backgrounds; people with disability; people who have been incarcerated; people who are migrants or impacted by insecure visa status; and people engaged in sex work.

78. The submission and consultation process, as well as the ALRC's broader engagement with the community, was informed by a 'Trauma-informed Practice Framework'. The ALRC developed this Framework at the start of the Inquiry to help ensure that the ALRC took an approach that aimed not to cause more trauma for anyone who engaged with the Inquiry, including stakeholders and staff.

Research and expert review

79. The Final Report builds on the information collected through the processes above, research about Australian laws and practice, as well as laws and practice overseas. This includes legislation, case law, academic research, evaluations, and reports of previous inquiries or reviews. Taking a comparative approach was especially helpful in this Inquiry for identifying promising reform models. The ALRC also considered publicly available quantitative data, and data provided by some organisations.

80. Some of the Final Report chapters were read by expert reviewers, who provided feedback based on their experience and expertise.

Navigating the Final Report

81. The Final Report's chapters and related recommendations are summarised below:

- Chapter 1 outlines the Inquiry's recommendations and the ALRC's approach to reform. It also introduces the Inquiry and details its process.
- Chapter 2 outlines the relevant context for the Inquiry.
- Chapter 3 identifies key barriers that prevent people who have experienced sexual violence from engaging with the justice system, and makes one recommendation (**Recommendation 1**) for Safe, Informed, and Supported Services to increase engagement with the justice system. This includes the provision of Independent Legal Services and Justice System Navigators.
- Chapter 4 introduces the criminal justice system, and makes two nationally-focused recommendations in relation to guilty pleas and developing a shared research and evidence base across jurisdictions (**Recommendations 2 and 3**).
- Chapters 5 to 12 focus on key aspects of the criminal justice system, and make 42 recommendations for specific reforms to improve criminal laws and procedures (**Recommendations 4–45**), including to:
 - improve access to information, adopt accountability mechanisms, and ensure people who have experienced sexual violence have access to legislated rights, and independent legal advice and representation;
 - introduce training and education across the criminal justice system to counter myths and misconceptions, and support a trauma-informed response;
 - improve evidence laws and measures for sexual offences, such as recorded police statements, pre-recorded evidence hearings, ground rules hearings, expert evidence, jury directions, and cross-examination;
 - make available, where appropriate, experts, intermediaries, and interpreters; and

- to evaluate and harmonise, where possible, consent laws, and improve consent education.
- Chapter 13 introduces the civil justice system and relevant civil justice pathways, and makes two recommendations for improving civil proceedings by enhancing trauma-informed practices and countering myths and misconceptions about sexual violence (**Recommendations 46 and 47**).
- Chapters 14 and 15 focus on specific aspects of civil justice, and make eight recommendations to (**Recommendations 48–55**):
 - enhance the scope of sexual harassment provisions under the *Sex Discrimination Act 1984* (Cth), and expand the available remedies for breaches; and
 - enhance access to the *Fair Work Act 2009* (Cth), by reducing financial disincentives to bringing an application; avoiding duplicate investigations by different regulators; expanding the available remedies for breaches; and potentially replicating the regime in other sectors.
- Chapter 16 focuses on victims of crime financial assistance schemes, and contains two recommendations to improve access to the schemes in all states and territories (**Recommendations 56 and 57**).
- Chapter 17 introduces restorative justice as an important justice pathway for people who have experienced sexual violence.
- Chapter 18 contains seven recommendations about restorative justice, including (**Recommendations 58–64**):
 - key features of legislation required to make restorative justice for sexual violence safe and accessible;
 - the need for national guidelines for the safe delivery of restorative justice for sexual violence; and
 - the need for designated oversight bodies and funded wraparound services.
- Chapter 19 highlights the suggested areas for further reform that could not be covered in the Final Report due to time constraints.

“

The need for information about system processes is clear, as victims speak not only of a lack of detailed information but chaotic and contradictory communication which leaves them unaware of their rights, confused about police procedure and frustrated with decisions being made about them, without them.

”

TERMS OF REFERENCE



Terms of Reference

I, the Hon Mark Dreyfus KC MP, Attorney-General of Australia, having regard to the Government's commitment to strengthen and harmonise sexual assault and consent laws, refer to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), an inquiry into justice responses to sexual violence. Through this referral, the ALRC should seek to promote and consider just outcomes for people who have experienced sexual violence,¹ including minimising re-traumatisation.

Scope of the Reference

1. In undertaking this reference, the ALRC should have regard to:
 - a. Laws and frameworks about evidence, court procedures/processes and jury directions
 - b. Laws about consent
 - c. Policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors
 - d. Training and professional development for judges, police, and legal practitioners to enable trauma-informed and culturally safe justice responses
 - e. Support and services available to people who have experienced sexual violence, from prior to reporting, to after the conclusion of formal justice system processes. This should include consideration of:
 - i. Current supports such as legal assistance, appropriately trained and accredited interpreters, witness assistance and intermediaries, and the accessibility of those supports
 - ii. Innovative supports including independent legal representation
 - iii. Information and resources provided to victims and survivors about supports available and justice processes
 - f. Alternatives to, or transformative approaches to, criminal prosecutions, including restorative justice, civil claims, compensations schemes, and specialist court approaches.
2. In the context of the significant under-reporting of sexual violence and the limited prosecution of reported cases, the ALRC should take a trauma-informed, holistic, whole-of-systems and transformative approach. The ALRC should also consider the particular impact(s) of laws and legal frameworks on population

¹ We acknowledge that a range of terms are used to refer to people who have experienced sexual violence, including 'victims and survivors', and that some individuals may not identify with this terminology.

cohorts that are disproportionately reflected in sexual violence statistics, and on those with identities intersecting across cohorts, including:

- a. Women
 - b. First Nations people
 - c. People from culturally and linguistically diverse (CALD) backgrounds
 - d. People with disability
 - e. People who are Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, Brotherboy, Sistergirl, or who have other genders and sexualities (LGBTQIA+)
 - f. People who have been convicted of criminal offences, and been incarcerated
 - g. People who are migrants or newly arrived refugees impacted by an insecure visa status
 - h. People living with HIV
 - i. People employed in sex work
 - j. People in residential care settings
 - k. Older people, especially those experiencing cognitive decline
 - l. Young people.
3. In undertaking this Inquiry, the ALRC should consider the matters raised for reform and detailed in the **Summary Report of the ministerial-level national roundtable on justice responses to sexual violence**. The ALRC should also identify and consider relevant reports, inquiries and action plans, including but not limited to the list below. Where appropriate, the ALRC should synthesise and build on relevant federal, state and territory reports, with a focus on identifying opportunities to explore new ground and not duplicate existing work.
- a. The **Senate Legal and Constitutional Affairs References Committee report into Consent Laws**, tabled in federal Parliament on 14 September 2023.
 - b. Australian Institute of Criminology's **national review of child sexual abuse and sexual assault legislation in Australia (2023)**.
 - c. Standing Council of Attorneys-General **Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–2027**.
 - d. **National Plan to End Violence against Women and Children 2022–2032** and associated Action Plans and **consultation reports**.
 - e. **Wiyi Yani U Thangani Report (2020)** and **Implementation Framework (2022)**.

- f. **Mayi Kuawyu** — National Study into Aboriginal and Torres Strait Islander Wellbeing.
- g. ACT Sexual Assault Prevention and Response Program Steering Committee **Listen. Take Action to Prevent, Believe and Heal Report (2021)**, and the **ACT Government Response (2022)**.
- h. Queensland Women's Safety and Justice Taskforce (2022) **Hear Her Voice — Report Two (2022)** and the **Queensland Government response (2022)**.
- i. New South Wales Law Reform Commission Report: **Consent in relation to sexual offences (2020)**.
- j. Victorian Law Reform Commission Report: **Improving the Response of the Justice System to Sexual Offences Report (2021)**.
- k. AIC Research Report: **Sexual harassment, aggression and violence victimisation among mobile dating app and website users in Australia (2022)**.
- l. Australian Human Rights Commission: **Respect@Work: Sexual Harassment National Inquiry Report (2020)**.
- m. House Standing Committee on Social Policy and Legal Affairs report: **Inquiry into family, domestic and sexual violence — Parliament of Australia (aph.gov.au)**.
- n. **Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (2017)**.
- o. **National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030**.
- p. **National Agreement on Closing the Gap 2020**.
- q. The forthcoming **Senate Legal and Constitutional Affairs Committee inquiry into missing and murdered First Nations women and children report**.
- r. Attorney-General's Department, Australasian Institute of Judicial Administration, and Central Queensland University: **Specialist Approaches to Managing Sexual Assault Proceedings: an Integrative Review (2023)**.

Consultation

4. In undertaking this Inquiry, the ALRC should identify and consult with relevant stakeholders across Australia, including but not limited to:
 - a. people who have experienced sexual violence
 - b. people and organisations representing population cohorts that are overrepresented in sexual violence statistics as listed above

- c. state and territory government and law enforcement agencies
 - d. policy and research organisations
 - e. community service providers (especially specialist sexual assault service providers and legal assistance service providers)
 - f. the broader legal profession (including prosecutors and defence lawyers)
5. Consultation should include the lived-experience Expert Advisory Group, established by the Attorney-General's Department, primarily comprising victims and survivors of sexual violence and their advocates.

Timeframe

6. The ALRC should provide its final report to the Attorney-General by 22 January 2025.

“

The justice system has the opportunity to influence community norms and attitudes, both through judgments and sentencing ... but also by legal practitioners, judges and police promoting equality and respect ...

”

RECOMMENDATIONS



Recommendations

Chapter 3

Recommendation 1

In the context of the significant under-reporting of sexual violence, and to ensure people who have experienced sexual violence are able to engage with the justice system in a safe, informed, and supported way, the Australian Government, together with state and territory governments, should fund relevant organisations (including sexual violence services, community legal centres, Aboriginal Community Controlled Organisations, Legal Aid Commissions, and participating legal firms) to provide the following three services (Safe, Informed, and Supported Services, or SIS Services):

- a. **Independent Legal Services** — for every person who has experienced sexual violence, the provision of a free and confidential legal advice session that enables informed decision-making about whether or not to engage with the justice system and, if so, which justice pathways best suit their needs, including referral to any chosen pathway. For ongoing legal advice and representation in the criminal justice context, see Recommendation 9.
- b. **Justice System Navigators** — for every person who has experienced sexual violence, support to access any chosen justice pathway; and for people who choose to pursue a criminal justice pathway, the provision of a trained support person to advocate and provide support in initial and ongoing interactions with police, prosecutors, the court, and related systems.
- c. **Safe Places to Disclose** — for every person who has experienced sexual violence, the ability to disclose the harm to trauma-informed professional staff, receive support and assistance to access relevant health and social services, and be referred to the Independent Legal Services.

To diminish barriers to engagement, increase accessibility and address diverse needs, SIS Services should be provided through a network or other form of coordination, and be available when and where they are needed, including in-person, via telephone, online, and through outreach services.

Chapter 4

Recommendation 2

The Australian Government should commission a national inquiry to address the impact of factors such as:

- a. mandatory sentencing provisions;
- b. sentencing discount regimes; and
- c. consequences following conviction (such as sex offender registration)

on sexual offence matters proceeding to trial rather than resolving via guilty pleas, and measures that may promote early resolution.

The inquiry should have regard to the importance of just outcomes for accused persons, people who have experienced sexual violence, and the broader community.

Recommendation 3

The National Judicial College of Australia should be funded to manage and staff an ongoing research team and, in consultation with heads of jurisdiction in each of the trial courts that hear most sexual offence matters (District Courts in New South Wales, Queensland, South Australia and Western Australia; the County Court in Victoria; and the Supreme Courts in the Australian Capital Territory, Northern Territory and Tasmania), locate a member of the research team in each of the trial courts to coordinate the building of a shared evidence base by supporting the evaluation of reform measures implemented in trial courts to improve responses to sexual violence, including:

- a. research and evaluation projects regarding reform measures implemented in trial courts to improve responses to sexual violence, including:
 - i. jury directions to address myths and misconceptions (including the implementation of the Model Jury Directions Bill) (Chapter 8, Recommendation 21);
 - ii. the calling of expert evidence to address myths and misconceptions (Chapter 8, Recommendations 23–25);
 - iii. recorded police statements (Chapter 9, Recommendation 29);
 - iv. pre-recorded evidence hearings (Chapter 9, Recommendations 28–30);
 - v. intermediaries (Chapter 10, Recommendation 31);
 - vi. ground rules hearings (Chapter 10, Recommendation 32);
 - vii. specialist lists (discussed in Chapter 4);
 - viii. measures to reduce delays (such as case management programs) (discussed in Chapter 4); and
 - ix. measures to support the delivery of victim impact statements (Chapter 10, Recommendation 34);

- b. research and evaluation projects regarding the practical operation of relevant legislative provisions, including provisions that address:
 - i. access to a complainant's personal, sensitive, or confidential information (including access to a complainant's sexual assault counselling communications) (Chapter 12, Recommendation 43) and the involvement of an independent legal representative to represent complainants in applications for access to that information (Chapter 6, Recommendation 9);
 - ii. the cross-examination of complainants by unrepresented accused persons (Chapter 12, Recommendation 42);
 - iii. the admissibility and use of complaint evidence and distress evidence (discussed in Chapter 19);
 - iv. the admissibility and use of tendency and coincidence evidence (discussed in Chapter 19);
 - v. the availability and use of interpreters (Chapter 10, Recommendation 33);
 - vi. the admissibility and use of sexual history and sexual reputation evidence (Chapter 12, Recommendation 44–45); and
 - vii. elections for juryless trials in sexual assault trials (discussed in Chapter 19);
- c. research and evaluation projects regarding:
 - i. the impact of vicarious trauma upon trial judges who preside over sexual assault matters, including measures to address that trauma (discussed in Chapter 4);
 - ii. affirmative models of consent (to be conducted by the Australian Institute of Criminology) (Chapter 11, Recommendations 35–37);
 - iii. section 41 of the *Evidence Act 1995* (Cth) and whether it is reducing improper questioning and increasing appropriate judicial intervention (as commissioned by the Standing Council of Attorneys-General) (Chapter 12, Recommendation 41); and
 - iv. the practical operation of confidential communication and sexual assault counselling privilege provisions (including the adequacy of current subpoena processes) and identification of areas of improvement (as commissioned by the Standing Council of Attorneys-General);
- d. nationally standardised and ongoing data collection and statistical analysis on sexual violence matters in the courts (Chapter 5, Recommendation 5);

- e. the involvement of the courts in consultations to formulate a Model Jury Directions Bill addressing myths and misconceptions in sexual violence trials (Chapter 8, Recommendation 21);
- f. the analysis of annual reports tabled in parliament regarding feedback made by complainants of sexual violence about their experiences of the criminal justice process for the information of judicial officers (Chapter 5, Recommendation 6);
- g. court responses to requests from Attorneys-General for feedback on proposed legislative amendments relating to sexual violence laws and court processes; and
- h. court responses to requests from law reform bodies about sexual violence.

The National Judicial College of Australia should convene national meetings of the research officers, nominated judicial officers from each of the trial courts, and representatives of the Judicial Commission of New South Wales and the Judicial College of Victoria, to ensure effective research planning, judicial education delivery, information sharing, and best practice identification.

Note: The National Judicial College of Australia and its research team may conduct some of the research and evaluation projects listed above, but will primarily support other research organisations or individuals to conduct those projects, including by being their principal point of contact with the courts and, for example, facilitating requests to the court for access to information (including access to data, transcripts, and hearings).

Chapter 5

Recommendation 4

State and territory governments should each establish and fund an independent taskforce within 12 months of this Report to:

- a. undertake an initial review of all reports of sexual violence made to police within the prior 12 to 18 months that did not progress to charge and publish a report of its findings and recommendations (modelled largely on the Sexual Assault (Police) Review in the Australian Capital Territory);
- b. develop a model for an independent, ongoing review mechanism for all reports of sexual violence that the police do not progress to charge that publishes reports at appropriate intervals (and the model to be implemented within 24 months of the report published by the initial taskforce); and
- c. develop a model for an independent, ongoing, and complainant-initiated review mechanism to enable complainants of sexual violence to seek a review of the police decision not to progress to charge in their case (and the model to be implemented within 24 months of the report published by the initial taskforce).

The taskforce and models should include specialist and diverse sector expertise (including sexual violence services, representatives from Aboriginal Controlled

Community Organisations, and researchers with a mixed set of disciplinary skills and expertise) as part of its membership.

The initial review will, among other things: identify systemic reasons for attrition and make recommendations to address those reasons; identify and recommend any individual cases to be further investigated; and accept self-referrals from complainants whose matters did not proceed to charge at any time up to the commencement of the review.

The ongoing review mechanism, for all reports of sexual violence that the police do not progress to charge, will operate as a rolling review of all reports of sexual violence which the police do not progress to charge; monitor attrition levels, systemic reasons for attrition and compliance with recommendations; make ongoing recommendations to address systemic issues; and recommend any specific cases be re-investigated.

Governments should ensure information-sharing frameworks are in place to enable the reviews and respond to the initial review report and ongoing reports released by that review mechanism.

Recommendation 5

The Standing Council of Attorneys-General should commission the Australian Bureau of Statistics, or other appropriate body, to devise a nationally consistent data collection framework for reports of sexual violence as they progress through the criminal justice system, and provide appropriate funding and support to police agencies, Offices of the Directors of Public Prosecutions, and courts to implement that framework to obtain nationally consistent data regarding sexual violence cases that:

- a. are reported to the police;
- b. do not proceed to charge;
- c. are charged but otherwise discontinued by police before referral to Offices of the Directors of Public Prosecutions;
- d. are discontinued by Offices of the Directors of Public Prosecutions;
- e. are resolved by guilty plea;
- f. are the subject of convictions following trial;
- g. are the subject of acquittals following trial; and
- h. are the subject of an appeal against conviction, including the outcomes of those appeals.

The data should:

- i. identify the reasons for reports not proceeding to charge or discontinuance of proceedings;
- j. capture timeframes on the progression of the reports through the system;

- k. include demographic information about groups who are disproportionately reflected in sexual violence statistics; and
- l. be published online annually.

Recommendation 6

Each state and territory government should establish and fund an independent centralised feedback mechanism for complainants of sexual violence to report their experience of the criminal justice system.

The methods and formats (such as questionnaire development) for obtaining feedback should be considered in consultation with relevant stakeholders including Victims of Crime Commissioners, sexual violence service providers (including from Aboriginal Controlled Community Organisations), and people who have experienced sexual violence.

The mechanism should be managed by Victims of Crime Commissioners, or an equivalent independent body.

Victims of Crime Commissioners (or an equivalent independent body) should collate feedback with a view to identifying systemic issues in the criminal justice system and making recommendations to be published in an annual report which must be tabled in parliament.

Each state or territory government should be required to respond to the annual report in their jurisdiction within a prescribed period.

Chapter 6

Recommendation 7

The Commonwealth, and those states and territories that do not currently have a legislated victims' charter, should enact such a charter.

Recommendation 8

The Standing Council of Attorneys-General should commission an appropriately funded national review of victims' charters to identify and consolidate a key set of rights for victims of sexual violence which should then be legislated in victims' charters in the Commonwealth and all states and territories. Subject to the review, the key set of rights should include:

- a. Where police decide not to investigate or lay charges:
 - i. the right to be informed by police about the right to seek reasons, and a review, of the decision;
 - ii. the right to reasons for the decision; and
 - iii. the right to a review of the decision.

- b. Where prosecutors decide to withdraw or otherwise discontinue all charges in relation to a prosecution:
 - i. the right to be informed by prosecutors about the right to seek reasons, and a review, of the decision;
 - ii. the right to reasons for the decision; and
 - iii. the right to review of the decision.
- c. The right to request that the person interviewing them is of a particular gender, and to have that request accommodated where possible.
- d. The right to be informed of, and make use of, available flexible evidence measures and flexible arrangements for giving a police statement, evidence, and a victim impact statement.
- e. The right to be informed of alternative justice options (including civil justice, restorative justice, conciliation, and victims of crime schemes).
- f. The right to interpretation and translation, including for First Nations people who speak a language other than English.

Victims' charters should also require justice agencies to take into account, refrain from discriminating on the basis of, and be responsive to, the particular needs of groups who are disproportionately reflected in sexual violence statistics.

Recommendation 9

As a component of the Independent Legal Services recommended in Recommendation 1, the Australian Government, together with state and territory governments, should fund and support independent legal advisers who will be available to:

- a. provide complainants of sexual violence with legal advice as required during the criminal justice process; and
- b. represent complainants in court when applications are made to subpoena or inspect materials which may contain a complainant's personal, sensitive, or confidential information (including sexual assault counselling communications).

Recommendation 10

The Commonwealth, states, and territories should amend relevant legislation to provide that independent legal advisers have standing to appear in court on behalf of complainants of sexual violence in applications to subpoena or inspect materials directed to third parties which may contain a complainant's personal, sensitive, or confidential information, including sexual assault counselling communications. The legislative changes should include a mechanism which ensures the complainant is notified that a subpoena has been sent to a third party to produce personal, sensitive, or confidential information, including sexual assault counselling communications, relating to the complainant.

Chapter 7

Recommendation 11

People who work in the criminal justice system and have relevant involvement in sexual violence matters, including judicial officers (magistrates, trial judges, and appellate judges); court staff; prosecutors and in-house witness assistance officers; defence lawyers; and police officers, should receive:

- a. education about myths and misconceptions that utilises research on:
 - i. trauma, memory, and responsive behaviour of complainants of sexual offences; and
 - ii. sexual offending, grooming behaviour, and coercive control;
- and
- b. training about trauma-informed and culturally safe practices, including:
 - i. best practice communication and engagement with complainants (including working with intermediaries and interpreters);
 - ii. supporting the informed choices of complainants, including in relation to giving statements, flexible evidence measures, and giving evidence;
 - iii. minimising retraumatisation in the justice system, including during questioning by police, prosecutors in witness conferences, and parties in court;
 - iv. victims' rights, including their rights to privacy and laws and processes about sexual assault counselling communications;
 - v. responding with an understanding of the intersection between family violence and sexual violence; and
 - vi. practices which address the experiences and needs of groups who are disproportionately reflected in sexual violence statistics.

The education and training should:

- c. be evidence-based;
- d. inform and address the relevant organisation's guidelines about myths and misconceptions and trauma-informed and culturally safe practices; and
- e. be developed with input from experts on trauma; memory and responsive behaviour of complainants of sexual offences; people who have experienced sexual violence; sexual assault services; and representatives of groups who are disproportionately reflected in sexual violence statistics.

Recommendation 12

Police agencies should mandate and be funded to ensure all police officers receive the education and training described in Recommendation 11, but tailored to reflect the tasks performed by specialist police officers and general duty police officers.

Recommendation 13

Commonwealth, state, and territory Offices of the Directors of Public Prosecutions should mandate and be funded to ensure that all employed solicitors, prosecutors, and witness assistance officers who work on sexual violence matters receive the education and training described in Recommendation 11 (tailored to reflect the tasks performed).

Recommendation 14

All courts should strongly encourage the education and training described in Recommendation 11 for court staff who work on sexual violence matters (tailored to reflect the tasks they perform).

Recommendation 15

State and territory bar associations and law societies should:

- a. strongly encourage barristers and solicitors who work on sexual violence matters to complete the education and training described in Recommendation 11 as part of ongoing professional development and training requirements;
- b. be funded to enable the provision of this education and training to barristers and solicitors for free or at a discounted rate; and
- c. collect and publish data on the number of participants who undertake this education and training.

Recommendation 16

Each court, through its head of jurisdiction, should strongly encourage all judicial officers (magistrates, trial judges, and appellate judges) who sit on sexual violence matters to undertake the education and training described in Recommendation 11.

The National Judicial College of Australia, the Judicial Commission of NSW, and the Judicial College of Victoria should be funded to provide that education and training and keep records of attendances.

Levels of attendance of judicial officers at education and training programs described in Recommendation 11 should be included in court annual reports.

Recommendation 17

The Law Admissions Consultative Committee (LACC) should ensure that education about myths and misconceptions research and trauma-informed and culturally safe responses to sexual violence (as described in Recommendation 11) are part of the current discussions between the six peak bodies (the Council of Australian Law Deans, LACC, Legal Services Council, Australian Law Students' Association, Law Council of Australia and the Australasian Professional Legal Education Community Ltd) around reforming legal education with a view to embedding that education within the curriculum of all law schools and practical legal education providers.

Recommendation 18

Federal, state, and territory police agencies should prepare or review and update their guidelines on responding to complainants of sexual violence to ensure that their guidelines address, at a minimum, the following matters:

- a. a requirement to log all complaints of sexual violence;
- b. processes for responding to complainants of sexual violence, including complainants who are within groups that are disproportionately reflected in sexual violence statistics;
- c. advising complainants prior to a formal interview of their right to seek independent legal advice and the availability of supports, including referrals to the Independent Legal Services, a Justice System Navigator, and support services;
- d. criteria for making decisions regarding investigations or laying charges;
- e. processes for interviewing complainants, including processes for taking a written statement or making an audiovisual recording;
- f. communicating with complainants, including keeping complainants informed and updated;
- g. timeframes;
- h. the use of communication assistance, including interpreters and intermediaries;
- i. the intersection between family violence and sexual violence; and
- j. review and complaint processes.

The police guidelines (which are not operationally sensitive) should be made publicly available, published online and subject to ongoing review.

Recommendation 19

Offices of the Directors of Public Prosecutions should review and update their guidelines on responding to complainants of sexual violence to ensure their guidelines address, at a minimum, the following matters:

- a. the decision to prosecute or not prosecute;
- b. communicating with complainants, including keeping complainants informed and updated;
- c. processes for responding to complainants of sexual offences, including complainants who are within groups that are disproportionately reflected in sexual violence statistics;
- d. advising complainants of their right to seek independent legal advice and the availability of supports, including referrals to (where applicable) Independent Legal Services, a Justice System Navigator, witness assistance services, and support services;

- e. meeting with complainants before trial;
- f. preparation for trial, including the process of proofing complainants and court familiarisation;
- g. the trial process generally;
- h. the option of a pre-recorded evidence hearing;
- i. the availability of flexible evidence measures;
- j. the use of communication assistance, including interpreters and intermediaries;
- k. applications for access to a complainant's personal, sensitive or confidential information, including sexual assault counselling communications;
- l. sentencing and victim impact statements;
- m. appeals;
- n. timeframes;
- o. resolving charges before trial;
- p. decisions to discontinue the prosecution; and
- q. review and complaint processes.

The prosecution guidelines should be made publicly available, published online, and subject to ongoing review.

Recommendation 20

Federal, state, and territory police agencies, the Offices of the Directors of Public Prosecutions, and state and territory courts should ensure their online information on processes about sexual offence matters:

- a. is easy to find;
- b. explains to complainants what they can expect from the process;
- c. provides information about all trauma-informed and culturally-informed processes, including the availability of flexible evidence measures;
- d. is accessible to screen readers;
- e. is available in an accessible format, including in easy read and audio or video format with captioning;
- f. is available in multiple languages; and
- g. is kept up to date.

Chapter 8

Recommendation 21

The Standing Council of Attorneys-General should establish an appropriately funded expert multi-disciplinary working group to produce a model bill containing judicial directions to address myths and misconceptions in sexual offence trials, to be enacted by each state and territory (the Model Jury Directions Bill).

The multi-disciplinary working group should include experienced criminal trial judges and consult nationally with criminal trial judges, researchers, and stakeholders about the Model Jury Directions Bill.

Once adopted by states and territories, the effectiveness of the directions in the Model Jury Directions Bill should be subject to ongoing evaluation, including a review within five years after enactment.

Recommendation 22

The National Judicial College of Australia, the Australasian Institute of Judicial Administration, the Judicial College of Victoria, and the Judicial Commission of New South Wales, in collaboration with relevant experts, should be funded to publish a National Judicial Bench Book, to support and complement the Model Jury Directions Bill (Recommendation 21).

Recommendation 23

Relevant Commonwealth, state, and territory legislation should be amended, where necessary, to make admissible expert evidence about the impact of sexual violence on child and adult complainants.

Recommendation 24

The Standing Council of Attorneys-General should commission the establishment of an appropriately funded governing body of expert witnesses in sexual violence matters to:

- a. compile and maintain a panel of expert witnesses as an accessible resource for prosecution and defence who are seeking opinions, reports, and evidence from qualified experts about myths and misconceptions, including the impact of trauma on memory, responsive behaviour of complainants, and related topics;
- b. prepare materials for a flexible approach to expert evidence, including audiovisual recordings of experts giving evidence in the form of modules which address research on the impact of trauma on memory and responsive behaviour of complainants with a view to those recordings being admissible as part of the prosecution case;
- c. prepare summaries of those modules which may be used as the basis for agreed facts between prosecution and defence in sexual assault trials; and

- d. be a resource for the education of people who work in the criminal justice system, including by producing training videos for police, prosecutors, and defence counsel on myths and misconceptions and trauma-informed practice (discussed in Recommendation 11) and contributing to programs organised by the National Judicial College of Australia, Australasian Institute of Judicial Administration, judicial colleges, Offices of the Directors of Public Prosecutions, Legal Aid Commissions, Aboriginal and Torres Strait Islander legal services, bar associations, law societies, and police.

Membership of the governing body should include experts and academics specialising in: memory, including the impacts of trauma on memory; responsive behaviour of people who have experienced sexual violence; sexual offences; and jury research.

Members of the governing body should undertake this work in consultation with experienced trial judges; academics who specialise in jury research; counsel experienced in conducting sexual violence trials; and other relevant stakeholders.

Recommendation 25

The Commonwealth, and each state and territory, should enact legislation to provide that the evidence of an expert on sexual violence (see Recommendation 24) may be admissible in the form of an audiovisual recording, but the expert (or another expert who adopts the video) must be available for cross-examination if required.

Chapter 9

Recommendation 26

The Standing Council of Attorneys-General should establish an appropriately funded national taskforce to develop a national quality assurance framework for police interviewing of complainants of sexual violence.

- a. The national taskforce should, in relation to the police agency in each jurisdiction:
 - i. use the quality assurance framework to review agency interviewing guidelines and work with the agency to ensure they are founded upon generally accepted evidence-based practices for interviewing complainants;
 - ii. evaluate agency implementation of those guidelines, including by objectively evaluating interviewer and organisational performance;
 - iii. provide feedback to the police agency, which would include communicating key elements of the research and identifying areas for improvement; and
 - iv. receive reports back from the police agency in response to the feedback and areas identified for improvement.

- b. The taskforce should include:
 - i. members with extensive high-level police governance experience; and
 - ii. experts in the field of investigative interviewing of complainants of sexual violence and in the evaluation of interviewer training.
- c. As required, the taskforce should consult with relevant stakeholders, including:
 - i. experts on the impact of trauma;
 - ii. people who have experienced sexual violence;
 - iii. representatives from groups who are disproportionately reflected in sexual violence statistics and other experts who can advise on cultural sensitivity with respect to police investigations;
 - iv. experienced prosecution and defence counsel; and
 - v. trial judges experienced in conducting sexual assault trials.

Recommendation 27

Federal, state, and territory police agencies should ensure that trauma-informed environments are available for interviewing complainants of sexual violence, including the provision of:

- a. a comfortable space;
- b. privacy;
- c. the ability to accommodate a support person or victim advocate; and
- d. disability access.

Arrangements should be put in place to allow for statements to be taken from outside police premises, including at culturally appropriate locations.

Recommendation 28

The Commonwealth, states, and territories should enact or amend legislation, where necessary, to provide all adult complainants of sexual offence proceedings in County, District, or Supreme Courts with the option of giving their evidence (evidence-in-chief, cross-examination, and any re-examination) at a pre-recorded evidence hearing (recorded in the absence of a jury).

Offices of the Directors of Public Prosecutions in each jurisdiction should adopt guidelines which ensure:

- a. an adult complainant is:
 - i. given a choice to give evidence either at a pre-recorded evidence hearing or at the time of trial;
 - ii. given information relevant to making that choice; and

- iii. advised that to help make the choice, they may speak with a Justice System Navigator or obtain advice from the Independent Legal Services (see Recommendations 1 and 9); and
- b. the prosecution will not make an application for a pre-recorded evidence hearing unless the complainant has been consulted and made an informed choice to proceed in that way.

Recommendation 29

The Australian, state, and territory governments should ensure that the use of recorded police statements and pre-recorded evidence hearings is monitored and reviewed, by collaborating to commission and fund relevant empirical research projects.

Recommendation 30

The Australian, state and territory governments should ensure that adequate technology, suitable for recording and playing evidence, is available to police agencies and courts, including in regional and remote areas.

Chapter 10

Recommendation 31

The Commonwealth, states, and territories should each legislate, establish, maintain and fund an intermediary scheme which ensures an intermediary is available in sexual violence matters for child complainants and complainants with communication needs at the police interview, pre-recorded evidence hearing, and trial stages.

The Standing Council of Attorneys-General should establish an appropriately funded peak body to support the recruitment, professional development, and provision of intermediaries across Australia by:

- a. developing national accreditation standards for intermediaries (in consultation with Aboriginal Community Controlled Organisations) which respects and includes competency in working with First Nations complainants;
- b. creating an inter-jurisdictional register of intermediaries; and
- c. providing national professional development opportunities and access to vicarious trauma support.

Recommendation 32

Trial courts should extend 'ground rules' hearings about the evidence of complainants of sexual violence as an available option in all sexual offence trials, to be held on application by prosecution or defence or on the court's own motion prior to the complainant giving evidence.

Where necessary, the Commonwealth, states, and territories should enact legislation to facilitate this.

Recommendation 33

The Standing Council of Attorneys-General should:

- a. develop a strategy to address the national shortage of interpreters to assist complainants of sexual violence in the criminal justice system; and
- b. coordinate the Australian, state and territory governments to:
 - i. ensure interpreters are consistently, efficiently, and appropriately engaged by justice agencies for complainants of sexual violence, from the point of police reporting to finalisation of the criminal process (including considering the mechanisms for engagement of interpreters by courts and tribunals as identified by the Judicial Council on Cultural Diversity in the 'Recommended National Standards for Working with Interpreters in Courts and Tribunals');
 - ii. develop national standards for working with interpreters on sexual violence matters at the police and prosecution stage (in consultation with relevant stakeholders, including police agencies, interpreting agencies and services, people who have experienced sexual violence, and Aboriginal Community Controlled Organisations); and
 - iii. provide for vicarious trauma support and training in trauma-informed principles for interpreters who work with complainants of sexual violence.

Recommendation 34

The Commonwealth, states, and territories should review and where necessary amend legislation, and courts should amend court rules, to implement flexible measures for victims of sexual offences to make and deliver their victim impact statements:

- a. in a flexible format, including written, pre-recorded audio, or pre-recorded audio-visual statements;
- b. utilising illustrative formats, such as drawings and photographs;
- c. for written statements:
 - i. read aloud by the victim in an open or closed court (with or without a screen) or via remote witness facilities and with a support person; or
 - ii. read aloud by someone nominated by the victim; or
 - iii. tendered without being read aloud; and
- d. for pre-recorded audio or pre-recorded audio-visual statements:
 - i. played in an open court; or
 - ii. played in a closed court; or
 - iii. tendered without being played in court.

Chapter 11

Recommendation 35

1. Jurisdictions that have recently adopted affirmative models of consent, or that are proposing to do so, should evaluate these reforms within five years of the reforms commencing. Tasmania (which has had an affirmative model of consent since 2004) should also conduct a review, within a reasonable timeframe.
2. The purpose of the evaluation is to ensure that a best practice affirmative model of consent is identified for the purposes of national harmonisation.
3. The Standing Council of Attorneys-General should commission, and ensure appropriate funding for, the Australian Institute of Criminology to prepare the evaluation criteria and conduct the evaluation. The evaluation should assess whether the reforms are:
 - a. operating in a trauma-informed manner for complainants and consistently with the accused person's right to a fair trial; and
 - b. having any impact on:
 - i. jury directions;
 - ii. the presentation of prosecution and defence cases at trial;
 - iii. cross-examination of complainants and accused persons; and
 - iv. community understandings of consent.
4. The Australian Institute of Criminology should liaise with court researchers (see Recommendation 3) to obtain data for the evaluation process.
5. People who have experienced sexual violence, police, prosecutors, defence lawyers, and judicial officers should be consulted as part of the evaluation process.
6. The Australian Institute of Criminology should provide the results of the evaluation to the Standing Council of Attorneys-General to consider the adoption of a nationally harmonised affirmative model of consent.

Recommendation 36

The Commonwealth, states, and territories, with the assistance and oversight of the Standing Council of Attorneys-General, should review their legislation to ensure there is broad national consistency in the list of matters that do not, on their own, constitute consent (negative indicators of consent). Examples (based on existing legislation across the jurisdictions) include:

- a. previous consent to a sexual act, of that kind or any other kind, either with the accused person or someone else; and
- b. absence of resistance to sexual activity.

Note: These are expressed as general terms. The ALRC seeks to achieve broad consistency nationally, rather than being prescriptive about how such negative indicators should be expressed in legislation.

Recommendation 37

1. The Commonwealth, states, and territories, with the assistance and oversight of the Standing Council of Attorneys-General, should review relevant legislation, and amend that legislation where necessary, to ensure there is broad national consistency in the list of circumstances where there is no consent.
2. The circumstances where there is no consent should be considered and agreed upon, in respect of each of the following categories:
 - a. where the person does not do or say anything to communicate consent;
 - b. where the person has no capacity to consent, for example because they were: asleep, unconscious, or incapable of understanding the nature of the act; or because the person was incapacitated by drugs or alcohol;
 - c. where the person participates because of:
 - i. threats or use of force or harm (including economic or financial harm) to themselves, another person, an animal, or property;
 - ii. intimidation or coercion, including in the context of domestic or family violence;
 - iii. unlawful detainment; or
 - iv. an abuse of a position of authority, trust, or dependency;
 - d. where the person has a mistaken belief as to the identity of the other person or as to the nature or the purpose of the act;
 - e. where the person participates because of a fraudulent inducement or deception; or
 - f. where, contrary to an agreement that a condom would be used, there was intentional non-use, removal of, or tampering with, a condom.

Note: The ALRC seeks to achieve broad consistency nationally. The ALRC emphasises that the descriptions given in (2)(a)–(f) are descriptions of categories (which are based on existing legislation across the jurisdictions). It is for the states and territories, through the Standing Council of Attorneys-General, to try to ensure consistency of categories.

Recommendation 38

The Australian Government should resource and support ongoing public education about consent. The Australian Government should build upon existing initiatives, with an emphasis on identifying gaps and meeting the needs of different communities.

- a. Education programs should seek to explain:
 - i. the importance of consent;
 - ii. who can consent;
 - iii. that consent requires free and voluntary agreement;
 - iv. that not doing or saying anything to communicate consent is not consent (and include examples of ways that consent can be communicated);
 - v. that steps should be taken by each participant to see if other participants are consenting (and include examples of steps that could be taken);
 - vi. that consent is required every time for every type of sexual activity (see Recommendation 36);
 - vii. that there are circumstances in which there is no consent (see Recommendation 37); and
 - viii. that sexual activity with a person who does not consent is a criminal offence.
- b. Education programs should be:
 - i. informed by international technical guidance on sexuality education;
 - ii. informed by evidence-based research on primary prevention of gender-based violence (consistent with the *National Plan to End Violence Against Women and Children 2022–2032*) and on how best to generate lasting social change;
 - iii. accessible and up to date; and
 - iv. specific to their context and audience (rather than general).
- c. Education programs should be tailored to reach all groups in the community, with a focus on:
 - i. boys and young men;
 - ii. specific age groups including children at different developmental stages, young people, and older people;
 - iii. neurodiverse people;
 - iv. people with communication difficulties (who may have difficulties communicating consent);

- v. people with impaired capacity to consent;
 - vi. people with impaired capacity to understand whether or not other participants are consenting;
 - vii. First Nations people;
 - viii. people in remote, rural, and regional communities; and
 - ix. people working in institutional settings with children, people with disabilities, and people in aged care.
- d. Education programs should be developed through a process of participatory design, which includes children and young people, older people, First Nations communities, LGBTQIA+ communities, neurodiverse people, people with disabilities, and culturally and linguistically diverse communities.

Chapter 12

Recommendation 39

Each state and territory should amend relevant legislation, where necessary, and enact a provision that fully adopts section 41 of the *Evidence Act 1995* (Cth).

Recommendation 40

Judicial education should cover the duty to intervene imposed by section 41 of the *Evidence Act 1995* (Cth), to ensure its requirements are well understood and consistently applied.

Recommendation 41

The Standing Council of Attorneys-General should commission and ensure appropriate funding for research, within five years of all jurisdictions adopting section 41 of the *Evidence Act 1995* (Cth), to evaluate whether the provision, combined with judicial education, is reducing improper questioning and increasing appropriate judicial intervention.

Recommendation 42

The Commonwealth, states, and territories should amend relevant legislation, where necessary, to adopt a consistent approach to cross-examination by unrepresented accused persons in criminal proceedings by:

- a. prohibiting unrepresented accused persons from personally cross-examining any complainant or family member of the complainant (a protected witness), in all sexual offence proceedings, in all courts;
- b. providing that unrepresented accused persons are only permitted to cross-examine a protected witness through a person appointed by the court to ask questions on their behalf;

- c. providing that if unrepresented accused persons wish to cross-examine a protected witness, the court must order that a person be appointed to ask questions on behalf of the accused person for the purposes of cross-examination only;
- d. providing that any person appointed by the court for this purpose:
 - i. must be a legal practitioner; and
 - ii. is indemnified when providing such a service, provided they act in 'good faith';
- e. providing that Legal Aid Commissions are funded and required in each jurisdiction to provide this service, irrespective of the accused person's capacity to pay for representation;
- f. providing that appointed persons must not put improper questions to the protected witness on behalf of the accused person;
- g. providing that judicial officers must advise accused persons of:
 - i. their right to a court-appointed legal practitioner; and
 - ii. the consequences (in terms of being able to lead evidence which contradicts, challenges, or discredits a witness) if they decline and decide not to cross-examine a witness;
- h. providing that judicial officers must inform juries that:
 - i. it is normal process for protected witnesses not to be questioned by an accused person directly and for legal practitioners to be appointed for that purpose; and
 - ii. no inference (against or in favour of the accused person or protected witness) may be drawn from this process.

Recommendation 43

The Standing Council of Attorneys-General should commission and ensure appropriate funding for the Australian Institute of Criminology to conduct research:

- a. on how confidential communication and sexual assault counselling privilege provisions are operating in practice (including the adequacy of current subpoena processes); and
- b. to identify areas for improvement, consistent with the underlying public interest rationale for the provisions.

The Standing Council of Attorneys-General should, on the basis of that evaluation, consider whether sexual assault counselling communications should be absolutely privileged or admissible with the leave of the court (and if so, what the criteria for granting leave should be).

Recommendation 44

Section 4(1) of the *Sexual Offences (Evidence and Procedure) Act 1983* (NT), dealing with sexual reputation, should be amended to provide that evidence of a complainant's sexual reputation is not admissible in a sexual offence proceeding. This absolute prohibition should extend to all sexual offence complainants. The availability of leave (in respect of section 4(1)(a)) and the term 'chastity' should be removed.

Recommendation 45

New South Wales should introduce a discretionary leave model for the admission of sexual history evidence, consistent with the approach adopted in all other jurisdictions.

Chapter 13

Recommendation 46

1. Commonwealth, state, and territory laws relating to civil proceedings, as well as court and tribunal processes (including processes relating to their conciliation, mediation, and hearing functions) should be amended, where reasonably practicable, so that the following measures, mechanisms, and evidentiary rules are available in any civil proceeding in which an allegation of sexual violence is raised:

Delay

- a. Prioritise for hearing (and for any pre-recorded evidence hearing) matters involving children, or people with a cognitive impairment, who allege they have experienced sexual violence.

Flexible evidence measures

- b. Establish 'ground rules' for appropriate questioning of witnesses, and appropriate flexible evidence measures, as part of case management hearings.
- c. Record evidence given at trial by witnesses who allege having experienced sexual violence to avoid the need for that evidence to be given again on any re-trial.
- d. Any person who alleges they have experienced sexual violence should have access to the following flexible evidence measures:
 - i. giving evidence with a one-way screen or other device to avoid visual contact with the person alleged to have used sexual violence;
 - ii. giving evidence from a remote location within the court precinct via video link;

- iii. giving evidence from a remote location outside the court precinct via video link;
- iv. having a support person present while giving evidence; and
- v. having a canine companion present while giving evidence.
- e. A court should have explicit discretion to close the court when a person who alleges having experienced sexual violence gives evidence, and the court should give significant weight to the potential for the person to experience trauma if they were to give evidence in open court.
- f. Make available Indigenous Liaison Officers to assist courts to operate in culturally safer ways, and to assist First Nations people to engage with court proceedings, whether as a party, witness, or otherwise, in relation to matters in which sexual violence is a relevant issue.

Interpreters

- g. Where necessary, make available an appropriately qualified interpreter trained in trauma-informed principles (see Recommendation 33) to interpret for a person who alleges sexual violence.

Intermediaries

- h. Make available an intermediary for witnesses who are a child or have a communication difficulty and allege having experienced sexual violence.

Improper questioning

- i. Relevant evidence legislation should be amended to introduce a provision equivalent to section 41 of the *Evidence Act 1995* (Cth) (where not already enacted in the particular jurisdiction), requiring a court to intervene when an improper question is put to a witness.

Cross-examination

- j. Prohibit personal cross-examination by an unrepresented person of a witness when there is an allegation of sexual violence between the unrepresented person and the witness (or an allegation of violence against a family member of the witness) and provide for any cross-examination to be conducted by a legal practitioner who is made available without cost to the unrepresented person.

Admissibility of evidence

- k. Require that the leave of the court or tribunal be obtained to compel the production of, or to produce, or to adduce, evidence of confidential sexual assault counselling communications made by a party or witness who alleges having experienced sexual violence, unless the party or witness has waived confidentiality. In considering whether leave should be granted, the court or tribunal should take into account the probative

value of the evidence and the prejudice or harm that would be caused by the loss of confidentiality.

- l. Exclude evidence of the sexual reputation of a witness who alleges having experienced sexual violence and require that the leave of the court be obtained for the admission of evidence about that person's sexual history.
- m. Provide for admissibility of expert evidence regarding the nature and effects of sexual violence upon a person alleging having experienced sexual violence (including effects on memory, the nature and effects of trauma, and the nature of sexual violence), to be used for the purpose of assessing the credibility and reliability of the person's evidence.

The measures or mechanisms outlined above should, unless the court or tribunal otherwise determines, be made available only when the alleged sexual violence is capable of constituting a criminal offence.

2. Training and education should be made available to judges, tribunal members, court and tribunal staff, and lawyers involved in civil proceedings involving allegations of sexual violence in relation to:
 - a. Trauma-informed practice, including cultural competence and cultural safety.
 - b. Working with interpreters in sexual violence matters.
 - c. Working with intermediaries in sexual violence matters.
 - d. The duty to intervene to prevent improper questioning, to ensure that the requirements of a provision equivalent to section 41 of the *Evidence Act 1995* (Cth) are well understood and consistently applied.
3. Courts and tribunals should, where appropriate, publish a bench book relating to civil matters involving allegations of sexual violence.

Recommendation 47

Commonwealth, state, and territory complaint bodies and regulators (such as the Commonwealth Ombudsman, Australian Human Rights Commission and Fair Work Ombudsman), non-tribunal government services, and private mediators and arbitrators should review their processes to:

- a. enhance trauma-informed practice;
- b. avoid perpetuating or giving effect to myths and misconceptions about sexual violence;
- c. train staff in trauma-informed practice (including cultural competence and cultural safety) and common myths and misconceptions about sexual violence; and
- d. facilitate the communication needs of people who have experienced sexual violence.

Chapter 14

Recommendation 48

The *Sex Discrimination Act 1984* (Cth) should be amended so that the prohibitions on sexual harassment (as defined in s 28A of the Act) apply beyond those areas of activity specified by ss 28B–28L of the Act to all areas of public activity.

Recommendation 49

The Australian Government should consider within 24 months of this Report whether, and how best, to amend the *Sex Discrimination Act 1984* (Cth) so that the prohibitions on sexual harassment apply universally.

Recommendation 50

The remedies available under the *Australian Human Rights Commission Act 1986* (Cth) for addressing a contravention of the prohibition on sexual harassment in the *Sex Discrimination Act 1984* (Cth) should be clarified or extended to include the capacity for the court to make orders where appropriate:

- a. restraining a respondent from engaging in particular conduct (such as approaching the applicant, or attending a particular place);
- b. requiring a respondent to take part in a program of counselling, training, mediation, rehabilitation, or assessment;
- c. requiring a respondent, conducting the business or undertaking in which the sexual harassment has occurred, to take corrective action to prevent further sexual harassment in the business or undertaking; and
- d. requiring a respondent to pay a civil penalty in relation to a breach of a prohibition on sexual harassment in the *Sex Discrimination Act 1984* (Cth).

Recommendation 51

The *Australian Human Rights Commission Act 1986* (Cth) should be amended such that a person found to have contravened the positive duty in s 47C of the *Sex Discrimination Act 1984* (Cth) may be ordered to pay a civil penalty.

Chapter 15

Recommendation 52

Section 570 of the *Fair Work Act 2009* (Cth) should be amended for sexual harassment proceedings, such that it is equivalent to s 46PSA of the *Australian Human Rights Commission Act 1986* (Cth), which is the provision that applies to the recovery of legal costs in sexual harassment proceedings under the *Sex Discrimination Act 1984* (Cth).

Recommendation 53

The *Fair Work Act 2009* (Cth) should be amended to include a provision (equivalent to that contained in the *Sex Discrimination Act 1984* (Cth)) imposing a positive duty on an employer, or a person conducting a business or undertaking, to take reasonable and proportionate measures to eliminate, as far as possible, the sexual harassment of workers. A person who breaches the positive duty should be liable for payment of a civil penalty.

Recommendation 54

The remedies available under the *Fair Work Act 2009* (Cth) for a breach of the prohibition on sexual harassment should be clarified or extended to include capacity for a court or the Fair Work Commission (in arbitration or when making a stop sexual harassment order) to make orders, where appropriate:

- a. restraining a respondent from engaging in particular conduct (such as approaching the applicant, or attending a particular place);
- b. requiring a respondent to take part in a program of counselling, training, mediation, rehabilitation, or assessment; and
- c. requiring a respondent, conducting the business or undertaking in which the sexual harassment has occurred, to take corrective action to prevent further sexual harassment in the business or undertaking.

Recommendation 55

The Australian Government should, within 24 months of this Report, conduct a review of the operation of the regime in the *Fair Work Act 2009* (Cth) addressing sexual harassment.

Subject to the outcome of that review, a regime incorporating tribunal, court, and regulatory processes like those provided for in the *Fair Work Act 2009* (Cth) should be made available in other sectors (for example, in the higher education sector) or across all areas of activity in which sexual harassment is prohibited in the *Sex Discrimination Act 1984* (Cth).

Chapter 16

Recommendation 56

Each state and territory victims of crime scheme should, where necessary, be amended in relation to sexual violence matters to:

- a. extend time limits for applications to be at least 10 years from the date of the most recent act of violence for which assistance is sought, and provide a discretion to accept applications made outside the time limit based on a low threshold;
- b. remove any requirement for an applicant to have disclosed the violence to another person, or to have formally reported or cooperated with authorities, as a condition of receiving financial assistance or as a basis for any reduction in

the financial assistance provided, and not use non-reporting as determinative of, or necessarily essential to, the assessment of whether the violence occurred;

- c. remove requirements to prove injury as a condition of making a recognition payment, and provide access to a recognition payment as an alternative to proving injury in order to obtain a compensation payment. Injury should be presumed in relation to medical, counselling, and related expenses;
- d. not notify the person alleged to have used sexual violence that an application has been made, or that a financial assistance payment has been made, where the applicant has a genuine belief of a risk of harm to the applicant or to a person associated with the applicant;
- e. not reduce any payment on the basis that the person alleged to have used sexual violence may benefit, and instead use other measures to safeguard payments made to an applicant; and
- f. introduce recognition statements and recognition meetings.

Recommendation 57

Each state and territory government should conduct a review of its victims of crime scheme to consider the following (where applicable) in relation to all applications (including, but not limited to, sexual violence matters):

- a. ensuring that the process is victim-centred and trauma-informed, including by:
 - i. ensuring that decision-makers are appropriately trained;
 - ii. reducing complexity of the application process; and
 - iii. reducing the time taken to process applications;
- b. setting out guiding principles for the operation of the scheme;
- c. with the assistance and oversight of the Standing Council of Attorneys-General, providing equality of access across all victims of crime schemes and providing for more equitable and consistent awards of compensation or financial assistance across all jurisdictions;
- d. applying the standard of proof that 'on the balance of probabilities' the wrongdoing occurred, rather than any higher standard;
- e. prohibiting any criminal activity by the applicant being used as a ground for refusal or reduction of an award, and ensuring that any discretion to refuse or reduce an award by reason of any contributory conduct is not misused;
- f. on request, requiring decision-makers to provide written reasons for decisions; and
- g. recognition payments.

Chapter 18

Recommendation 58

The Commonwealth, states, and territories should, where necessary, adopt, or review and amend, legislation to make restorative justice for sexual violence widely available.

Recommendation 59

Restorative justice legislation should provide clarity about:

- a. its aims, which should include:
 - i. empowering people who have been harmed and responding flexibly to their needs;
 - ii. respecting all participants and ensuring their safety; and
 - iii. repairing harm;
- b. the voluntary nature of restorative justice — no one is under any obligation to participate;
- c. the confidentiality of the restorative justice process and limits on confidentiality;
- d. its availability in cases involving children and young people, and the additional screening and supports that must be provided in these cases;
- e. the relationship between restorative justice and other justice processes, including:
 - i. when and how matters that are the subject of criminal charges can be referred for restorative justice, and how restorative justice outcomes may influence criminal justice outcomes in these cases (Recommendation 60);
 - ii. recognition that restorative justice can happen independently of other justice processes;
- f. the obligation on providers of restorative justice for sexual violence to work within national guidelines (Recommendation 61); and
- g. the bodies responsible for oversight of restorative justice (Recommendation 62).

Recommendation 60

Restorative justice legislation should specify that restorative justice is available:

- a. where a person who has experienced sexual violence has not reported the violence to the police;
- b. where a person who has experienced sexual violence has reported to police, but there were insufficient grounds to file charges or the prosecution was

discontinued, subject to safeguards to ensure the charging and prosecution process is fair and transparent;

- c. during criminal proceedings as part of the accused person being referred to a diversionary program that provides for a restorative justice process;
- d. after a guilty plea or conviction and before sentencing; and
- e. at any time after sentencing, including as part of parole proceedings.

Recommendation 61

The Australian Government, together with state and territory governments, should develop national guidelines for the safe delivery of restorative justice for sexual violence, drawing on the guidelines used in the Australian Capital Territory, New Zealand; and in Victoria for family violence.

The national guidelines should be developed with input from people who have experienced sexual violence, sexual violence services, Aboriginal Community Controlled Organisations, community organisations (including those representing groups who are disproportionately reflected in sexual violence statistics), and restorative justice researchers and providers.

Recommendation 62

The Commonwealth, states, and territories should ensure designated bodies are responsible in each jurisdiction for providing oversight of restorative justice, including consistent implementation of the national guidelines (Recommendation 61). The oversight bodies should include First Nations representatives and representatives from groups who are disproportionately reflected in sexual violence statistics.

The Commonwealth oversight body should:

- a. establish and publish national training standards;
- b. establish and publish national accreditation criteria; and
- c. provide national coordination and support national information sharing, knowledge building networks, and communities of practice.

The Commonwealth, state, and territory oversight bodies should:

- d. establish and manage complaints processes in their jurisdiction;
- e. ensure transparency and accountability in relation to the funding of restorative justice; and
- f. evaluate programs and collect and publish data to provide transparency and inform program and policy development. How programs are evaluated, and data is collected and published, should be consistent with principles of Indigenous data sovereignty.

Recommendation 63

The Australian, state, and territory governments should jointly provide funding to support First Nations communities to design, build, and deliver accredited restorative justice programs for First Nations people.

First Nations people should be free to access restorative justice at any restorative justice service.

Recommendation 64

The Australian, state, and territory governments should make sure restorative justice is well resourced and supported by 'wrap around' services, including therapeutic treatment programs for people responsible for sexual violence.

Unless otherwise stated, this Summary Report reflects the law as at 1 November 2024.

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