

# JUSTICE RESPONSES TO SEXUAL VIOLENCE

Respect Victoria submission

<b>Attention</b>	Australian Law Reform Commission
<b>Response to</b>	Inquiry into Justice Responses to Sexual Violence
<b>Closing date</b>	Friday 14 June 2024 (late submissions accepted)
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# Acknowledgement of Country

Respect Victoria acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples and Traditional Owners and Custodians of the lands and waterways on which we rely. We proudly acknowledge Aboriginal communities in Victoria and their ongoing strength in practising the world's oldest living culture. We acknowledge the significant and ongoing impacts of colonisation and commit to working alongside Aboriginal communities to effect change. We recognise the ongoing leadership role of Aboriginal communities in addressing and preventing family violence and violence against women, and will continue to work in collaboration with First Peoples to eliminate these forms of violence from all communities.

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# ABOUT OUR SUBMISSION

Respect Victoria welcomes the Australian Law Reform Commission's inquiry into justice responses to sexual violence. As Victoria's dedicated agency for the primary prevention of family violence and violence against women, Respect Victoria welcomes the Commission's focus on sexual violence and its recognition of the gendered nature of this violence.

The sexual violence cases that enter the civil and criminal justice systems (referred to throughout this submission as 'the justice system') represent only the tip of the iceberg of what is a complex, pervasive, and widespread social issue across Australian society. To address this, it is vital that we ensure justice responses to this violence are trauma-informed, safe and effective, while also taking every opportunity to stop sexual violence from occurring, escalating, or reoccurring.

Our submission highlights the role of whole-of-population and cohort-specific primary prevention approaches in supporting strong justice responses to sexual violence, including through building the knowledge, skills, capabilities and accountability of those working within the system. Our submission also explores opportunities to harness the justice system to help drive the long-term systemic and cultural change required to eliminate sexual violence. This includes the role of:

- whole-of-population prevention efforts in reducing sexual offending over time and alleviating demand on the justice system, improving its ability to deliver timely responses
- the role of the justice system in shaping and reinforcing social norms about sexual violence, consent and relationships and what behaviour is, and is not, acceptable in our society
- prevention initiatives and community education in dispelling common myths, misconceptions, and harmful attitudes relating to sexual violence that create barriers to reporting, limit access to the justice system for victim-survivors and reduce accountability for perpetrators
- the attitudes, beliefs, values and capabilities of people working within the justice system in enabling safe, just and effective responses to sexual violence.

There has been considerable work in Victoria that touches on the Terms of Reference for this inquiry, including the Victorian Law Reform Commission's ('VLRC') 2021 review, *Improving Justice System Responses to Sex Offences* (1) and the Victorian Victims of Crime Commissioner's report *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system* (2). These reviews acknowledge the critical intersection between strong justice system responses to sexual violence and whole-of-population approaches to violence prevention. We encourage the Australian Law Reform Commission to consider the approaches taken and recommendations made in these inquiries.

Our submission addresses the following elements of the Terms of Reference:

- 1a. Laws and frameworks about evidence, court procedures/processes and jury directions
- 2a. Laws about consent (**noting we would be happy to be consulted further on this as required**)
- 1c. Policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors
- 2c. Training and professional development for judges, police, and legal practitioners to enable trauma-informed and culturally safe justice responses
- 3c. Support and services available to people who have experienced sexual violence, from prior to reporting, to after the conclusion of formal justice system processes.

In addition, our submission provides responses to the following questions posed by the Issues Paper:

24. Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?
33. Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

## RECOMMENDATIONS

### Recommendation 1

The ALRC recognise and highlight the importance of evidence-based and adequately supported whole-of-population and cohort-specific primary prevention efforts to:

- (a) prevent sexual violence from occurring
- (b) enable safe and supported disclosures of sexual violence and the provision of accurate, trauma-informed advice to victim-survivors about their legal (and other) options
- (c) facilitate victim-survivors to safely report sexual violence and access the justice system, should they so wish
- (d) support trauma-informed, just and effective justice processes and outcomes that hold perpetrators of violence to account.

### Recommendation 2

The Australian legal sector commit to whole-of-organisation and whole-of-setting primary prevention, including through:

- (a) supporting and building on existing work and promising practice
- (b) partnering with prevention experts and specialist sexual violence services to design and deliver primary prevention programs and activities across justice workplaces and settings
- (c) exploring opportunities to require and/or incentivise uptake, for example through embedding prevention training within continuing professional development systems, pro bono legal service provision and/or eligibility criteria for private law firms to access government legal panels.

### Recommendation 3

Australian governments explore the merits and feasibility of:

- (a) the establishment of specialist sexual violence courts, sections or lists (and how these might interact with existing specialist family violence courts where they are in place)
- (b) requiring all judges who conduct sexual offence cases to undertake comprehensive specialised training
- (a) reviewing current evidentiary restrictions and developing up-to-date, nationally consistent guidance to limit cross-examination that reflects myths and misconceptions about sexual violence
- (b) establishing specialist training and accreditation for lawyers and prosecutors involved in sexual offence matters.

### Recommendation 4

Any general or specialist sexual violence training rolled out within the justice system is developed in consultation with experts from the primary prevention of violence against women sector and specialist sexual violence sector and includes:

- (a) accurate and evidence-based information on the gendered drivers and reinforcing factors of violence against women and the additional, specific factors that drive men’s use of sexual violence against women, as outlined in Change the Story, Australia’s national framework for preventing violence against women
- (b) the nature, prevalence and harms of sexual violence
- (c) barriers to reporting sexual violence and accessing just outcomes commonly experienced by different cohorts of victim-survivors within Australia, including women, First Nations people, people from culturally and linguistically diverse backgrounds, people with disability, people who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual or another gender or sexuality, and other marginalised groups outlined in the Terms of Reference for this inquiry
- (d) the ways in which trauma, particularly sexual trauma, can impact a person’s behaviour and memory
- (e) education and practical guidance for countering commonly held misconceptions or ‘rape myths’ that may arise within the justice system and the community more broadly.

## **Recommendation 5**

Australian Governments explore opportunities to strengthen and harmonise consent laws nationally, ensuring consistent application of an affirmative consent model.

Australian Governments ensure reforms to consent laws are accompanied by community education, training and evaluation and connected to broader prevention efforts.

## **Recommendation 6**

The Australian Institute of Judicial Administration develop a National Sexual Violence Bench Book, or strengthen the existing National Family and Domestic Violence Bench Book, to incorporate evidence-based information about sexual violence and the gendered drivers of violence.

## **Recommendation 7**

Findings from Victoria’s Justice Navigator pilot are shared nationally to inform consideration of the merits and feasibility of rolling out similar models in other States and Territories.

## **Recommendation 8**

A strong sexual violence services sector and community legal assistance sector is available in all jurisdictions to provide specialist trauma-informed supports to victim-survivors of sexual violence, and support mutually reinforcing prevention messages throughout the justice system.

## **Recommendation 9**

The ALRC consult with First Nations communities and Aboriginal Community Controlled Organisations with expertise in sexual violence and violence against women to explore opportunities to:

- (a) ensure the availability of culturally safe and appropriate, specialist sexual assault services
- (b) strengthen Aboriginal-led and evidence-informed, primary prevention initiatives.

# ABOUT RESPECT VICTORIA

Respect Victoria is the state's dedicated organisation for the prevention of family violence and violence against women. Our vision is a Victorian community where all people are safe, equal and respected, and live free from family violence and violence against women.

To achieve our vision, we lead and support evidence-informed primary prevention and act as a catalyst for transformational social change. Primary prevention aims to stop violence from occurring in the first place, by changing the culture that drives it. We drive coordination and effectiveness of the prevention system. We build and promote primary prevention knowledge and evidence. We keep prevention on the public and policy agenda. We guide prevention wherever Victorians live, work, learn and play. We raise awareness that violence against women is preventable and influence community conversations to fuel social change.

We are an independent voice, with functions, powers and duties enshrined in legislation.

## The primary prevention of violence against women

Primary prevention is our opportunity to stop all forms of violence against women, including sexual violence, before it occurs and curb the extreme social and economic costs of this harm. Primary prevention seeks to change the conditions that allow violence against women to thrive in society (3). These conditions include our individual attitudes, beliefs and behaviours, social norms, organisational cultures and practices, policies, laws and institutions. Prevention works by promoting healthy, safe and equal environments, behaviours and attitudes in places where we live, work, learn, socialise and play (3).

The prevention of sexual violence has been identified as a priority across efforts to address violence against women in Australia, as evidenced by the focus on both primary prevention and sexual violence within the *National Plan to End Violence Against Women and Children 2022-2032* (4) and its first Action Plan(5), the introduction of the *Commonwealth Consent Policy Framework* (6), and the Federal inquiry into *Current and Proposed Sexual Consent Laws in Australia* (7). Australia's most recent *National Community Attitudes Towards Violence Against Women Survey ('NCAS')* shows that despite progress in attitudes towards violence against women and support for gender equality generally, many Australians still hold harmful attitudes that minimise, excuse, or normalise sexual offending (8).

A broad spectrum of action is required to holistically address violence against women, including sexual violence. This includes response services (such as refuges, helplines, counselling and support services, and men's behaviour change programs), early intervention initiatives (such as programs that work with individuals who are a higher risk of perpetrating or experiencing violence), and primary prevention (such as policy change and programs that address the gendered drivers of men's violence towards women) (3).

Primary prevention approaches can be effectively embedded within early intervention and response efforts to produce immediate benefits for victim-survivors, while driving the long-term systemic and cultural change required to eliminate violence in the future. For further information about the continuum of effort required to prevent violence against women, including sexual violence, see the infographic at **annexure A**.

# The nexus between justice responses to sexual violence and primary prevention

Prevention's overarching goal is to stop violence before it starts. Therefore, this approach holds the potential to reduce sexual offending and demand on the justice system, enhancing the system's ability to deliver timely responses to sexual violence. These benefits can be achieved by targeting the attitudes, behaviours, and structures that drive sexual violence at a whole-of-population level so that, in time, less people experience and perpetrate sexual violence, and need to engage with the court system.

Addressing the gendered drivers of violence can also enable the justice system to provide safe, just, and effective responses to sexual violence. The presence of stigma, victim-blaming, shame, and the normalisation of violence within both the justice system and the community at large creates barriers to reporting and pursuing outcomes through the justice system. Prevention initiatives and community education can dispel common myths, misconceptions, and harmful attitudes, supporting victim-survivors to disclose their experiences and gain access to the justice system.

Finally, the justice system is also a 'setting' for prevention. Delivering targeted prevention initiatives within the justice system ensures those working within the justice system have the knowledge, skills and capacity to provide trauma-informed responses for victim-survivors, and deliver outcomes that hold perpetrators to account and connect them with services and supports to reduce reoffending. By delivering prevention initiatives at both a whole-of-population level and within the justice system, we seek to ensure every opportunity is taken to reinforce positive messages about consent, respect, and healthy sexual relationships.

## ABOUT SEXUAL VIOLENCE

### Prevalence, nature, and impact

Violence against women in Australia, including sexual violence, is an epidemic.<sup>1</sup> It can be challenging to quantify the full extent of sexual violence in Australia using service data, as it is under-reported (9) and the cases which progress to a court only represent a small proportion of the true volume and spectrum of sexual violence that occurs (10). Research indicates at least one in five women in Australia have experienced sexual violence since the age of 15 (11), two in five young people aged 14 to 18 have had unwanted sex (12), and 9 in 10 women have experienced sexual harassment at some point in their lifetime (11). In addition, Australian Institute of Health and Welfare data indicates that 11% of girls and 3.6% of boys are sexually assaulted as children in Australia (11).

Sexual violence occurs along a continuum of harmful behaviour. This can include a range of behaviours, such as sexual harassment that makes someone feel uncomfortable or afraid; unwanted touching or remarks; coerced sexual activity; and rape with physical violence or threat to life (13). Sexual violence can also be perpetrated in a range of contexts. While women are most likely to experience sexual violence perpetrated by a man they know, such as an intimate partner, friend, or co-worker, they may also be assaulted by a stranger (11). The settings in which sexual violence occurs are evolving quickly, often

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<sup>1</sup> In Australia, almost 1 in 4 women (23.0%) have experienced **intimate partner violence by a male partner** since the age of 15, more than 1 in 3 women (37.2%) have experienced **physical and/or sexual violence by a man** since the age of 15 (Australian Bureau of Statistics 2023, [Personal Safety Survey 2021-22](#)).



outpacing the capacity of our legal system to respond. Technology and online spaces have created new sites for the promotion and perpetuation of sexual violence and harassment (14).

Victim-survivors of sexual violence face devastating and potentially life-long physical, emotional, social, and financial harm as a result. These adverse impacts of sexual violence are often compounded by barriers to disclosing their experience and poor justice responses. The barriers experienced by victim-survivors in relation to disclosing sexual violence are complex and varied. Victim-survivors may be discouraged from discussing their experiences if they believe disclosing could affect their safety, in addition to uncertainty around whether others will disbelieve, judge or criticise them (15). Victim-survivors may also falsely believe they are to blame for the violence they have experienced or the consequences experienced by people who used violence against them and, as a result, hold feelings of shame and embarrassment that stop them from disclosing (15). Without access to safe disclosure pathways, victim-survivors are denied access to formal justice responses, and the supports and services they deserve.

For victim-survivors who are supported to disclose their experiences and pursue justice responses, many describe their involvement with the justice system as retraumatising (2). Such experiences include victim-survivors having their accounts disbelieved or minimised by police, undergoing an invasive forensic medical examination by a stranger after being physically violated, facing cross-examination designed to impugn their character or present them as somehow to blame for the violence they experienced, and having to recount terrifying and/or denigrating experiences in a public courtroom with their perpetrator watching.

The adverse impacts of sexual violence, the presence of barriers to disclosing, and experiences of poor justice responses are all amplified for those who experience additional and intersecting forms of structural inequality, including women with disability, Aboriginal and Torres Strait Islander women, migrant and refugee women, people within the LGBTIQ+ community, and women living regionally or remotely (15). This is because each of these factors shape the ways that violence is enabled, perpetrated, responded to, and experienced by different people in the community.

## Drivers

### The gendered drivers of violence

Australia's national framework for the prevention of violence against women, *Change the story* (3), represents a robust synthesis of available evidence, from Australia and internationally, on violence against women (including sexual violence) and what works to prevent it. This evidence demonstrates a strong and consistent association between gender inequality and levels of violence against women, and points to particular expressions of gender inequality that have been shown to be most consistently associated with higher rates of men's violence against women, including sexual violence. These expressions of gender equality are known as the *gendered drivers* of violence against women. *Change the story* outlines the four main *gendered drivers* of violence against women (3), they are:

- attitudes, behaviours and actions that condone, minimise or excuse violence against women
- men's control of decision-making and restrictions on women's independence in public and private life
- rigid gender stereotyping and dominant forms of masculinity that hurt men, women and all people
- male relationships and cultures of masculinity that emphasise aggression, dominance and control.

These drivers are the factors that most consistently predict men's violence against women at a population level and explain its gendered patterns. In practice, the gendered drivers arise from gender-discriminatory

norms, practices, and structures, which together create environments where women and men are not considered equal and violence against women is more likely to occur, and more likely to be tolerated.

There are also additional, reinforcing, factors which may impact the probability, frequency, or severity of men's violence against women in particular contexts (3). Resistance to or backlash against moves towards gender equality or other social change; condoning of violence in general; factors that weaken prosocial behaviour (e.g. natural disasters, substance use, stress); and prior experience of or exposure to violence can all influence the perpetration of violence against women in particular circumstances and parts of our society, if the gendered drivers are also at play (3).

## **The additional, specific drivers of men's use of sexual violence**

In addition to the gendered drivers of violence against women outlined above, *Change the story*, articulates several factors which are specifically linked to men's use of sexual violence(3). These include:

- adherence to forms of masculinity that commonly emphasise control and dominance
- performances of strength and toughness through violence outside the home
- peer pressure and social expectations that men should never say no to sex and should have many sexual partners
- peer pressure to pursue sex with women in coercive and aggressive ways, and talk about women as sexual objects
- prior exposure to violence against a parent, or emotional, physical and sexual abuse during childhood
- current exposure to violent pornography

## **Attitudes and beliefs of Australians towards sexual violence**

Data from the 2021 NCAS highlighted that a significant proportion of the Australian population hold concerning attitudes around sexual violence and harm, including attitudes that reflect the gendered drivers of violence and serve to normalise, trivialise or excuse sexual and other forms of violence. Some key findings include(8):

- 35% of Australians agreed that it is common for sexual assault accusations to be used as a way of getting back at men
- 25% of Australians agreed that a lot of times, women who say they were raped had led the man on and then had regrets
- 25% of Australians agreed when a man is very sexually aroused, he may not even realise that the woman doesn't want to have sex
- 14% of Australians agreed that many allegations of sexual assault made by women are false

Contrary to these common assumptions, research demonstrates that sexual violence is under-reported, victim survivors continue to face significant barriers to reporting, and false reports of sexual assault are rare (16).

The 2024 *Man Box Study* demonstrated the association between attitudes to manhood and the behaviours of Australian men aged 18 to 45 (17). Using survey and focus group data, the research explored the extent to which Australian men perceive social pressure to conform to certain 'rules' (or stereotypes) about how a 'real man' man should think and act. It examined whether men personally agree with these social messages, and the relationships between men's endorsement of Man Box rules and a range of behaviours and life outcomes. The study's 2024 data found that the men surveyed who most strongly endorsed masculine stereotypes (such as self-sufficiency, rigid gender roles, hypersexuality, and aggression and control) were eight times more likely to report that they had used sexual violence against

an intimate partner and 28 times more likely to report that they had used fear to coerce a partner into having sex (17).

Further evidence demonstrating the complex and interconnected relationship between community attitudes and the normalisation, condoning and perpetration of sexual violence can be seen in Our Watch's 2020 paper, *Pornography, Young People, and Preventing Violence Against Women* (18). This research explored the relationship between young people's experiences with pornography and their attitudes and beliefs related to violence against women. It found that "... more frequent consumption of pornography was associated with victim blaming attitudes, such as the belief that if a woman is affected by alcohol or drugs, she is at least partly responsible for whatever happens to her" (18).

As the justice system is designed and operated by people within our communities, it is not immune to the impact of these prevalent but harmful attitudes and beliefs about sexual violence, and violence against women more broadly. Addressing and transforming social norms and practices that normalise, minimise, justify or excuse violence against women is essential if we are to deliver safe, just and trauma-informed outcomes for victim survivors of sexual violence, hold perpetrators to account, and ensure the proper administration of the law.

## **THE ROLE OF PREVENTION IN SUPPORTING *ACCESS* TO JUSTICE**

### **Under-reporting and barriers to disclosure**

To access safe and effective justice responses to sexual violence, victim-survivors must be enabled to recognise that what they have experienced constitutes sexual violence, is against the law, and that they can access safe, trusted and accurate information to understand their options (including through the criminal and civil justice system). However, this is not currently the case. Of women who experience sexual assault, 92% do not report this to police, and only 57% will seek advice or support from another source (9). Victim-survivors experience multiple barriers to disclosing their experiences of sexual violence. This can include uncertainty about how others will respond their story, whether they will be believed, or whether what happened to them was wrong (15). Failure to believe, or properly respond to, disclosures of sexual violence is often the result of the plethora of widely held myths and misconceptions about who uses and experiences sexual violence (19). Undue suspicion or scepticism may be directed towards victim-survivors who act contrary to these myths, which falsely dictate how "real" victims act and create incorrect narratives around the nature of perpetration (16).

Victim-survivors who have negative experiences disclosing sexual violence to friends or family report a range of adverse psychosocial outcomes including social isolation, substance abuse, mental health disorders, and increased risk of experiencing further abuse (20). Furthermore, negative experiences disclosing to police often create an insurmountable barrier to pursuing formal justice processes (19). The resulting under-reporting of sexual violence in crime statistics affects the broader community, as harmful misinformation about sexual violence remains unchallenged and the drivers of violence are further reinforced.

# Primary prevention supports disclosure

In considering how to strengthen support for victim-survivors to disclose their experiences, primary prevention approaches to addressing violence against women present an opportunity. Australia's national framework to prevent violence against women, Our Watch's *Change the story*, describes a universal, whole-of-population approach (3). This approach understands that gender-based violence, including sexual violence, as a problem that occurs across Australian society and affects all women and gender-diverse people (3). As such, the proposed actions to address violence against women consider the broader social, political, and economic factors that drive violence and not just the individual behaviour of those that perpetrate violence (3). (3) Inherent in this approach is the understanding that we all have an important role to play in the prevention of gendered violence, including sexual violence.

Primary prevention initiatives are a highly effective means for increasing the community's awareness and understanding of violence against women (including sexual violence, consent and what a safe and healthy sexual relationship or encounter looks like), ensuring that our systems and institutions enable and support disclosures of violence, and equipping individuals with the skills and capability to actively prevent violence in their day-to-day lives.

It is most common that victim-survivors will seek support from friends and family, over formal support services (9). This suggests that, in addition to equipping those working in frontline settings to facilitate safe and supportive disclosures of violence, it is also vital to ensure these skills are strengthened across the broader community. Increasing public understanding of sexual violence and its gendered drivers and manifestations will increase the likelihood that victim-survivors will be supported by their friends, families, or coworkers, and receive trauma-informed responses from frontline justice workers, such as police or legal practitioners. It is vital that we ensure prevention messaging is wide reaching and able to positively influence the attitudes, beliefs and behaviours of all Australians.

The importance of whole-of-population approaches to preventing sexual violence, and the role this can play in supporting justice responses, was recognised in the VLRC's 2021 review, *Improving Justice System Responses to Sex Offences* (1). The VLRC highlighted the impact of strong government commitment to public education about sexual violence, ultimately recommending that the Victorian Government resource and support public education that covers identifying sexual violence, dispelling common myths and misconceptions about sexual violence, consent laws, and the available support services and justice options (1). There was additional emphasis placed on ensuring that public education is targeted across school and higher education through Respectful Relationships Education, as well as health care settings, including maternal and child health services (1). To support the reporting of sexual violence and improve access to justice responses, we recommend ongoing support for whole-of-population approaches to preventing violence against women.

## Recommendation 1

The ALRC recognise and highlight the importance of evidence-based and adequately supported whole-of-population and cohort-specific primary prevention efforts to:

- (a) prevent sexual violence from occurring
- (b) enable safe and supported disclosures of sexual violence and the provision of accurate, trauma-informed advice to victim-survivors about their legal (and other) options
- (c) facilitate victim-survivors to safely report sexual violence and access the justice system, should they so wish
- (d) support trauma-informed, just and effective justice processes and outcomes that hold perpetrators of violence to account.

# THE ROLE OF PREVENTION IN SUPPORTING SAFE, JUST, AND EFFECTIVE *RESPONSES* TO SEXUAL VIOLENCE

## The role of the justice system in primary prevention

As an institution that seeks to reach and serve the whole community, the justice system holds significant potential to both prevent and respond to sexual violence.

The justice system holds many interconnected settings or opportunities – each of which can play a role in preventing sexual violence and violence against women more broadly. These include:

- the power of legislation and legal frameworks to reinforce or dismantle entrenched attitudes that drive and enable sexual violence.
- the role of high-profile legal cases in shaping cultural norms around consent, sexual violence and perpetrator accountability
- the justice system as a series of workplaces (such as, courts, law firms and legal services, police stations and family mediation services) that can be sites for the perpetuation or prevention of sexual violence.

Each of these settings – or preventative opportunities - within the justice system hold significant potential to drive long-term change to prevent sexual violence and all forms of violence against women. Below, we have outlined how the drivers of violence against women are currently present within each of these settings and opportunities to create change – by improving justice responses to sexual violence and helping to prevent these offences from happening in the first place.

### **The power of legislation and legal frameworks to reinforce or dismantle entrenched attitudes that drive and enable sexual violence**

Legislation is a powerful tool for setting the standard of what behaviours are and are not accepted in our society. Legal definitions of sexual violence are influential on the community's understanding of these

harms, and their attitudes and expectations about sex, consent, relationships, and gender equality more broadly. Ensuring that our sexual offence laws are carefully considered is vital not only to ensuring that victim-survivors can access safe and effective justice system responses, but also in harnessing the preventative potential of the law.

There are a range of historic and contemporary examples that illustrate the role of legislation in reinforcing attitudes and behaviours that drive sexual violence. For example, it was only relatively recently that it became unlawful for a husband to rape his wife, with the last Australian jurisdiction (the Northern Territory) criminalising marital rape in 1994 (21). Similarly, the concept of ‘conjugal rights’, which described an inherent right to sexual relations with one’s spouse, remained in law until the introduction of the *Family Law Act 1975* (Cth) (22). These laws condoned sexual violence by making consent irrelevant and reinforcing harmful gendered stereotypes that positioned sex as something for men to demand and women to submit to, allowing violence to become culturally entrenched.

By contrast, legislation can also be harnessed to both respond to *and* prevent gendered violence. A key example is the *Sex Discrimination Act 1984* (Cth) (23). The Act protects people from unfair treatment on the basis of their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy, and breastfeeding (24). Significantly, the introduction of this legislation also made sexual harassment against the law (24) – leading to a range of community education resources and programs aimed at ensuring people understood and complied with the law. The effectiveness of the *Sex Discrimination Act 1984* (Cth) was further bolstered by the recent introduction of a legally enforceable positive duty on employers, business and organisations to take ‘reasonable and proportionate’ steps to eliminate sexual harassment and discrimination in the workplace (25). This reform shifted the emphasis away from a complaints-based model of responding to sexual violence, instead placing the burden on employers to actively prevent harm from occurring in the first place. Victoria’s recent legislative reform to introduce an Affirmative Consent Model (which is detailed below under ‘[promising practice](#)’) is another illustration of the preventative power of legislative change, particularly when bolstered by quality implementation support (26-28). Through corresponding education and prevention initiatives designed to transform the attitudes and beliefs that drive violent behaviour, and enable compliance, the law can more effectively respond to sexual offending.

## **The role of high-profile cases in shaping cultural norms around consent, sexual violence, and perpetrator accountability**

While it is crucial that the law – as articulated in the statute books – appropriately criminalises sexual violence, is informed by robust evidence on the drivers, nature and impacts of sexual violence, and provides pathways to justice, the written word alone is not enough. We must also look at the ways in which the law is administered, by whom and for whom. It is critical to recognise the real-world power dynamics in which laws are situated, the marginalities that they may risk magnifying, and the myths and misconceptions around sexual violence they may reinforce.

Aided by media reporting, the way that sexual assault proceedings unfold, the decisions made, and the manner in which these are communicated to the public have strong cultural influence over the community’s understanding of what constitutes sexual violence, the nature of how this harm is perpetrated, who perpetrates it and who is affected. Within their submission to this inquiry, No to Violence noted that men accessing their phone counselling service regularly justify their use of sexual violence using the same myths and misconceptions that are commonly heard during sexual assault trials (29). For this reason, legal proceedings can either reinforce or challenge myths and misconceptions in relation to sexual offending or consent. If harmful ideas are perpetuated through prosecution, judgement or reporting of cases, there is a risk that legal proceedings reinforce the drivers of violence and thus contribute to the ongoing perpetration of sexual violence, as well as under-reporting and poor justice responses for victim-survivors.

A prominent example of how high-profile cases can influence public discourse around sexual violence is the 2019 allegation that Bruce Lehrman raped Brittany Higgins in a Federal Minister's office. The media storm that followed this case as it progressed towards a criminal trial placed Higgins under intense scrutiny, as her allegation of rape was questioned and her behaviour examined to determine whether she fit the ideal of a "model victim"(30). Higgins described the police investigation of her allegation of rape as "absolutely awful", with the process leaving her feeling belittled and violated(31). Additionally, Higgins had her private text messages leaked to the media and published(32). The public response to this high-profile case also raised serious concerns, with sexual violence advocates warning that the backlash against Higgins had the potential to significantly dissuade victim-survivors of sexual violence from disclosing their experiences and seeking a justice response, while further reinforcing myths around false allegations(33). The allegations were taken to trial in 2022, which was later aborted due to juror misconduct, and the criminal charges laid against Lehrmann were dropped in late-2022, due to serious concerns around how a retrial may impact Higgin's mental health(34).

Earlier in 2024, several NSW judges publicly criticised the manner in which sexual assault cases were being prosecuted(35). The criticism included a suggestion (disputed by the NSW DPP) that sexual assault cases were being pursued without prosecutors being satisfied the alleged victim had a "reasonable basis" for making a complaint (35). To justify this, one District Court judge was reported in the media as giving the example of a case involving a woman who alleged she was sexually assaulted while under the influence of alcohol, suggesting that the allegation was only made because she didn't remember what had happened. He further alleged this was not a strong case because the woman had previously made allegations of sexual assault against other men – notwithstanding that, according to the media report, three of the other men accused had pleaded guilty to sexually assaulting her (35). These comments, which were publicly reported in the media, reinforce dangerous misconceptions around the prevalence of false, or nefarious, allegations of sexual assault, and the nature of and responsibility for seeking consent. For example, they directly undermine long-standing efforts from sexuality educators, sexual assault services and others to ensure the public understand that it is against the law to have sex with someone who is so intoxicated they cannot consent.

While high-profile cases hold the potential to negatively influence cultural understandings of consent, sexual violence, and the perpetration of this harm, they also hold the power to shape stronger community understanding and contribute to the prevention of sexual violence. Following the abandonment of criminal charges, Bruce Lehrmann filed defamation proceedings against the media outlet which first aired Brittany Higgins's allegations. In a landmark finding, Justice Michael Lee determined that on the civil standard of proof, Lehrmann did rape Higgins (36). Within his judgement, Justice Lee dispelled many false notions about how we expect victim-survivors of sexual violence to behave, including in relation to how trauma influences a person's behaviour following an incident and how it can impact their memory (37). Justice Lee's judgement also provided a strong statement of what rape is in contemporary Australia, by detailing how rape and consent are defined and understood in a modern context (38). Given the high-level of media reporting and public interest, this judgement had impact beyond the individual parties involved; sending a powerful signal to all Australians about the importance of consent, the seriousness of sexual violence, and that perpetrators of this violence will be held to account.

## **The justice system as a series of workplaces that can be sites for the perpetuation or prevention of sexual violence**

Workplaces are another influential setting for ensuring safe and effective justice responses to sexual violence. *Change the story* points to workplaces as an important site for addressing violence against women, as demonstrating gender equality and challenging violence within these spaces has a strong normative influence on individuals' attitudes (3). Primarily, for those working within the justice system, it is vital to ensure sexual harassment and gendered discrimination is prevented and addressed. If the legal

profession is not a safe workplace for women, it is natural to question how it can be relied upon to provide safe and just responses to sexual violence and other gendered crimes.

The prevalence of sexual harassment within the legal profession is well documented. In April 2021, Dr Helen Szoke published her final report in the Review of Sexual Harassment in Victorian Courts, which found that sexual harassment was an ‘open secret’ (39). Following this, in June 2021 The Victorian Legal Services Board and Commissioner report on Sexual Harassment in the Victorian Legal Sector found that 61% of women legal professionals who participated in the survey had experienced sexual harassment (40).

The *Starts with Us* reports by Women’s Legal Service Victoria found that courts and legal offices in community, public and private sectors overwhelmingly favour white, cisgender men at the expense of women (41, 42). Women of colour, women who have disability or mental illness, trans women, women from precarious economic backgrounds, older women and lesbian, bi and queer identifying women all suffered more frequent or more severe discrimination (41, 42). As these reports show, legal workplaces and institutions have historically been environments where the gendered drivers of violence thrive, including ‘men’s control of decision-making’ and ‘cultures of masculinity that emphasise dominance, aggression and control’ (3). This helps make sense of both the prevalence of sexual harassment and gender-based discrimination within the legal profession and the historic and ongoing challenges of addressing it.

It is promising to see that across various workplaces within the justice system, there is appetite for change (these measures are outlined below under ‘[promising practice](#)’). Efforts over the last decade to improve the representation of women in judicial positions have achieved results: 39.4% of Commonwealth judges are now women, an increase of 8.6% since 2013; and 50.0% in Victoria, an increase of 11.2% in the same period (43). While there is not currently other demographic data available, we note the Australian Law Reform Commission’s 2022 inquiry into judicial impartiality and the law on bias, which included a recommendation to collect and report annually on statistics related to judicial diversity (44).

While these efforts are promising, there are opportunities for legal services and law firms, police, courts and tribunals, and the lawyers, judicial officers and staff that make up these workplaces to do more to address sexual violence and harassment perpetrated within the justice system. This includes leveraging the positive duty under the *Sex Discrimination Act 1984* (Cth) – and related positive duties under state-based equal opportunity and occupational health and safety laws - to encourage the public, private and community sector to play a greater role in the primary prevention of sexual violence across their workplaces and the broader community. There may also be opportunities to require engagement with primary prevention in order to access and comply with established systems of compulsory professional development, pro bono legal service provision, and the highly coveted eligibility for private law firms to be on government legal panels to require and incentivise lawyers, law firms and legal services.

Accordingly, Respect Victoria encourages the legal sector to commit to whole-of-organisation and whole-of-setting primary prevention. This should include partnering with prevention experts and specialist sexual violence services to drive commitment to and uptake of primary prevention across justice workplaces and settings. Improving workplace cultures, with a focus on safety and equity, holds the potential to drive long-term change across the justice system and ensure victim-survivors have access to safe and effective justice responses to sexual violence.



## Recommendation 2

The Australian legal sector commit to whole-of-organisation and whole-of-setting primary prevention of violence against women, including through:

- (a) supporting and building on existing work and promising practice
- (b) partnering with prevention experts and specialist sexual violence services to design and deliver primary prevention programs and activities across justice workplaces and settings
- (c) exploring opportunities to require and/or incentivise uptake, for example through embedding prevention training within compulsory professional development systems, pro bono legal service provision and/or eligibility criteria for private law firms to access government legal panels.

## Promising prevention work within the justice system

There is currently a range of promising work taking place across jurisdictions to prevent and address sexual violence. The following section highlights just some key examples. It places a particular emphasis on Victoria given the nation-leading role Victoria has played in family, domestic and sexual violence reform over the past decade following its landmark Royal Commission into Family Violence.

### **Affirmative consent roll-out**

In recent years, a number of Australian jurisdictions have made important progress to actively improve justice responses to sexual violence, with the introduction of an Affirmative Consent Model (45-49). Affirmative consent makes it clear each individual person participating in a sexual act holds responsibility to take steps to actively check that the other person(s) involved are freely consenting to that specific sexual activity (26). Victoria's legislative reform also strengthened laws relating to image-based sexual abuse and criminalised the act of 'stealthing' (which is the intentional non-use, tampering or removal of a condom without permission or knowledge of the other person(s) involved) (26). This reform sent a powerful message to the community about the importance of consent and the seriousness of these forms of offending. The preventative impact of Victoria's reforms to consent laws were strengthened through dedicated implementation resourcing. Information about affirmative consent was integrated into Victoria's Respectful Relationships curriculum (27) and through the *Supporting Young People to Understand Affirmative Consent Program*, which sought to ensure that young people in out-of-school settings would also receive the necessary capacity building to understand and practice affirmative consent in accordance with the new law (28).

### **Women's Legal Service Victoria's *Starts With Us* Project**

Women's Legal Service Victoria's *Starts with Us Framework* provides legal and justice workplaces with resources to ensure all their workers are valued and treated as equal regardless of their gender, contributing to the prevention of gendered violence within these settings (50). To further support workplaces within the justice sector, Women's Legal Service Victoria has also launched a new initiative, *Respect and Equality In The Legal Sector*, to support these workplaces to meet their legal obligations to prevent gendered violence (51).

## Victoria's Justice Navigators Pilot Program

On 30 May 2024, the Victorian State Government released a Women's Safety Package for Victoria, which included a commitment to implement a Justice Navigator pilot to ensure victim-survivors of sexual assault can more easily navigate support, recovery and justice options (52). This follows the Victorian Law Reform Commission making a recommendation in its 2021 Inquiry into *improving justice responses to sexual violence* that the Victorian Government consult on and co-design an independent advocate model, similar to the model which has been in place in England and Wales since 2007 (1).

Sexual Assault Services Victoria have been advocating for the establishment of Justice Navigators embedded within specialist sexual assault services for a number of years (53). They describe the role of Justice Navigators as being to:

- act as an entry point to the justice system
- support victim survivors to understand and exercise their rights
- help victim survivors to navigate the complex range of support, compensation, recovery and justice options available to them, including by attending court and hearings
- be experts in their jurisdiction's victims rights charter and advocate to make sure that a victim survivor's charter rights are upheld

Justice Navigators would ideally have a key role in 'walking with' victim-survivors throughout the criminal and civil justice processes, helping to ensure victims' rights are understood and upheld. Sexual Assault Services Victoria have noted that 'because prosecutors will expect Justice Navigators to hold them to account around Victims Charter rights, we expect this "soft" or informal accountability will shift practices for the better, among prosecutors and their departments (54). In this way, Justice Navigators have great potential to reinforce education and prevention initiatives within the justice system through supporting messages that people hear in the wider community about consent, the gravity of sexual assault, and that victim-survivors can expect respect and justice are upheld through their contact with the justice system.

## Victoria Police's Centre of Learning

In 2017, the Victorian Government made a range of significant investments to improve Victoria Police's capability to respond to family violence, sexual offences, and child abuse (55). This included the establishment of the *Centre for Learning*, which delivers career-long, tailored family violence training to police officers on topics such as the nature and drivers of family violence (55). It is anticipated that the *Centre for Learning* will continue to expand its focus to more specifically include training on sexual offences(55). The additional training provided through the *Centre for Learning* should support frontline police officers to provide safe, affirming, and effective responses to sexual violence.

## Court Services Victoria's Sexual Harassment Review

Dr Helen Szoke's 2021 report on sexual harassment in Victoria's courts handed down a series of recommendations to ensure that these workplaces are safe and respectful for everyone (39). These recommendations included multiple preventative actions, including structural reforms to prevent sexual harassment, building organisational knowledge about sexual harassment, and providing targeted training on sexual harassment to key staff (39). In response, Court Services Victoria established a *Sexual Harassment and Respect* team to monitor progress made against these recommendations and has a publicly available 'report card' outlining this progress (56). The implementation of the recommendations is intended to help ensure Victoria's court system is a safe and equal workplace for legal professionals, regardless of gender.

## **Current training and education for judges and lawyers**

The National Judicial College of Australia and the Judicial College of Victoria both have education programs and resources available to support judicial officers to understand sexual harassment and successfully manage sexual offence cases and hearings (57-59). Data in relation to the nature and completion of this training is not readily available and we note the following comments by Women's Legal Services Australia in their submission to this inquiry (60):

*WLSA has not been able to identify any information on the number of judges or magistrates who receive existing training and the jurisdictions or courts they preside over, the length of any particular training and how often judges or magistrates are required to participate in training, whether training is compulsory, regular or one-off and whether judges in regional areas receive adequate training (noting that 53% of all sexual assault cases are in the country lists).*

In Victoria, the Continuing Professional Development (CPD) obligations for lawyers are a valuable mechanism for delivering further education to legal professionals relating to sexual violence, with the scope of this recurrent, mandatory learning including 'ethics and professional responsibility' (61). Through the Victorian Bar, barristers can access specific CPD sessions to build their understanding of family violence and sexual harassment (62). This range of training and education opportunities enables legal professionals with an interest in sexual offence cases to gain the necessary understanding of the nature of sexual violence. However, at present, there is no requirement for barristers or solicitors to have undertaken any such training before working on sexual violence-related matters.

## **Specialist Family Violence Courts**

Victoria's Specialist Family Violence Courts were established in response to the Royal Commission into Family Violence and are currently located in 13 locations across Victoria. They are designed to support the safety and wellbeing of people affected by family violence and increase the accountability of people who have used violence against their family members. All magistrates, registry and practitioners, engaged in these courts are trained and specialise in family violence matters and court facilities and processes display a range of tailored, safety features. Specialist Family Violence Courts can hear intervention order cases alongside other matters, including bail applications, plea in criminal cases, family law parenting matters, and victims of crime applications related to family violence. While these courts do deal with matters that involve sexual violence, such cases are limited to those where the sexual violence arises in the context of family violence and they do not have jurisdiction to hear criminal trials.

## **Programs for young people with harmful sexual behaviours**

Across Victoria, there are a number of programs available to support children and young people who have engaged in harmful sexual behaviours. Delivered by sexually abusive behaviour treatment services and specialist sexual assault services, these programs provide developmentally appropriate treatment to address the use of harmful sexual behaviour and any underlying harm a young person may have experienced, with the aim of reestablishing age appropriate behaviour (63). Anecdotal reports from practitioners in these programs indicate that a significant number of children or young people who display harmful sexual behaviours have themselves been victims of sexual violence or exploitation or have been exposed to pornography. Harmful Sexual Behaviour programs are critical for providing a holistic response to young people's use of harmful sexual behaviour, while also disrupting the trajectory of violence and preventing future harm.

## **Court-mandated Men's Behaviour Change Programs**

In Victoria, *Specialist Family Violence Court* magistrates can order a respondent to a family violence intervention order to attend court-approved counselling for their violent behaviour (64). This court approved counselling is usually a Men's Behaviour Change Program (MBCP), which involves group

counselling sessions that are completed over several months, with the aim of encouraging men to take responsibility for their behaviour and provide them with the tools to change that behaviour (65). The implementation of court ordered MBCP attendance was a key recommendation of Victoria's Royal Commission into Family Violence and the Victorian Government has since provided significant investment to ensure that this scheme is adequately funded (66). While the evidence on the effectiveness of MBCPs in preventing the escalation of violence is mixed, it is important to explore how perpetration interventions can be used to prevent both the escalation of harm and perpetration of future harm (67).

## Building capacity of the justice system to effectively address and prevent sexual violence

The presence of the gendered drivers of violence against women, myths and misconceptions about sexual violence, and the perpetration of sexual harassment within the justice system limits its capacity to deliver safe, just, and effective responses to sexual violence. To counter this, it is vital that the individuals, organisations, and institutions within the justice system are supported to build the knowledge, skills and capabilities to contribute to an environment where sexual violence – its nature, prevalence, drivers and impacts - are properly understood and addressed and where the drivers of violence are actively challenged and prevented.

As outlined above, we know that many Australians still hold harmful attitudes that minimise, excuse, or normalise sexual offending and reinforce dangerous misconceptions about the how the perpetration of this violence occurs (8). The high levels of sexual harassment observed within the legal profession indicate that those working within the justice system are not immune from also holding these harmful views. As highlighted in the VLRC's 2021 review *Improving Justice System Responses to Sex Offences*, law reform must be accompanied by cultural change (1). Without broader cultural change, there may be an 'implementation gap' between the procedural reforms to improve justice responses to sexual violence and what happens in practice (1).

### Training for judges and legal practitioners

In response to Issues Paper, Question 33, there is considerable merit in establishing specialist sexual violence training and accreditation for judges and legal practitioners. However, the prevalence of sexual violence, and number of justice system elements that people who use and experience violence come into contact with, means that broader cultural change is also essential. This cultural change requires that everyone working within the justice system be given adequate education on sexual violence, including training on the nature of sexual violence, the gendered drivers of this offending, and identifying and countering misconceptions about sexual violence.

Additional specialist training and accreditation processes could then also be considered for judges, legal practitioners, and police who are routinely dealing with sexual assault cases. This would include considering the merits and feasibility of mandating sexual violence training for judges hearing sexual offence cases and police prosecutors and lawyers involved.

Any such training should be developed in consultation with primary prevention experts, survivor advocates, and representatives from the specialist sexual violence sector and include:

- accurate and evidence-based information on the gendered drivers and reinforcing factors of violence against women and the additional, specific factors that drive men's use of sexual violence against women, as outlined in *Change the Story*, Australia's national framework for preventing violence against women(3)
- the nature, prevalence and gendered nature of sexual violence

- barriers to reporting sexual violence and accessing just outcomes commonly experienced by different cohorts of victim-survivors within Australia, including women, First Nations people, people from culturally and linguistically diverse backgrounds, people with disability, people who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual or another gender or sexuality, and other marginalised groups outlined in the Terms of Reference for this inquiry
- the ways in which trauma, particularly sexual trauma, can impact a person's behaviour and memory
- education and practical guidance for countering commonly held misconceptions or 'rape myths'.

As outlined on page 19 above, there are opportunities to consider how such training – alongside broader prevention initiatives – could be incentivised and/or required through existing frameworks. For example, there may be opportunities to explore how training could be incorporated through:

- pre-service training and/or ongoing professional development for Police
- continuing professional development for legal practitioners and/or admission qualifications, such as the College of Law program
- existing and/or newly developed, specialist accreditation for legal practitioners, mediators and other practitioners involved in sexual violence matters.

### Specialist lists

In response to Issues Paper, Question 33, the creation of specialist courts, sections, or lists to hear sexual offence cases holds considerable merit. In Victoria, it is common practice that commercial and common law divisions of the courts have 'specialist lists', which allows matters to be overseen by judicial officers with expertise in that area of law or practice (68, 69). However, it is not current practice for specialist lists to be established in relation to criminal matters. The introduction of specialist lists to hear sexual offence cases would contribute to safeguarding the effectiveness of justice responses to sexual violence, while broader systemic reforms are implemented. Further, the existence of specialist lists could assist in prioritising early roll-out of broad-based training to those working within the lists.

With respect to specialist court lists, careful consideration of the feasibility and practicality of these would need to be explored. This includes considering how any new lists or courts would interact with existing, related specialist courts, such as Victoria's network of specialist Family Violence Courts, as well as matters where multiple forms of violence or criminal conduct have been perpetrated. Victoria's Specialist

## Recommendation 3

Australian governments explore the merits and feasibility of:

- (a) the establishment of specialist sexual violence courts, sections or lists (and how these might interact with existing specialist family violence courts where they are in place)
- (b) requiring all judges who conduct sexual offence cases to undertake comprehensive specialised training
- (c) reviewing current evidentiary restrictions and developing up-to-date, nationally consistent guidance to limit cross-examination that reflects myths and misconceptions about sexual violence
- (d) establishing specialist training and accreditation for lawyers and prosecutors involved in sexual offence matters.

## Recommendation 4

Any general or specialist sexual violence training rolled out within the justice system is developed in consultation with experts from the primary prevention of violence against women sector and specialist sexual violence sector and includes:

- (a) accurate and evidence-based information on the gendered drivers and reinforcing factors of violence against women and the additional, specific factors that drive men's use of sexual violence against women, as outlined in Change the Story, Australia's national framework for preventing violence against women
- (b) the nature, prevalence and harms of sexual violence
- (c) barriers to reporting sexual violence and accessing just outcomes commonly experienced by different cohorts of victim-survivors within Australia, including women, First Nations people, people from culturally and linguistically diverse backgrounds, people with disability, people who identify as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual or another gender or sexuality, and other marginalised groups outlined in the Terms of Reference for this inquiry
- (d) the ways in which trauma, particularly sexual trauma, can impact a person's behaviour and memory
- (e) education and practical guidance for countering commonly held misconceptions or 'rape myths' that may arise within the justice system and the community more broadly.

### Harmonising consent laws

Strengthening laws relating to consent, including through the effective implementation of an affirmative consent model, is an important mechanism to support the prevention of sexual violence. The primary prevention of sexual violence involves building the capacity of individuals to understand and practice free, voluntary and enthusiastic consent in a manner that emphasises communication, respect, and mutual pleasure; while reforming our systems and structures to create an environment that supports individuals to apply this within their relationships (6). Affirmative consent legislation contributes to this enabling environment, by sending a clear message to the community about what constitutes consent and holding those who don't practice this to account (26).

As noted above, a number of jurisdictions including Victoria, New South Wales, Tasmania, Queensland and the ACT have recently introduced affirmative consent reforms. However, there remain significant variations across States and Territories in terms of how consent is defined and interpreted, and how the reforms have been rolled out. In this context, there is a significant opportunity to harmonise consent laws and deliver a uniform, national approach that embeds an affirmative model of consent.

As highlighted by the recent Senate inquiry into 'Current and proposed sexual consent laws in Australia', in addition to introducing affirmative consent models, there are significant benefits to ensuring consent laws are harmonised across states and territories (7). Harmonisation eliminates jurisdictional inconsistencies, minimises confusion, and enables education and awareness raising about sexual assault to be nationally relevant (7). Ensuring that all states and territories implement nationally consistent, strong models of affirmative consent is a key opportunity to increase the justice system's capacity to address and prevent sexual violence.

However, as outlined above, legislation alone will not create the cultural change required to transform behaviours around consent and sexual violence. In order to harness the full preventative potential of reforms to consent law, it is crucial that any legislative changes are accompanied by dedicated resourcing for implementation, evaluation and community education and that they are connected with broader primary prevention efforts.

## Recommendation 5

Australian Governments explore opportunities to strengthen and harmonise consent laws nationally, ensuring consistent application of an affirmative consent model.

Australian Governments ensure reforms to consent laws are accompanied by community education, training and evaluation and connected to broader prevention efforts.

### Nationally consistent guidance

In response to Issues Paper Question 24, Respect Victoria recommends the Australasian Institute of Judicial Administration develop a National Sexual Violence Bench Book or review and strengthen the existing National Family and Domestic Violence Bench Book to ensure it incorporates evidence-based information about sexual violence and the gendered drivers of violence. In addition, such guidance should ensure up-to-date, nationally consistent guidance on the restriction of cross-examination that reflects myths and misconceptions about sexual violence. Reviewing and revising evidentiary processes and restrictions in this way would be an important mechanism to ensure the content delivered in training is reinforced day-to-day in the courtroom.

We note that development of a National Sexual Violence Bench Book was recommended by the Senate Standing Committee on Legal and Constitutional Affairs in its recent inquiry into Current and Proposed Sexual Consent Laws in Australia (7). It has also been recommended by Our Watch in their submission to this inquiry (70).

Bench books are an effective mechanism for delivering consistent and comprehensive guidance on specific legal issues, as they are a central resource for all judicial officers. They provide background information on a particular area of law, supported by current research, and outline guidance on procedural issues (71). Australia currently has a *National Domestic and Family Violence Bench Book*, which supports judicial officers considering legal issues relevant to domestic and family violence related cases (71). However, this current bench book only discusses sexual violence within the context of domestic and family violence, which has limited application to sexual offences perpetrated in other contexts (71). Furthermore, the *National Domestic and Family Violence Bench Book* does not directly dispell common myths and misconceptions relating to sexual offences perpetrated outside of an intimate partner relationship (71).

The introduction of a national bench book that specifically addresses sexual violence, or extending the existing *National Domestic and Family Violence Bench Book* to include this, is a key opportunity to deliver nationally consistent, safe, and effective justice responses to sexual violence. A revised Bench Book would help ensure judicial officers presiding over sexual offence cases are informed by the most accurate and up-to-date evidence about sexual violence and support fair proceedings and outcomes. As highlighted within Women's Legal Services Australia's submission to this inquiry, there are multiple opportunities to improve guidance relating to procedural matters to ensure that misconceptions about sexual violence are addressed (60). This includes ensuring jury directions address misconceptions about

consent, trauma, and sexual violence and that sexual reputation evidence be ruled inadmissible in all circumstances (60). Further, a revised Bench Book could assist in identifying where expert witnesses might be helpful to ensure the court is informed by appropriate psycho-social evidence about the impacts and presentations of sexual violence on victims, the patterns, motivations and behaviours of perpetrators, and the prospects and options for rehabilitation and reducing recidivism. In particular, it would also assist judicial officers to both check their own assumptions and those of the practitioners and witnesses in their courts. In doing so, this would assist judicial officers to limit cross-examination or argument that reflects rape myths and common misconceptions about the nature of sexual violence and which may unduly bias the outcome of a particular case. Moreover, it could also assist judicial officers to understand and reflect on the potential influence (both positive and negative) of their comments and judgments on broader community attitudes towards sexual violence and gender-based violence.

## **Recommendation 6**

The Australian Institute of Judicial Administration develop a National Sexual Violence Bench Book, or strengthen the existing National Family and Domestic Violence Bench Book, to incorporate evidence-based information about sexual violence and the gendered drivers of violence.

### **Strong specialist sexual violence sector and community legal assistance sector**

As outlined above, barriers to reporting sexual violence and accessing justice, and harmful attitudes and misconceptions about sexual violence remain within the justice system and the community at large. A robust and suitably supported sexual assault services sector, primary prevention and community legal assistance sector are key to addressing these issues. They do this through providing trauma-informed support to help victim-survivors safely access and navigate the justice system, and also by countering harmful attitudes and misconceptions about sexual violence and holding individuals within the justice system to account. These workforces, including survivor-advocates, hold considerable expertise to help strengthen justice responses and harness the preventative potential of the justice system.

Victoria has a strong history of nation-leading family violence reform, including in the design and delivery of victim-survivor supports, system improvement and primary prevention. The Victorian Government has implemented all 227 recommendations from its 2016 Royal Commission into Family Violence (including those pertaining to sexual violence), investing more than \$3.8 billion (72). In the 2024-25 State Budget, the Victorian Government made additional commitments to delivering victim survivor support services, sexual assault services and critical workforce supports such as staffing the peak body Sexual Assault Services Victoria, as well as seeking to drive down family and sexual violence through investing in primary prevention research and initiatives, and early intervention programs (73). As Victoria's reform efforts continue to progress, it is important that learnings pertaining to improving justice responses to sexual violence are shared among jurisdictions to support nation-wide progress.

Victoria's Justice Navigator Pilot program, outlined above under current promising practice, highlights the potential of the sexual assault services sector to support access to the justice system and enable safe and effective justice responses. Respect Victoria encourages other jurisdictions to learn from the delivery of this pilot and consider the merits and feasibility of implementing similar models. The rationale for and learnings arising from this pilot may also inform other steps required to ensure a strong and suitably resourced sexual violence services sector, primary prevention sector, and community legal services sector is in place across Australia. The sector could provide trauma-informed and effective support for



victim-survivors, ensure safe and just legal outcomes in sexual violence cases, and maximise opportunities for mutually reinforcing prevention messages and initiatives throughout the justice system.

## **Recommendation 7**

Findings from Victoria's Justice Navigator pilot are shared nationally to inform consideration of the merits and feasibility of rolling out similar models in other States and Territories.

## **Recommendation 8**

A strong sexual violence services sector and community legal assistance sector is available in all jurisdictions to provide specialist trauma-informed supports to victim-survivors of sexual violence, and support mutually reinforcing prevention messages throughout the justice system.

### **Culturally safe services and supports for both victim-survivors and those at risk of perpetrating violence**

Given the high degree of under-reporting and the unique barriers to justice faced by First Nations victim-survivors of sexual violence, it is also important to consider opportunities to strengthen cultural safety and self-determination across the justice system and continue to invest in First Nations-led prevention and early intervention.

As noted in Djirra's submission to this inquiry, First Nations women encounter additional barriers to disclosing and to accessing the justice system, as their experiences are further compounded by racism and distrust (74). First Nations women may be reluctant to access the justice system due to fear of receiving a punitive response, such as child removal or misidentification (74). Further, cases involving First Nations women who have allegedly experienced sexual assault are less likely to achieve a successful prosecution (74).

To address these issues and ensure more equitable access to the justice system, First Nations women need access to independent, self-determined justice responses to sexual violence. Aboriginal Community Controlled Organisations ('ACCOS') are best placed to provide accessible, culturally safe spaces for First Nations women to disclose sexual violence, access support, and recover and heal, while creating pathways to accessing legal assistance and justice responses (74).

In its 2021 review into Justice Responses to Sexual Violence, the VLRC recommended an Aboriginal sexual assault services model. This recommendation responded to calls from Aboriginal community organisations for an Aboriginal community-run sexual assault service and reflected the importance of Aboriginal community-controlled responses to family and sexual violence as highlighted within both the Victorian Royal Commission into Family Violence and the Royal Commission into Institutional Child Sexual Abuse (1). The VLRC stated (1):

*"8.38. [An Aboriginal community-run sexual assault service] is needed because of service gaps in the current sexual assault system, not because there is any*

*connection between Aboriginal culture and violence. Violence is not part of Aboriginal culture, but whole of community approaches are important to respond to Aboriginal experiences of violence.*<sup>72</sup>

8.39. *An Aboriginal sexual assault service is needed to provide:*

- *a culturally safe and appropriate service that connects with Aboriginal healing approaches*
- *more options for Aboriginal people who have experienced sexual violence (in addition to mainstream service options).*<sup>73</sup>

8.40. *It would also be an important form of self-determination. Self-determination involves responses to sexual violence being ‘designed, developed, led and evaluated by ACCOs [Aboriginal Community-Controlled Organisations]’.*<sup>74</sup> *It is recognised as:*

*the key strategy to generate sustainable and systemic change to benefit the cultural, physical, spiritual, economic, social and emotional wellbeing for Aboriginal people, families and communities.—Aboriginal Justice Caucus.*<sup>75</sup>

We respectfully recommend the ALRC consider this recommendation. We also encourage the ALRC to consult with First Nations communities and specialist Aboriginal Community Controlled Organisations with expertise in family violence and violence against women about the merits of considering an adapted Justice Navigator role or alternative localised, community-led model to ensure culturally safe and trauma-informed support for First Nations victim-survivors of sexual violence.

In April 2023, Respect Victoria published two pieces of research into First Nations-led prevention. This research comprised an Aboriginal Family Violence Prevention Evidence Review (75) and an Aboriginal-led Prevention Mapping Project (76), both of which were undertaken by Urbis Consulting in partnership with Karen Milward, and commissioned by Respect Victoria and Family Safety Victoria for the Dhek Dja Partnership Forum. The purpose of the Evidence Review was to document available evidence on effective First Nations-led prevention. It looked at what works best, and where there are gaps in our knowledge. It reviewed evidence across Victoria and Australia, as well as New Zealand, Canada and the United States. It identified certain enablers that support effective First Nations prevention approaches, including long-term funding, strengthening workforce capacity, culturally safe service delivery, and ongoing investment in monitoring and evaluation (75). The Aboriginal-led Prevention Mapping Project identified and mapped the broad range of government-funded prevention initiatives, mostly delivered by Aboriginal Community Controlled Organisations, across a range of settings. The report found that much of this work is being done with limited resourcing and that current funding is not commensurate with the size of the need and the time required to achieve prevention outcomes (76).

Ensuring the ongoing design and delivery of First Nations-led prevention at scale, along with culturally safe and First Nations-led supports for victim-survivors, are an essential element of improving the operation of the justice system with respect to sexual violence.

## **Recommendation 9**

The ALRC consult with First Nations communities and Aboriginal Community Controlled Organisations with expertise in sexual violence and violence against women to explore opportunities to:

- (a) ensure the availability of culturally safe and appropriate, specialist sexual assault services
- (b) strengthen Aboriginal-led and evidence-informed, primary prevention initiatives.

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