



**National Women's
Safety Alliance**

Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault

May 2023

About NWSA

The **National Women's Safety Alliance** brings together a diversity of voices, expertise, and experience to inform and guide national policy on women's safety. The NWSA, established in August 2021, connects the sector, experts, government, and victim-survivors with a shared vision to end violence against women. This will be achieved through consultation, research, and the collaborative development of expert policy advice to government.

More information about NWSA is available on our [website](#).

Introduction

NWSA welcomes the opportunity to participate in the Australian Government consultation to inform the development of a pilot project for specialised and trauma-informed legal services for victims and survivors of sexual assault. This follows on from previous advice we have provided in the space of sexual violence reform including most recently on the harmonisation of Australia's sexual consent laws. We used that earlier submission to reinforce what is widely acknowledged among women's frontline services; that while law reform is an important component in addressing violence against women, institutional responses are a significant factor in a survivor's decision to disclose violence. Therefore, their suitability and efficacy must be part of the broader reform agenda of government.



In developing this submission, we participated in consultations with the Attorney General's Department and surveyed our members and members of the public to gauge their journey reporting sexual violence, potential improvements, and any barriers to reporting. The survey was open for six days and received 30 responses from

individual members of the Alliance and the broader community.

The responses indicate that while a strong proportion of respondents (45%) did report their assault to police, very few respondents (13%) sought out legal advice after being sexually assaulted. This reflects national data which reveals that legal services are not a common contact point for assistance.¹

We use this submission to share the reflections of our survey respondents regarding the needs of sexual violence survivors and reiterate our longstanding position to centre the survivor of violence in the matrix of formal, institutional responses.

¹ [Sexual Violence - Victimisation | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-bureau-of-statistics/publications/feature-articles/sexual-violence-victimisation)

It's like you don't exist in the system, you're silenced. And if you go to free legal services, they are so overrun and staff are not trained in violence responses – they are legally trained yes, and give legal advice, but without any support. You are literally alone fighting these 'David and Goliath' battles while trying to recover from sexual assault –
Survey Respondent.

Survivors are acutely aware how the system is stacked against them.

The true extent of sexual violence in Australia can likely never be fully quantified, as underreporting is estimated to be as high as 90%.² Whether a survivor takes decades to disclose an assault, never discloses or

immediately discloses, the impacts of this type of violence can be life-long affecting the physical, mental, and social wellbeing of the survivor.

For the survivor who chooses to formally report their assault, the reality of this decision-making process is one that is made while weighing up a multitude of factors including fear, shame, a sense of obligation to the perpetrator, and the prospects of a successful outcome. National datasets on sexual violence demonstrate that for those women who choose not to report the most recent incident of sexual violence, feelings of shame or lack of confidence in the police were significant factors in their decision-making process.³ Fear of the legal process was the determining factor for 10% of women.⁴

Where a formal justice outcome is considered a *viable* option, either because it is in the public interest or a conviction is deemed likely, the role of the survivor has been moved to the margins: Prosecution is in the hands of the state, trial procedure is centered on the rights of the accused and the survivor's role is one of microscopic character assessment and interrogation.⁵ The survivor becomes ultimately a passenger in their own quest for justice, a modern feature of criminal

² [Personal Safety, Australia, 2021-22 financial year | Australian Bureau of Statistics \(abs.gov.au\)](#) "The majority of women (9 out of 10) did not contact the police regarding their most recent incident of sexual assault (87% or 553,900)"

³ [Sexual Violence - Victimization | Australian Bureau of Statistics \(abs.gov.au\)](#) Feelings of shame and embarrassment was the reason not to report among 26% of survivors. Around 36% believed there would be little the police could do (relevant responses combined)

⁴ Ibid

⁵ Kaladelfos, A (2018) *Gender, victimization and prosecutorial discretion in the attrition of sexual offences*: Law & History; 5(2), 88-110.

procedure which is distant from the historical rights of the victim in Australia's early justice system.⁶ Some survivors confronting a labyrinthine and often hostile judicial process will withdraw complaints. In other cases, the police may decide to ultimately drop charges after weighing up key determining factors such as whether the victim knew the perpetrator or the presence of physical injuries. The marginalisation of the survivor by institutional forces, such as police, the state, or counsel and the knowledge that they will be subjected to intense character assessments is reflected in the high attrition rate in the prosecution of sexual offenses.

For those respondents to our survey, who did not report their assault to police, their responses reflect this. Many respondents reiterated these decision-making factors including, lack of confidence in the process, fear of being disbelieved and not wanting to endure the trauma of a criminal process.

It didn't feel real, it didn't feel like it was really 'rape', at least not at the time - Survey Respondent

I didn't think anybody would believe me. That the process would be more trouble than it was worth - Survey Respondent

I didn't report because it took me a few years to recognise what I'd experienced as assault. I still don't think reporting would be my choice because I am not seeking the perpetrator to be charged. I would like him to understand the impacts for me, but not have criminal charges - Survey Respondent

I didn't want to go through the harrowing experience of the criminal justice system, of reliving my experience - Survey Respondent

What support do survivors want?

A trauma-informed and specialist survivor service should, as a minimum work to counter the marginalisation of the survivor in all other facets of the response system. Should a survivor choose to formally report or not is irrelevant, rather the pilot must be premised on responding to the individual experience and their unique needs. For each client of the service, their needs and measures of success might be vastly different. Some respondents

to our survey indicated that a restorative justice setting would have met their needs, others did not hold this belief. Some respondents highlighted how they

⁶ Ibid

would have preferred to talk to a social worker as an initial first step. Others highlighted the role of an assigned legal advocate to help them navigate the system, explain procedure, and respond to their needs. Given the theoretically limitless scope of survivor preferences, services must be agile, responsive and survivor led.

End to end legal service support including court advocacy – Survey respondent.

I would have preferred to speak to a case worker or social worker. Someone who understands what it is like to be so scared, with no understanding of the options you have – Survey respondent.

Legal services co-located with other support services – Survey respondent.

The victim's legal service needs to importantly be able to speak out on systemic issues of concern and involved in public advocacy as well – NWSA member.

Multidisciplinary teams allow each professional to achieve their role more fully – NWSA member.

For me restorative justice would have been triggering. I have no desire to confront my abusers. Multi-disciplinary centres are a good idea. Everything under an umbrella service model is ideal, especially for someone traumatised – Survey respondent.

Further feedback from our members and some survey respondents have reflected upon the need for multi-disciplinary services, including legal support, embedded within a spectrum of client advocacy more broadly. It is important to remember that similar models exist elsewhere. For example, since 2005, Independent Sexual Violence Advisers (ISVAs) have been available across England and Wales to provide continuous, end-to-end support and advice for survivors of sexual violence. ISVAs are now recognised as a critical part of providing a tailored response for survivors, working with them regardless of whether they decide to make a formal police report.

The value of roles like the ISVA is in the continuity of both practical and emotional support, the impartiality of advice and their advanced understanding of multi-disciplinary services. Because of the end-to-end approach, the relationship between the ISVA and the client is

such that a range of needs can be assessed and met, including wellbeing management, risk assessment, advocacy, referrals and reporting advice.⁷

Likewise, survivor advocacy in America has been pivotal in securing a Bill of Rights Act for survivors of sexual violence. The *Survivors' Bill of Rights Act*,⁸ enacted in 2016, identifies rights that must be afforded to sexual assault survivors in federal sex crimes cases. In practice, the Bill establishes a minimum set of rights that survivors are to be afforded such as being told their legal rights, being able to track the status of their rape kit analysis, the right for evidence to be preserved for 20 years and access to relevant police reports. The federal version of the Bill has since been replicated in several state legislatures embedding additional rights such as the right to an advocate from a local rape crisis service to be present during your physical examination, and the right to emergency contraceptive, HIV prophylaxis and other STI testing services.⁹ While outside the scope of the proposed pilot project, the *Survivors' Bill of Rights Act* demonstrates the capacity for reform in how systems respond to survivors of sexual violence and how the rights of the victim can be re-centered. Under the rights-based framework, the survivor is empowered through access to information and individual advocacy as well legal and emotional support when they require it.

We continue to support the work of Australia's sexual violence response services, and advocate for resourcing to be commensurate with growing demand and professionalism. These services have worked from a trauma-informed framework for decades and they are best placed to serve as locations for a specialist response project. We welcome the opportunity to continue working with the Australian Government in responding to violence against women and ensuring the unique needs of survivors can be addressed.

⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/647112/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf

⁸ Public Law 114 - 236 - Survivors' Bill of Rights Act of 2016 <https://www.govinfo.gov/app/details/PLAW-114publ236>

⁹ [New York State Sexual Assault Victim Bill of Rights \(ny.gov\)](http://www.nysenate.gov/legislation/bills/2016/102)