



National Women's Safety Alliance

committed to ending **gender based** violence

Submission to the ALRC on Justice Responses to Sexual Violence

June 2024

Submitted by

Katherine Berney

Executive Director

National Women's Safety Alliance

www.nwsa.org.au

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

The National Women's Safety Alliance ('the Alliance') brings together brings together over 600 individual and organisational members to provide policy guidance, lived experience and frontline expertise to inform national policy and reform on women's safety. We support the work of our members, including Queensland Sexual Assault Network in this discussion as well as the longstanding work of Women's Legal Services Australia who have made recommendations to this significant reform.

We welcome the opportunity to provide insight to and consult with our members on the Australian Law Reform Commission's Justice Responses to Sexual Violence issues paper. Our contribution to this discussion follows our previous submission to the Crimes Amendment (Strengthening the Criminal Justice Responses to Sexual Violence) Bill 2024.

In responding to the issues paper, the Alliance makes specific comments and reflections on the following

- Independent reviews of non-progressed sexual violence cases
- Sentencing
- Independent Legal Representation
- Civil Litigation

NWSA has provided a suite of recommendations in consultation with our members.

Background Considerations

Attrition rates for sexual violence offences remain high. Data relating to Australia's criminal court proceedings for sexual and related offences indicates that of more than 11,000 defendants 'finalised' 17% were withdrawn by prosecution. Guilty outcomes were delivered in roughly 40% of proceedings.¹ Attrition rates of reports prior to the commencement of criminal proceedings are also extremely high.² For comparison, for property offences guilty outcomes trend at greater than 80%.³

Further to this, there are also growing concerns regarding the prevalence of men living in Australia, who have reported sexual feelings towards children. Key findings of a 2023 study found around one in six (15.1%) respondent men reported sexual feelings towards children and nearly 20% of men surveyed had sexual feelings towards children or had sexually offended against children.⁴ Additional to this survey, the Child Maltreatment Study (2023) found that nearly one-third of the survey's 8503 respondents had disclosed childhood sexual abuse during the interview.⁵ These are deeply concerning findings that point not only to the immediate issue of child safety, but also an underlying urgency to improve justice responses for survivors of sexual abuse. This reform agenda carries not only significance for the immediate future, but also to withstand any future pressure implicit in these concerning trends.

¹ Australian Bureau of Statistics (2022-2023) *Criminal Courts*, Defendants Finalised, table 4.

<https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release>

² For example, in NSW in 2018, 5,869 incidents of sexual assault were reported to NSW police. Of these, 872, or 15%, resulted in the commencement of criminal proceedings against one of 969 defendants and involving 3,369 individual criminal charges for sexual assault or a related sex offence.

<https://www.bocsar.nsw.gov.au/Publications/BB/BB170-Report-attrition-sexual-assaults.pdf>

³ Op. Cit, 1.

⁴ Salter, M. (2023), *Identifying and understanding child sexual offending behaviours and attitudes among Australian men*; UNSW.

<https://www.humanrights.unsw.edu.au/sites/default/files/documents/Identifying%20and%20understanding%20child%20sexual%20offending%20behaviour%20and%20attitudes%20among%20Australian%20men.pdf>

⁵ The Medical Journal of Australia (2023), *The Australian Child Maltreatment Study*; [mja2_v218_s6_cover.indd](#)

Independent reviews of sexual assault cases that are not progressed to criminal proceedings.

In this section we refer to the section of the issues paper ‘police responses to reports of sexual violence’ and the role of independent reviews of a given jurisdiction’s sexual violence reports that fail to proceed to criminal trial. Following a sweeping review of prevention and system responses to sexual violence in the ACT, 684 sexual assault cases reported to ACT Policing which did not progress to charge, were independently reviewed. This included reports that were deemed unfounded, uncleared or withdrawn. This review saw an unprecedented level of scrutiny on how ACT Police responded to reports of sexual violence as well as potential cultural drivers of attrition.

The ACT *Sexual Assault (Police) Review Report*⁶ found that victim-survivor withdrawal from the complaint process is higher in the ACT than literature suggests in other jurisdictions. It also found there was a lack of victim centric responses which impacted the timeliness of procedures as well as referrals to support services. Furthermore, there was demonstrable misunderstanding among police regarding consent, rape-myths as well as the dynamics of sexual violence that occurs within domestic or family settings.⁷

The review recommended 28 ways to improve how sexual offences are responded to and how victim-survivors are treated including:

- Continuing to fund the review to make sure all cases identified as requiring action are progressed in a safe and quick way for victim-survivors.
- Changing policies, processes and creating new jobs and systems to better support victim-survivors when they report sexual violence, as an investigation progresses, to better collect information and improve communication with victim-survivors.
- Updating police training to align with leading research and approaches.
- Regularly review sexual offence cases to track progress over time’
- Law reform to improve the way victim-survivors are treated in the criminal justice process.

Given policing’s role in effectively ‘gatekeeping’ the progress of sexual offending reports, their place in a reformed system is significant. In the spirit of continuous improvement and building victim-centric responses, we believe there is value in similar independent reviews being undertaken elsewhere in Australia.

Recommendation: State and Territories undertake independent reviews of sexual offending reports that were not progressed to criminal proceedings.

⁶ https://www.act.gov.au/_data/assets/pdf_file/0003/2440164/The-Sexual-Assault-Police-Review-Report.pdf

⁷ Ibid.

Independent Legal Representation

The Alliance has raised through previous opportunities the urgency of Independent Legal Representation for sexual violence claimants.⁸ In our submission to the June 2023 roundtable consultation on justice reforms, we noted how many survivors feel sidelined by the judicial process itself and by the delegation of prosecutorial service.

Our members have collectively raised the need for Independent Legal Representation (ILR) to be made available to complainants. The ILR operates independently of the prosecutor and prioritises the interest of the complainant including case management, advocacy, and liaison. The Alliance believes that Independent Legal Representation for sexual assault complainants in criminal trials would support better outcomes and contribute to ensuring that any improved legislative protections for victim-survivors are effective in practice. Independent legal representation can ensure that complainants are aware of their substantive legal entitlements in federal offence proceedings, such as opportunities to share their wishes with the court in relation to evidence recorded hearings, make a victim impact statement, rights to an interpreter, rights to not be subjected to inappropriate or aggressive cross-examination, and rights to not have evidence about their sexual reputation admitted. This will ultimately lead to better experiences for victim-survivors as they navigate the system and understand the options and protections available to them. The Women's Legal Services are well placed to provide this specialist assistance with claimants as they navigate the legal system.

Recommendation: Independent Legal Representation be available to sexual offending claimants and funded through the Commonwealth Government.

⁸ <https://nwsa.org.au/wp-content/uploads/DRAFT-NWSA-Submission-Strengthening-the-Criminal-Justice-Responses-to-Sexual-Violence-Bill-2024-002.pdf>

Sentencing

Victim Impact Statements

We refer to the sentencing component of the issues paper to make the following comments on the survivor journey through including limitations on victim impact statements and sentencing submissions.

Members and survivor advocates have repeatedly raised issues regarding restrictions placed on victim impact statements at sentencing. Admissibility guidelines regarding the content of victim impact statements are seen to further peripheralise the survivor and effectively silence them.

Restrictions apply across jurisdictions and typically include the following, among others:

- Disallowance to describe the crime more than what is considered necessary
- Disallowance to share an opinion about the character of the offender
- Disallowance to share an opinion on how the crime impacted others
- Disallowance to share an opinion on appropriate sentencing

It is our view that the suite of limitations imposed on survivors at sentencing further reflects an offender-centric justice model rather than one which considers the wellbeing of the survivor. These disallowances reinforce imbalances that exist in the justice system and in sentencing submissions more broadly.

Recommendation: A review of the rules governing victim impact statements be conducted with the view to better recognising a survivor’s experience at sentencing.

Sentencing submissions

In *Barbaro v The Queen* [2014], the High Court held that, in criminal sentencing proceedings, it was impermissible for the prosecutor to put forward either a specific sentencing result or a range within which the sentence should fall, limiting the ability of parties to make submissions regarding the appropriate sentencing.⁹ Sentencing submissions assist the court in determining the objective seriousness of an offence,

any mitigating circumstances of the offender and the purpose of sentencing more broadly.

⁹ https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/obligations_of_the_parties.html

Limiting submissions has been criticised as having the potential to lead to increases in appeals based on manifestly inadequate or excessive sentences, which may continue to traumatise claimants.¹⁰ Some jurisdictions (Queensland), have introduced legislative reform to overturn *Barbaro* and make it clear that both parties may make submissions in sentencing regarding appropriate sentencing range. There is no national consistency in this reform progress.

There is a need to consider sentencing reform against the emerging expectations and understanding of the public in relation to sexual offending. Given declining public trust in the court system¹¹ and the popular opinion that courts have a ‘soft touch’ on sentencing for serious offences.¹² We support a nationally led effort to synchronise reform to overturn *Barbaro* and legislate for the equal sentencing submissions from parties.

Recommendation: Efforts to nationally synchronise an equal sentencing submission process be pursued.

¹⁰ https://www.act.gov.au/_data/assets/pdf_file/0020/2390204/Listen-Take-Action-to-Prevent-Believe-and-Heal.pdf (pg. 151)

¹¹ https://whataustraliathinks.org.au/data_story/do-we-trust-our-criminal-justice-system/

¹² Gleeson, M. AC QC (2004) <https://www.aioa.asn.au/wp-content/uploads/2013/11/Out-of-Touch-or-Out-of-Reach-Judicial-Conference-of-Australia-Colloquium-Adelaide-2-October-2004.pdf>

Civil litigation

We support proposals to introduce a new civil model for victim-survivors and encourage this to be developed in partnership with the sector, legal groups and victim-survivors.¹³ Any new civil model will need to be rigorously designed and tested; however, this should not be an insurmountable challenge.

Currently, the only justice options available to victim-survivors of sexual offences are criminal proceedings, or restorative approaches where they exist. Options for compensation can be pursued through civil proceedings, however these can be complex and exorbitant for claimants and expose them to costs orders, limiting their appeal.

A new civil model will not replace criminal proceedings but rather provide an alternative avenue similar to existing restorative models. A new model would involve a determination by the court, made on the balance of probabilities and where evidence exists, lead to a *harm order* being placed against the respondent, similar to a DVO. A reformed civil model could provide claimants with a degree of closure and accountability and facilitate access to justice without cost burdens.

Recommendation: The ALRC considers developing a civil alternative for victim-survivors of sexual violence in consultation with relevant stakeholders.

¹³ We have relied on evidence in the submission by Queensland Sexual Assault Network (QSAN) to inform our position.