



GOVERNMENT OF  
WESTERN AUSTRALIA

Department of  
Justice

# Improving experiences for victim-survivors: Review of criminal justice responses to sexual offending in Western Australia

December 2025



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## Support

This report includes stories about people who have experienced sexual offending and contains information that may be confronting or distressing to readers. If you need support after reading this information, help is available through the following services:

- 1800RESPECT 1800 737 732
- Women's Domestic Violence Helpline (WA) 1800 007 339
- Men's Domestic Violence Helpline (WA) 1800 000 599
- Crisis Care 1800 199 008
- MensLine Australia 1300 789 978
- Lifeline Australia 13 11 14.

## Foreword

Sexual violence has a devastating and long-lasting impact on victim-survivors, families and communities. The way the criminal justice system responds to sexual offending plays a critical role in supporting healing, enabling access to justice and maintaining public confidence in accountability and deterrence.

In 2022, the former Attorney General, the Hon John Quigley MLA, tasked the Office of the Commissioner for Victims of Crime to undertake a review of criminal justice responses to sexual offending. The review sought to examine how the justice system currently responds to sexual offending, identify the barriers that victim-survivors face, and consider opportunities to strengthen processes to achieve fairer and more effective outcomes. In addition to this review, the Attorney General also made a referral to the Law Reform Commission of Western Australia to review Chapter XXXI of the Criminal Code and make recommendations regarding law reform and sexual offending in Western Australia. The Law Reform Commission's final Report was tabled in May 2024.

This report has been informed by extensive engagement and consultation. We acknowledge the extraordinary courage of victim-survivors and thank them for sharing their lived experiences to inform this work. We extend our sincere gratitude to the specialist sexual assault service sector, as well as the wider supports sector (including mental health, health, sexual health and specialist services), for their time and input, in recognition that sexual offending creates lasting impacts across many aspects of people's lives and that victim-survivors have multiple needs that interact across sectors. Lastly, we thank the community organisations, legal and justice professionals and government agencies (including the Office of the Director of Public Prosecutions and the Western Australia Police Force) for sharing their expertise and experiences to help shape the findings and recommendations presented in this report.

It is apparent that sexual offending presents particular challenges for the justice system. It is under-reported, has high rates of attrition, may involve complex power and control dynamics, and can result in systemic retraumatisation of victim-survivors. The report highlights these issues and identifies alternative and innovative solutions to better support victim-survivors, improve system coordination, and strengthen responses to sexual offending across all stages of the justice process.

As with other forms of gender-based violence, the justice system alone cannot stop sexual offending. Reform in this area will require a whole-of-government and sector approach, as well as social change.

The report makes 22 recommendations that are designed to work together as part of a coordinated system-wide response. While focused on the criminal justice system, the report's ability to improve outcomes depends on the entire ecosystem, including timely social, health and therapeutic supports. Some recommendations act as enablers, improving communication and coordination across agencies, and they are intended to align with other projects underway across the sector, rather than operate in isolation.

Consultation highlighted that experiences of the justice system are not uniform. Victim-survivors in regional and remote areas often face additional barriers to accessing support and services. Meaningful reform must therefore include flexible and innovative

approaches, developed in collaboration with local organisations and communities, to ensure that victim-survivors, regardless of their location, can access justice and support.

I wish to acknowledge and thank the dedicated work undertaken by Philippa (Pip), Erin and the entire Policy Team of the Office of the Commissioner for Victims of Crime who compiled this report and saw it through to completion. The task was both sensitive and deeply complex. Their work demanded not only system expertise, but also empathy, care and respect. Pip, Erin and the Team approached this significant responsibility with integrity, and a commitment to ensuring victim-survivors were heard and their experiences treated with dignity. I am deeply grateful for their dedication, empathy and professionalism.



Kati Kraszlan

Commissioner for Victims of Crime

## Language used in this report

The *National Plan to End Violence against Women and Children 2022–2032* proposes nationally consistent definitions be ‘used to inform and support program design, public and private sector policies, as well as legislation across states and territories to ensure that all people in Australia have equal access to support and justice’ (p. 37). Where possible we have aligned our use of language with that used in the final report of the Law Reform Commission of Western Australia Project 113 (LRCWA, 2023, 2.1–2.17).

In this report we use the term ‘sexual offences’ or ‘sexual offending’ to refer to sexual violence that is a crime. Sexual violence is a broad term that refers to all non-consensual sexual activity.

We use the term ‘victim-survivor’ to refer to a person who has experienced sexual offending to recognise both victimisation and resilience. We have used this term because it is familiar. We also use the term complainant to refer to a person who has made a report to police and is pursuing the matter in the courts. This is a technical legal term used in certain contexts throughout the report.

We use the term ‘perpetrator’ to refer to a person who has used sexual violence (including a sexual offence) against another person. We acknowledge that this term should be used with caution and is not a preferred term in some contexts. We use the term ‘accused’ to refer to the person who is charged with committing a sexual offence. We use the term ‘offender’ to refer to a person who has been convicted of sexual offences.

We have used the term ‘Aboriginal’ in recognition of the fact that Aboriginal peoples are the original inhabitants of Western Australia.

We use the acronym LGBTQIA+ as an umbrella abbreviation to embrace diverse sexualities, genders and sex characteristics. The acronym generally stands for lesbian, gay, bisexual, trans, queer or questioning, intersex and asexual. There is not one LGBTQIA+ community. There are many different communities, groups and individuals with distinct experiences.

We recognise that many different terms are used to describe the types of behaviours and people we discuss in this report, and we acknowledge that not all people will identify with the terms and abbreviations we use in this report.

Other terms and acronyms used in the report include:

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
AIJA	Australian Institute of Judicial Administration
ALRC	Australian Law Reform Commission
ALSWH	Australian Longitudinal Study on Women’s Health
ANROWS	Australia’s National Research Organisation for Women’s Safety
ARO	Alternative Reporting Option

BOCSAR	Bureau of Crime Statistics and Research (NSW)
CAIT	Child Assessment and Interview Team
CALD	Culturally and linguistically diverse
CASA	Centres Against Sexual Assault
CPFS	Child Protection and Family Support
CWSW	Centre for Women's Safety and Wellbeing
DPP	Director of Public Prosecutions
EEK	Early Evidence Kit
FDSV	Family, domestic and sexual violence
FDV	Family and domestic violence
FIFO	Fly-in fly-out
FVRO	Family violence restraining order
HRSO Act	<i>High Risk Serious Offenders Act 2020 (WA)</i>
IPSV	Intimate partner sexual violence
ISVA	Independent sexual violence advisors
LRCWA	Law Reform Commission of Western Australia
MDRC	Multidisciplinary Reporting Centre
MIST	Multiagency Investigation and Support Team
NCAS	National Community Attitudes towards Violence Against Women survey
NSW	New South Wales
NSWLRC	NSW Law Reform Commission
NT	Northern Territory
NZ	New Zealand
NZLRC	New Zealand Law Reform Commission
OCIC	Office of Criminal Injuries Compensation
ODPP	Office of the Director of Public Prosecutions
PFK	Preliminary Forensic Kit procedure
PRB	Prisoner Review Board of Western Australia
PSS	Personal Safety Survey
PTSD	Post-traumatic stress disorder
QLD	Queensland
QLRC	Queensland Law Reform Commission
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
RJU	Restorative Justice Unit
SALSWA	Sexual Assault Legal Service Western Australia
SARA	Sexual Assault Reporting Anonymously
SARC	Sexual Assault Resource Centre
SARO	Sexual Assault Reporting Option
SART	Sexual Assault Resource Team
SARTS	Sexual Assault Response Teams
SAS	Sex Assault Squad
SASAG	Sexual Assault Specialist Advisory Group
SOCIT	Sexual Offence and Child Abuse Investigation Team
STI	Sexually transmitted infections
UK	United Kingdom
VEU	Victim Engagement Unit
VIS	Victim impact statement

VLO	Victim liaison officers
VLRC	Victorian Law Reform Commission
VMU	Victim–Offender Mediation Unit
VNR	Victim Notification Register
VSS	Victim Support Service
VWAS	Victims and Witness Assistance Service
WA	Western Australia
WACHS	WA Country Health Service
WACOSS	WA Council of Social Services
WA Police	Western Australian Police Force
WSJT	Women's Safety and Justice Taskforce (Queensland)

## 1 Introduction

In 2022, the former Attorney General, the Hon John Quigley MLA, asked the Office of the Commissioner for Victims of Crime to conduct a review of the experiences of victim-survivors of sexual offending in the criminal justice system in Western Australia (WA). The Office was asked to assess what is working well, identify what can be improved and recommend options for reform.

In particular, the Attorney General asked us to look at:

- the experience of adult victim-survivors (regardless of their age when the relevant sexual offending occurred) within the criminal justice system
- factors which contribute to under-reporting of sexual offences, and why people report offences but do not continue with the formal legal process
- alternative and innovative processes or procedures for receiving, investigating and resolving (through prosecution or otherwise) sexual offence complaints that are consistent with victim-survivors' interests and the interests of justice – for example, restorative justice processes.

The review is focused on the criminal justice system, from the time a person reports (or chooses not to report) to police, all the way through to the time an offender is released from custody.

A large part of conducting the review was consulting with the public to hear their views. We talk about the consultation process in Chapter 3 and discuss the findings throughout this report. We also considered the research evidence base and the outcomes of similar reviews in other jurisdictions to formulate 22 recommendations to improve the experience of victim-survivors in the criminal justice system.

However, the review is just one part of a larger program of work underway in WA looking at how to prevent, reduce and respond to all forms of sexual violence, including sexual offending. This report should be read as complementing these other pieces of work. Responding to sexual violence in all its forms requires an integrated, holistic response from government, the service sector and the community. A key finding from our consultation is that the criminal justice system is only one component required to address sexual violence. While many of the recommendations in this report relate directly to the criminal justice system, sexual violence must also be addressed in other ways.

The Law Reform Commission of Western Australia (LRCWA) recently completed a review of sexual offence laws in WA (Project 113 Final Report), with the final report tabled in the WA Parliament on 15 May 2024. Project 113 Final Report makes 134 recommendations for extensive reforms to handling sexual offences, including the introduction of an affirmative consent model. Australia's National Research Organisation for Women's Safety (ANROWS) has noted that sexual consent laws help people to recognise sexual violence and can help victim-survivors recognise their experience as a crime rather than simply a wrong or something that 'just happens' (ANROWS, 2023, p. 5). While there is some cross-over in subject matter, and we do refer to its report and recommendations where relevant, we are not aiming to duplicate the work of the LRCWA. The recommendations in Project 113 Final Report set out a program of criminal law reform to

ensure WA's sexual offences reflect contemporary community standards, whereas our report focuses on the experiences of victim-survivors and alternative complaint processes, as outlined above.

There is often an expectation that criminal law reform will drive a change in community attitudes, but the criminal law is only one method of effecting social change. In Louise Milligan's book *Witness*, Stephen Odgers SC (then head of the NSW Bar Association) described the limits of using criminal proceedings to educate about consent: 'Yes we want to educate our community to engage and to behave in a civilised way, but you shouldn't rely on the criminal law as the key mechanism for doing that' (Milligan, 2020, p. 3). Social change can be driven by measures beyond criminal law reform and should include other measures focused on community awareness, education and prevention that are developed with, and appropriate for, different cohorts.

The recommendations contained in this report will not improve the outcomes for victim-survivors unless we consider the entire ecosystem. Timely social and therapeutic support is critical for victim-survivors' long-term recovery and healing before, during and after their engagement with the criminal justice system. We cannot address one without the other. Most victim-survivors of sexual offending will not engage with the criminal justice system at all. Some may prefer alternative responses that still acknowledge the deep and long-lasting impact of their experience and hold the perpetrator to account. We also need to consider how best to meet their needs and support their recovery.

WA's first Sexual Violence Prevention and Response Strategy (the Strategy) was developed in parallel to this review. The Strategy, which will be the overarching framework for addressing sexual violence in WA, extends beyond criminal justice responses to look at prevention, early intervention, response, recovery and healing in relation to all forms of sexual violence. Recommendations contained in this report will inform the implementation of the Strategy and should be viewed in the context of the much wider program of work encapsulated in the Strategy – as part of the whole required to address sexual violence.

## 1.1 A note on children

The Attorney General asked us to only look at adult victim-survivor experiences of the criminal justice system. This includes adult victim-survivors who were offended against when they were children but reported the offence when they were an adult (a person over the age of 18). Consideration of the experiences of children victim-survivors in the criminal justice system is an important, sensitive and specialised area that should be undertaken by experts in that field.

With that in mind, some of our recommendations may include children in their scope. Further consultation with organisations that support children victim-survivors in the criminal justice system will be needed to test possible implications. We also note that, although not finalised, it is intended that the Strategy will take a life-course approach to preventing and responding to all forms of sexual violence.

## 2 Executive summary

In this report we present consultation findings, which are complemented by the evidence base, and recommendations resulting from our review of victim-survivor experiences of criminal justice responses to sexual offending. The overarching theme of this report is that responding to sexual offending in the criminal justice system in a way that protects victim-survivors' wellbeing requires a multifaceted approach. There is no single solution but, rather, a range of reforms that have at their centre victim-survivors' justice needs.

Reforms suggested in this report include:

- *Criminal justice responses* to ensure victim-survivors are supported during their participation in the criminal justice system. Enhancing procedural justice empowers victim-survivors with greater decision-making, helping them feel heard and valued throughout the process.
- *Alternative justice responses*, such as restorative justice practices, that offer a range of mechanisms to better meet the justice needs of victim-survivors.
- *Legislative changes* to embed victim-survivor entitlements and justice needs and support the development of alternative justice responses.
- *Health and social support services*, such as forensic medical care, specialist therapeutic care or other support and independent legal advice to provide wrap-around care to victim-survivors.
- *Community education* to build public awareness of what constitutes sexual offending, how to engage with the criminal justice system and help victim-survivors understand where they can go for support if needed.

However, for reforms to be effective they must be coordinated. As the report highlights, there are many organisations involved in the criminal justice system, which creates multiple touchpoints for victim-survivors and the possibility of them hearing similar information in numerous ways or, conversely, falling through the gaps. Some of the recommendations can be characterised as enablers, which are mechanisms to improve communication, collaboration and coordination throughout the criminal justice system.

The report also recognises that the criminal justice system is only one part of a whole-of-government approach. While the recommendations relate directly to the criminal justice system, reforms should integrate with actions being developed through other projects. Another key finding from our consultation is the discrepancy between victim-survivor experiences and the services and supports available for people in regional and remote WA and Perth. Implementing reform in regional and remote WA will require flexible, innovative responses and effective partnerships with local organisations.

In this report we do not propose reform to the fundamental features of the criminal justice system, such as lowering or changing the burden and standard of proof or moving away from an adversarial system. Any change to these fundamental features is highly complex and is beyond the terms of reference of our review, requiring consideration by organisations with specialist legal knowledge and expertise.

We acknowledge this may be disappointing given that there are also fundamental limitations in the criminal justice system to meet victim-survivors' justice needs. For this reason, we focus much of our attention in this report on reforms that provide direct

support and assistance to victim-survivors and emphasise collaboration with support organisations that can contribute to victim-survivors' long-term healing and recovery.

## **2.1 Background and consultation process**

In Chapter 3 of this report, we describe the consultation process that was undertaken to talk to people and hear different views.

In Chapter 4, we explain the political and legal context of criminal justice responses to sexual offending and how it is being considered by different governments. We discuss the work being undertaken through the Standing Council of Attorneys-General and the recent reviews undertaken in other states and territories.

## **2.2 Experiencing sexual offending and seeking help**

In Chapter 5 we talk about sexual offending in Western Australia – its prevalence and the debilitating, lifelong impact it has on victim-survivors. We explain that victim-survivors are engaging with the criminal justice system at a time when they face substantial challenges to their health and wellbeing, making support critical. We also describe the myths, misconceptions and harmful community attitudes about sexual offending and discuss how they influence the criminal justice response.

In Chapter 6, we describe barriers to seeking help for people experiencing sexual offending, including specific barriers for people from diverse backgrounds and communities. Responding to the barriers to help-seeking requires addressing interrelated social and economic issues, but we outline three measures: awareness, education and prevention; providing accessible information about the criminal justice system; and building workforce capacity to improve responses to disclosures.

## **2.3 Criminal justice responses to sexual offending**

In Chapter 7, we provide an overview of how the criminal justice system operates in WA, explain its impact on victim-survivors and look at the whole-of-system reforms that may support victim-survivors through the process and improve their experience. Reforms discussed include the introduction of victim advocates, independent legal advice and access to therapeutic counselling and other supports. The reforms must be understood in the context of victim-survivors' justice needs and the concept of procedural justice, so we discuss both in this chapter as well as how a trauma-informed approach can be embedded in criminal justice processes.

Subsequent chapters look at specific aspects of the criminal justice system such as reporting, investigating, pre-trial, going to trial and post-sentencing. In each of these chapters we discuss decision-making, describe victim-survivor experiences and outline measures for reform. We explain that reforms must be grounded in trauma-informed practice, take a victim-centred approach and respond to the needs of specific population groups and communities.

## **2.4 Alternative justice responses**

In our final chapter we consider alternative justice responses such as restorative justice and civil responses. Alternative justice responses do not replace criminal legal processes;

instead, they provide options for victim-survivors outside the standard processes of the criminal justice system. They are approaches that provide different ways for victim-survivors to heal from the harm caused by sexual offending.

## 2.5 Recommendations

Where we have been able to nominate a specific government agency to lead a recommendation we have done so. Where the recommendation might entail the involvement of multiple agencies or it is not immediately clear who the lead agency should be, we have directed the recommendation to the WA Government.

1	<p>The WA Government develop and implement targeted awareness, education and prevention initiatives as a priority action under the Sexual Violence Prevention and Response Strategy.</p> <p>Initiatives should be informed by, and align with, national and state policies, programs and strategies, represent a diverse range of experiences and be community-led where possible.</p>
2	<p>The WA Government progress workforce development and build capacity for support organisations operating in diverse sectors on responding to sexual offence disclosures as a priority action in the Sexual Violence Prevention and Response Strategy.</p>
3	<p>The WA Government consider developing a framework for moving to decriminalisation of sex work.</p>
4	<p>The Department of Justice undertake further policy work to strengthen victims' entitlements under the <i>Victims of Crime Act 1994</i> (WA). The framework should consider:</p> <ul style="list-style-type: none"> <li>• explicit inclusion of victim justice needs</li> <li>• a complaints mechanism for raising, reviewing and seeking remedy for criminal justice agencies' non-compliance with victims' entitlements.</li> </ul>
5	<p>The WA Government progress access to consistent, timely and high-quality therapeutic support and counselling for adult victim-survivors of sexual offences as a priority action under the Sexual Violence Prevention and Response Strategy.</p>
6	<p>The WA Government create or adapt an existing interagency group to enhance collaboration, integration and information sharing between all stakeholders in the criminal justice system. As a priority, the interagency group should develop a protocol that clearly sets out:</p> <ul style="list-style-type: none"> <li>• the role and responsibility of each stakeholder in the criminal justice system</li> <li>• referral pathways between organisations</li> <li>• communication guidelines for consistent messaging that can be tailored to different cohorts.</li> </ul>
7	<p>The WA Government undertake policy work to determine a best-practice training model for responding to sexual offending. The model should consider:</p> <ul style="list-style-type: none"> <li>• training for local and front-line police officers</li> <li>• training for the legal profession on myths, misconceptions and harmful community attitudes in relation to sexual offence victimisation</li> </ul>

	<ul style="list-style-type: none"> <li>• supporting work being undertaken at the national level to design and deliver training for the judiciary</li> <li>• training on trauma-informed practice when responding to victim-survivors for all professionals in the criminal justice system.</li> </ul>
8	<p>The Department of Justice establish a victim advocate model for victim-survivors of sexual offending. The model should:</p> <ul style="list-style-type: none"> <li>• provide end-to-end coordination and support for victim-survivors including links and referrals to other organisations as required</li> <li>• commence as a pilot in both a metropolitan and regional location.</li> </ul> <p>In doing so, delivery approaches that can adapt to the needs of diverse population groups should be considered.</p>
9	<p>WA Police develop a protocol for local police stations setting out minimum standards for supporting victim-survivors reporting sexual offences. The protocol should include:</p> <ul style="list-style-type: none"> <li>• ability to book an appointment</li> <li>• privacy and where possible a separate room when making a report</li> <li>• where possible choice of gender of the officer to whom the report is made</li> <li>• referrals to support services</li> <li>• availability of communication supports.</li> </ul>
10	<p>WA Police partner with specialist sexual assault support services to improve awareness of Safe2Say and develop training materials to support its use by services that support victim-survivors.</p>
11	<p>WA Police commission a formal evaluation of Safe2Say which also considers the following:</p> <ul style="list-style-type: none"> <li>• recommendations from the Australian Institute of Criminology 2023 report</li> <li>• best-practice features from platforms in use in other Australian jurisdictions</li> <li>• support for victim-survivors using the platform</li> <li>• how the platform can be adapted and delivered to meet the needs of high-priority population groups</li> <li>• how and when reports can be accessed and by whom</li> <li>• any unintended impacts of alternative reports, including their use in legal proceedings</li> <li>• the status of alternative reports with regard to criminal injuries compensation</li> <li>• the impact of increased reporting on WA Police and other organisations.</li> </ul>
12	<p>The WA Government introduce a multidisciplinary centre or reporting hub model for adult victim-survivors of sexual offending. The model should be:</p> <ul style="list-style-type: none"> <li>• flexible and adaptable to the specific regions and communities it will service</li> <li>• informed by best practice, national policy and research</li> <li>• delivered as a pilot in two different locations (one metro and one regional)</li> <li>• delivered in partnership with specialist and other support organisations.</li> </ul>
13	<p>The WA Government progress access to consistent, timely and high-quality forensic medical care for adult victim-survivors of sexual offences as a priority action under the Sexual Violence Prevention and Response Strategy.</p>

14	<p>WA Police use, where possible, specialist interviewers for all sexual offence cases, regardless of the age of the victim-survivor when the offence was committed or reported.</p> <p>WA Police to undertake further policy work to determine a model of training and ongoing professional support for specialist interviewers of adult victim-survivors that aligns with recommendation 9 of the Royal Commission into Institutional Responses to Child Sexual Abuse.</p>
15	<p>The WA Government amend the <i>Evidence Act 2025 (WA)</i> to extend the use of video-recorded police interviews as evidence in chief to all sexual offence matters.</p>
16	<p>The Department of Justice expand the proposed witness intermediary program to include the use of witness intermediaries at the police interview stage for vulnerable persons. The program should:</p> <ul style="list-style-type: none"> <li>• be governed by a procedure developed with WA Police that complements the provisions contained in the <i>Evidence Act 2025 (WA)</i>, any subsidiary regulations and best practice guidance from other jurisdictions</li> <li>• commence as a pilot at specific sites and be subject to evaluation before a statewide roll-out.</li> </ul>
17	<p>WA Police develop a protocol in conjunction with the Office of the Director of Public Prosecutions to govern collection of digital evidence in sexual offending cases. The protocol should:</p> <ul style="list-style-type: none"> <li>• contain clear procedures for the forensic examination and download of victim-survivors' digital devices</li> <li>• include a referral process for victim-survivors to access independent legal advice if police are contemplating collection of substantial digital evidence.</li> </ul>
18	<p>The Department of Justice commission independent research to understand the factors that contribute to attrition at the investigative and prosecution stage in Western Australia. The research should:</p> <ul style="list-style-type: none"> <li>• focus on the factors which influence police and prosecution decision-making and the factors that influence victim-survivors' decisions not to proceed</li> <li>• identify systemic issues and make recommendations for reform</li> <li>• provide a framework for an ongoing audit of attrition rates to evaluate the impact of reforms.</li> </ul>
19	<p>The Office of the Director of Public Prosecutions design and deliver ongoing victim liaison services within its operations. In designing victim liaison services, the Office of the Director of Public Prosecutions should:</p> <ul style="list-style-type: none"> <li>• work with high-priority population groups or lived experience advisory groups to design the victim liaison service</li> <li>• consider a focus on supporting victim-survivors in regional locations and Aboriginal people who experience sexual offending.</li> </ul>
20	<p>The Department of Justice undertake further policy work on providing in-court support to adult victim-survivors of sexual offending. The policy work should consider:</p>

	<ul style="list-style-type: none"> <li>the use of social workers or other professionals with experience in responding to sexual violence</li> <li>how support workers may be able to advocate for victim-survivor needs and choices</li> <li>physical facilities for victim-survivors before, during and after court proceedings in Perth and regional locations</li> <li>integrated service models or partnerships in regional locations</li> <li>caring and other responsibilities for victim-survivors.</li> </ul>
21	The Department of Justice commission a trial transcript analysis of the experience of complainants giving evidence in adult sexual offence trials, including the style and content of cross-examination.
22	<p>The Department of Justice undertake further policy work on establishing the framework for a long-term, sustainable restorative justice scheme. The policy work should consider:</p> <ul style="list-style-type: none"> <li>existing practice in WA</li> <li>the recommendations from the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence</li> <li>best-practice models in other jurisdictions</li> <li>development of guiding principles and a legislative framework</li> <li>mechanisms to co-design the scheme with Aboriginal communities and other population cohorts</li> <li>funding and workforce development.</li> </ul>

### 3 The consultation process

We are immensely grateful to all the people who put time, thought and care into providing submissions. Many submissions from victim-survivors expressed pain and frustration at a system they regard as failing them and adding to their trauma. Some also expressed hope for change and for a future in which a more compassionate and holistic response may be possible. This report is the start of what must be an ongoing conversation.

The former Attorney General, the Hon John Quigley MLA, and the Minister for Women's Interests, the Hon Sue Ellery MLC, announced the community consultation process for the review on 7 August 2023. Community consultation officially closed on 9 October 2023, but we continued to receive submissions and meet with stakeholders until the end of November 2023. To support consultation, we published four detailed discussion papers, a fact sheet and an easy read publication. The four discussion papers asked questions to guide responses from stakeholders with experience in responding to sexual offences. The fact sheet was produced for a general public audience and asked six questions about how the different parts of the criminal justice system are working in practice and what could be done differently or to improve the experience for victim-survivors. The questions asked were:

1. How can the process for reporting sexual offending be improved for victim-survivors?
2. How can the process for investigating sexual offending be improved for victim-survivors?
3. How can the court process for sexual offending be improved for victim-survivors?
4. What other kinds of justice models could be used to support victim-survivors of sexual offending (e.g. restorative justice, Aboriginal justice)?
5. What supports in the criminal justice system would help victim-survivors of sexual offending?
6. Is there anything else you would like to tell us about your experience in the criminal justice system?

We provided victim-survivors with a number of options for participating in consultation – by phone, meeting in person, emailed or written submissions and completing an online submission form. The online submission form was available on the public website (Review of criminal justice responses to sexual offending) for the duration of the public consultation period. The same options were also available for all members of the community.

The consultation process was informed by a consultation plan endorsed by an interagency Steering Committee and the Attorney General. We also engaged Nous Group to lead consultation sessions. Consultations were planned and conducted with four main groups and different approaches were used to engage with each group.

**Table 1 Consultation approaches**

Group	Overview and engagement approach
Criminal justice system	<p>This group includes stakeholders who either work in or oversee the criminal justice system and who understand victim-survivor experiences, and some of the barriers and challenges faced. This includes government agencies such as WA Police, the Office of the Director of Public Prosecutions (ODPP) and the Department of Justice (Court and Tribunal Services, Victim Support Service, and Corrections).</p> <p>These stakeholders were engaged via interviews as well as online submissions once the public consultation phase had started.</p>
Lived experience	<p>People with lived experience, including victim-survivors and family members of victim-survivors, were engaged to understand their experiences in the criminal justice system. People with lived experience participated through online submissions and/or comments, face-to-face interviews and focus groups, by phone, and through virtual interviews.</p> <p>All engagements were undertaken in a safe and trauma-informed way to ensure participants were supported before, during and afterwards. Focus groups were conducted with the support of specialist sexual assault service providers.</p> <p>The Office of the Commissioner for Victims of Crime engaged an experienced service provider to provide crisis counselling if a person engaging with consultation required support.</p>
Broader sector and system	<p>Stakeholders who either work in or oversee the broader sector (beyond the criminal justice system) were engaged, including service providers of health and social services. Seven focus groups were run to hear from providers of specialist sexual assault, health, family and domestic violence, social and legal services.</p> <p>Peak bodies and advocacy groups representing, and providers of services for, population subgroups were also engaged. This includes organisations representing or providing services to people with disability, people from CALD backgrounds, older people, young people and Aboriginal people.</p> <p>These stakeholders also had opportunities to engage via online submissions, virtual interviews and/or focus groups.</p>
Project-related stakeholders	<p>Project-related stakeholders were engaged to ensure the consultation approach was representative and appropriate. The Project Working Group and the Steering Committee reviewed and provided input on the Consultation Plan.</p> <p>Regular meetings were scheduled with project teams of interdependent work, such as the Sexual Violence Prevention and Response Strategy project, to ensure key findings were shared. This is in line with the 'no wrong door' approach to consultation that was one of the overarching principles of the Consultation Plan.</p> <p>Meetings were also held with organisations which are working on projects or initiatives relevant to the review such as the Department of Justice (QLD), the Australian Attorney-General's Department, Project Restore (NZ) and the Centre for Innovative Justice (VIC).</p>

We aimed to engage with a wide range of peak and advocacy bodies and service providers who could reflect the perspectives and experiences of diverse cohorts of victim-survivors, including women, Aboriginal people, people living in regional and remote WA, LGBTQIA+ people, people with disability, young people, people from CALD backgrounds, older people, sex workers, people in correctional facilities and men. The consultation sessions included attendees from metropolitan and regional WA.

We conducted regional consultation in partnership with the Department of Communities on development of the Strategy and we heard information relevant to the review as part of that process. We were fortunate to travel to Kalgoorlie, Albany, Kununurra and Northam and we are very thankful to everyone who took the time to meet with us in these locations. We also held online forums on the Strategy for stakeholders in Geraldton, Karratha and Port Hedland.

However, we must acknowledge limitations of our consultation process. Responses focused largely on aspects of the criminal justice system preceding the trial stage, but this likely also reflects the reality that very few sexual offence cases proceed to trial. We also received few responses on some of the more technical aspects of the criminal justice system, such as victim support measures in the courtroom. Despite our best efforts to engage victim-survivors, the number of submissions we received from victim-survivors was lower than we anticipated and some population groups were underrepresented in consultation, including people who undertake sex work, people in LGBTQIA+ communities and men. There may be many reasons for the low rate of engagement by victim-survivors, including the silencing effect of the shame and stigma often associated with sexual violence and offending.

Where there are gaps in our consultation findings we have turned to evidence in the research literature, and in inquiries and reports from other jurisdictions, to provide us with insight into the issues facing victim-survivors in the criminal justice system and with options for reform. While the evidence base provides us with a good understanding of the issues, we aim to identify where further consultation is needed, particularly in relation to options for reform and implementation.

The consultation process engaged with Aboriginal Community Controlled Organisations, Aboriginal legal assistance services, Aboriginal health services and other community organisations that work with Aboriginal victim-survivors of sexual offending across the state. While these stakeholders provided valuable insight into the experiences and needs of their clients, the number of victim-survivors who identified as Aboriginal people in their submission was low.

The Project Team did not actively reach out to regional and remote Aboriginal communities as part of the consultation process. We did not think it was safe or appropriate for potential participants given the resources and timelines for the project. Sex and sexual offending are taboo issues for many population groups, and discussion of these subjects in Aboriginal communities requires establishing relationships of trust over time. Instead, we have looked to the research from recent consultation processes with Aboriginal communities – including the *Wiyi U Thangani (Women’s Voices)* project and the recently tabled Senate Inquiry into Missing and Murdered Aboriginal Women and Children – to inform this report and our suggestions for reform. We acknowledge the importance of Aboriginal communities’ self-determination when implementing any recommendations.

Despite the consultation limitations, we seek to highlight the diversity of views we heard during consultation in this report. We aim to place the views of victim-survivors and stakeholders in a prominent position. Where possible we quote directly from submissions we received. Unless specifically named in the text, we generally refer to victim-survivors and stakeholders, which denotes non-government sector organisations. Where we refer to a government agency, we either use the agency’s name or the term ‘government agency’. Unless a citation is provided all quotations in this report are taken from submissions to the consultation process.

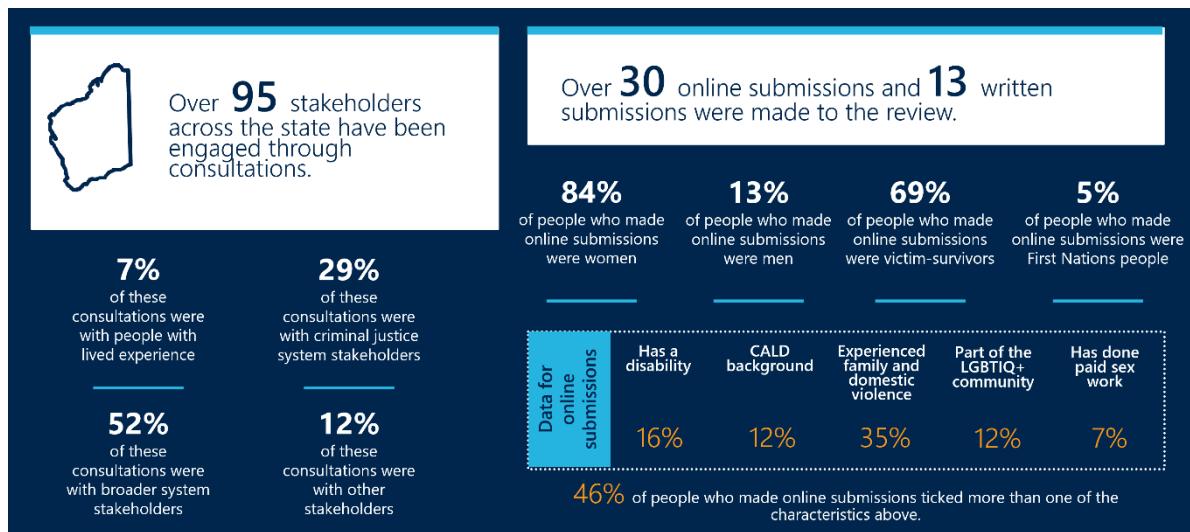


Figure 1 Consultation engagement snapshot

## 4 Policy context

Preventing, reducing and responding to sexual offending is a significant policy concern in Australia, and one that the Australian Government is addressing on a national level. Sexual offending and criminal justice responses to that offending have also been the focus of recent inquiries and reports in most Australian jurisdictions. It is an increasingly crowded research and policy space, and there is an existing evidence base on victim experiences and criminal justice responses to sexual offending. In writing this report we have sought to avoid repeating work underway at the national level or in other jurisdictions. We have aimed instead to consider the evidence base in the WA context to present options for reform that respond to WA's unique needs and circumstances, and that are based on our consultation findings. However, we have the benefit of learning from other inquiries and reform processes, and we incorporate many of those findings into this report. This chapter summarises the background information we used when considering the consultation outcomes and making recommendations for reform.

### 4.1 Western Australia

In November 2020 the Centre for Women's Safety and Wellbeing – WA's peak body for sexual violence services – released the report *Spotlight on Sexual Violence in Western Australia* (Evans, 2020). This report, which followed sustained advocacy from the sexual violence sector to improve WA's response to sexual violence, made 26 recommendations to Government.

In 2022 the WA Government announced a program of work to address sexual violence in WA, including this review, the LRCWA Project 113 and the development of WA's first Sexual Violence Prevention and Response Strategy. As discussed in the Introduction, these pieces of work are intended to operate in unison as a whole-of-government and whole-of-community response to sexual violence, recognising that this is the only way to achieve meaningful and long-term change in this space. The projects are the most comprehensive review of WA's responses to sexual violence since the West Australian parliamentary inquiry in 2008 (Community Development and Justice Standing Committee, 2008).

Other relevant reforms in WA include a statutory review of the *Criminal Law Amendment (Intimate Images) Act 2018* (WA), which came into operation in April 2019. The Act recognised the increasing rate of technology-facilitated sexual violence and criminalised the distribution of intimate images without consent. The review was completed in December 2024 and considers the operation and effectiveness of the legislation and investigate other emerging technology-facilitated abuse behaviours. The WA Parliament also considered sexual harassment against women in the fly-in fly-out (FIFO) mining industry, with the tabling of the report *Enough is Enough* in 2025 (Community Development and Justice Standing Committee, 2025).

In March 2024, a pilot program – the Sexual Assault Legal Service Western Australia (SALSWA) pilot – to provide legal advice and assistance to victim-survivors of sexual offending commenced in WA. The SALSWA pilot is a collaboration between community legal services – Women's Legal Service WA, Ruah Legal and Aboriginal Family Legal Services – to provide trauma-informed, holistic and culturally appropriate support to

victim-survivors of sexual offending, recognising the specific challenges and needs they face in the criminal justice system. We discuss the pilot in further detail in Chapter 7.

There has also been significant action in relation to gender-based violence in WA. Gender inequality is a driver of sexual violence, and sexual violence is frequently part of a wider pattern of family and domestic violence. *Path to Safety: Western Australia's Strategy to Reduce Family and Domestic Violence 2020–2030*, the *Aboriginal Family Safety Strategy 2022–2032*, *Stronger Together: WA's Plan for Gender Equality and the Family and Domestic Violence System Reform Plan 2024–2029* provide the framework for reform in this area. In November 2023, the WA Government accepted in principle a range of systemic and legislative changes recommended in the *Legislative Responses to Coercive Control in Western Australia: Consultation Findings* report.

While sexual violence frequently occurs as part of a pattern of abuse in family and domestic violence and is recognised as a type of family and domestic violence in WA – for example, in the definition contained in section 5A of the *Restraining Orders Act 1997* (WA) – the frameworks listed above do not specifically address sexual violence. A key aim of the Strategy is to recognise sexual violence as a distinct form of violence, one that requires a distinct response, while also acknowledging its intersection with other forms of violence, including family and domestic violence.

## 4.2 National

Sexual violence is also prominent on the national policy agenda. The Standing Council of Attorneys-General, which includes Attorneys-General from all Australian jurisdictions, is overseeing the *Workplan to Strengthen Criminal Justice Responses to Sexual Assault 2022–27*, which commits all jurisdictions to actions across three priority areas:

1. Strengthening legal frameworks.
2. Building justice sector capability.
3. Supporting research and greater collaboration.

Along with the legal services program, the Australian Government is leading national initiatives to improve responses to sexual offending. This includes a program of research and reviews covering sexual offending legislation, consent laws, criminal justice processes, alternative reporting options, forced marriage, human trafficking and sexual exploitation. Other initiatives include training for the justice sector on the impacts of sexual offending, funding for health and support services to assist victim-survivor recovery, the establishment of a lived experience advisory group and legislative reform to improve online safety and address technology-facilitated abuse.

Action 6 of the First Action Plan (2023–27) of the *National Plan to End Violence against Women and Children 2022–2032* is to ‘Improve action to prevent and address sexual violence and harassment in all settings, across the four domains of the National Plan [Prevention, Early Intervention, Response, and Recovery and Healing]’.

The Australian Institute of Criminology (AIC), ANROWS and the Australian Bureau of Statistics (ABS) regularly release research papers and statistical summaries related to sexual violence, sexual offending and victimisation, and the broader academic evidence base is also growing. Our Watch provides the national framework for primary prevention of

violence against women and children, and the Respectful Relationships – Relationships and Sexuality Education curriculum is delivered in schools across Australia.

The Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) revealed the widespread and severe nature of child sexual abuse in Australian institutions, describing it as a national tragedy (RCIRCSA, 2017b). It detailed the systemic failures of institutions, including poor practices, inadequate governance and a lack of accountability, which allowed the abuse to occur and persist. The report made recommendations for preventing future abuse, improving institutional responses and providing support and justice for survivors.

The RCIRCSA made 409 recommendations, including 310 for the Western Australian Government (WA Government, 2024b). Following the release of a Statement of Intent by Minister McGurk on 15 December 2017, the WA Government accepted or accepted in principle 289 of the recommendations and committed to providing annual updates to Parliament for five years. By the halfway implementation point in 2022, the Government had fully implemented 167 recommendations, marking a 53% completion rate (WA Government, 2022a).

While children are not included in the scope of this review, it is important to note the substantial work underway to address child sexual abuse. The Australian Centre for Child Protection - Western Australia is delivering a body of work to inform the implementation of Royal Commission recommendations about preventing and responding to children with harmful sexual behaviours and to support the child protection and community services sector. The *Framework for Understanding and Guiding Responses to Harmful Sexual Behaviours in Children and Young People* (WA Government, 2022b) is intended to build upon existing, relevant child protection and family support policies and procedures and to inform the development of future policies.

The National Office for Child Safety was established on 1 July 2018 in response to the RCIRCSA's findings (Australian Government, n.d.). The Office leads the development and implementation of national priorities to prevent and respond to child sexual abuse, including:

- National Strategy to Prevent and Respond to Child Sexual Abuse.
- The National Principles for Child Safe Organisations.
- Commonwealth Child Safe Framework.
- Improvements to information-sharing arrangements to strengthen child safety and wellbeing.

The Legal and Constitutional Affairs References Committee delivered the *Current and Proposed Sexual Consent Laws in Australia* report on 14 September 2023. Its inquiry focuses on inconsistencies in consent laws, their operation, benefits of national harmonisation and impacts on survivor experiences. Recommendations fall within the following categories:

- Ensure the agency of victim-survivors is paramount in all responses to sexual violence.
- Implement and evaluate affirmative consent models across jurisdictions and include them in national harmonisation efforts.

- Develop comprehensive Respectful Relationships education in schools and fund ongoing education initiatives.
- Provide trauma-informed legal services and establish restorative justice and specialist sexual violence court pilots.
- Fund ongoing research into the prevalence of sexual violence and the effectiveness of responses.

In 2025, the Australian Law Reform Commission (ALRC) completed its inquiry into justice responses to sexual violence in Australia (ALRC, 2024). The final report, *Safe, Informed Supported: Reforming Justice Responses to Sexual Violence* (2025), was tabled in the Commonwealth Parliament by the Attorney General of Australia, the Hon Mark Dreyfus KC MP on 6 March 2025. The Terms of Reference of the inquiry asked the ALRC to consider:

- laws and frameworks about evidence, court procedures/processes and jury directions
- laws about consent
- policies, practices, decision-making and oversight and accountability mechanisms for police and prosecutors
- training and professional development for judges, police, and legal practitioners to enable trauma-informed and culturally safe justice responses
- support and services available to people who have experienced sexual violence, from the period prior to reporting to the period after the conclusion of formal justice system processes
- alternatives to, or transformative approaches to, criminal prosecutions, including restorative justice, civil claims, compensation schemes and specialist court approaches (ALRC, 2023).

The ALRC's final report makes a substantial contribution to the evidence base on justice responses to sexual violence from a national perspective, and the report's 64 recommendations will inform and guide national and jurisdictional policy reforms. Our aim is to respond to specific issues related to justice responses to sexual offending and the needs of victims in WA, providing options for reform specific to the WA context. Despite this difference in perspective, there remains extensive cross-over in subject matter between the ALRC final report and this report. However, the drafting of this report was complete before the ALRC final report was published and we were not able to consider or incorporate the ALRC final report in detail.

In writing this report, we also turned to recent consultation to capture the needs of Aboriginal women and girls. The Australian Government responded to the *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future 2020* report (AHRC, 2020) by supporting all recommendations, some in principle and in part. The Legal and Constitutional Affairs References Committee delivered the *Missing and Murdered First Nations Women and Children* report on 15 August 2024. This inquiry focused on missing and murdered First Nations women and children in Australia, highlighting the alarming statistics and the need for urgent action. The inquiry referenced 'the systemic causes of all forms of violence – including sexual violence – against First Nations women and children' (p. 2).

#### 4.3 Other states and territories

New South Wales, the Northern Territory and Queensland have all implemented dedicated sexual violence strategies in the last decade and criminal justice responses are a key part of reforms under these strategies. All jurisdictions are undertaking system- and service-level reform related to sexual violence generally and criminal justice responses specifically.

The Victorian Law Reform Commission (VLRC), the Queensland Women's Safety and Justice Taskforce (WSJT) and the ACT Sexual Assault Prevention and Response Steering Committee have also undertaken in-depth reviews of victim-survivor experiences of criminal justice responses to sexual offending. The findings of these reports have greatly contributed to the evidence base for this review. Sexual offending law reform is also progressing across all states and territories. Reform relates to issues including consent, mistake of fact, stealthing, the ability of victim-survivors to consent to being identified and technology-facilitated sexual violence.

The VLRC released its report *Improving the Response of the Justice System to Sexual Offences* in 2021. The report recommends ways to improve the justice system response to sexual offences. Key recommendations include enhancing public education on sexual violence, amending laws to strengthen protections and enforcement, and improving support services for victims. The report also highlighted the importance of collaboration among stakeholders, the development of restorative justice programs and the need for ongoing research and data collection to inform policy and practice.

In 2022, the Women's Safety and Justice Taskforce (WSJT) released its second report examining the experiences of women and girls in Queensland's criminal justice system, both as victim-survivors of sexual violence and as offenders (Queensland Government, 2025). The 188 recommendations highlight the importance of a gender-specific strategy to address sexual violence.

In response to the NSW Law Reform Commission's Report 148, the NSW Bureau of Crime Statistics and Research (BOCSAR) led a research project to delve into the experiences of individuals reporting sexual offences within the NSW criminal justice system (KPMG & RMIT, 2023). Collaborating with KPMG and RMIT University's Centre for Innovative Justice, this project enabled complainants to describe both the strengths and challenges present in the NSW legal system for people who have experienced sexual violence.

## 5 The experience of sexual offending in Western Australia

To best respond to sexual offending, we need to understand what it is and how it impacts victim-survivors. To improve the experience of victim-survivors, we need to understand the context in which they are interacting with the criminal justice system and tailor our responses accordingly. In this chapter we define sexual offending, discuss its prevalence and explain its impacts. We also describe the myths, misconceptions and harmful community attitudes about sexual offending and discuss how they influence the criminal justice system's response to victim-survivors.

### 5.1 Defining sexual offending

We start this chapter by outlining what is meant by terms such as sexual offending and sexual violence. There is no single, universal definition of sexual offending. For the purpose of this report, we define sexual offending as sexual violence that is a crime as contained in the *Criminal Code Compilation Act 1913 (WA)* (Criminal Code). The primary legal framework for adult sexual offences is contained in Chapter XXXI of the Criminal Code.

**Table 2 Sexual offences in the Criminal Code**

Code section	Offence Description
323	Indecent assault
324	Aggravated indecent assault
325	Sexual penetration without consent
326	Aggravated sexual penetration without consent
327	Sexual coercion
328	Aggravated sexual coercion
329	Sexual offences against relatives
330	Sexual offences against incapable persons
331B	Sexual servitude
331C	Conducting a business involving sexual servitude
331D	Deceptive recruiting for commercial sexual servitude

Table 2 shows the adult sexual offences currently included in the Criminal Code Chapter XXXI. There are other adult sexual offences contained in the Criminal Code, including committing obscene or indecent acts in public, intimate image offences and electronic communication offences. Adapted from LRCWA, 2023, Table 6.1, p. 174.

A victim-survivor is unlikely to have contact with the criminal justice system unless the sexual violence they experience is a crime (Fileborn et al., 2023). However, social attitudes to sexual offending change over time, and the crimes considered sexual offences now reflect a specific moment in time and are subject to change. A clear example of the evolving nature of sexual offending is the case of marital rape (Bergen & Barnhill, 2006). Legislative changes to dissolve the spousal exemption of rape were enacted in WA in 1985. A specific purpose of the recently completed LRCWA Project 113 (LRCWA, 2024) was to provide advice on possible amendments to enhance and update provisions in the Criminal Code having regard to contemporary understandings of, and community expectations relating to, sexual offences (LRCWA, 2023).

Sexual violence is a broad term that refers to all non-consensual sexual activity. *The National Plan to End Violence Against Women and Children 2022–2032* (the National Plan) defines sexual violence as:

*Sexual activity that occurs where consent is not freely given or obtained, is withdrawn or a person is unable to consent due to their age or other factors. Such activity includes sexualised touching, sexual abuse, sexual assault, rape, sexual harassment and intimidation and forced or coerced watching or engaging in pornography.*

*Department of Social Services (2022)*

The affirmative model of consent as outlined by the LRCWA (2022) specifies that consent must be informed and freely given – that is, the participant must demonstrate willingness to proceed with a specific sexual activity. Sexual violence is the antithesis of affirmative consent by proceeding with a sexual activity via force, threat, exploitation, coercion, intimidation, manipulation and/or deception. Sexual violence as a term has been critiqued as being misrepresentative, as the term ‘violence’ is often associated with physical force. However, any sexual act that violates a person’s autonomy or is exploitative through the abuse of power or control is inherently violent, even in the absence of physical force.

## 5.2 Prevalence of sexual offending

Measuring the prevalence of sexual offending in our community at both a national and state-wide level is critical to:

- estimate the incidence of sexual offending
- develop responses to sexual offending that are proportionate and scalable
- identify trends and patterns that enable these responses to be appropriate and applicable to diverse cohorts, settings and contexts more vulnerable to sexual violence victimisation
- anchor our resources and initiatives in response to sexual offending in line with what the data is telling us.

The national Personal Safety Survey (PSS) delivered by the ABS shows that women were significantly more likely to experience sexual violence over their lifetime than their male counterparts. The PSS (2022) found that 22% of Australian women and 6.1% of men had experienced sexual violence since the age of 15. These statistics are corroborated by very similar findings from a longitudinal study conducted by ANROWS (2022), which found that, for example, approximately one in five women (18%) aged 18–24 in 2013 had experienced sexual violence in adulthood. This prevalence increased over time to 39% in 2019, when these women were aged 24–30 (Townsend et al., 2022, p. 31). This gendered comparison does not seek to negate the sexual victimisation also experienced by men, but the evidence shows that women are more likely to experience sexual violence victimisation.

Other statistical surveys and research papers show that some cohorts of women (AIHW, 2019) in the community experience sexual violence victimisation at higher rates, and this additional complexity must be acknowledged when talking about the prevalence of sexual violence and sexual offending. There is no single reason for sexual offending victimisation; rather a range of intersecting factors contribute to and arise from sexual violence and victimisation. During consultation, multiple stakeholders emphasised that discrimination and inequality based on race, class, ability, sexuality, gender and age mean that some

people are both more at risk of experiencing sexual offending and more likely to face barriers to accessing justice and support. We discuss many of the factors that contribute to under-reporting of sexual offending and attrition throughout the criminal justice system in later chapters.

The evidence base shows that some population groups are at higher risk of experiencing sexual violence victimisation:

- Young women aged 18–29 years were more likely to experience sexual assault compared with the national average for women (by about four times) (ABS, 2024a).
- Women who identify as lesbian, mainly lesbian or bisexual are at increased risk of sexual violence (Townsend et al., 2022).
- Transgender women are at higher risk of sexual violence than cisgender women, with transwomen of colour being at even higher risk (ANROWS, 2020a).
- Women with disability are twice as likely to be victim-survivors of sexual offending as women without disability. Between 39% and 60% of women with a cognitive disability will be sexually assaulted before the age of 18 (Centre of Research Excellence in Disability and Health, 2021).
- People who engage in sex work disproportionately experience high rates of sexual offending. One study found that 49.6% of sex workers have experienced sexual offending (Quadara et al., 2008).

There is limited data on rates of sexual offending against Aboriginal people in WA. The *Wyi Yani U Thangani* (Women’s Voices) report found that, across Australia, three in five First Nations women have experienced physical or sexual violence (compared with one in six women in the general population) (AHRC, 2020). The Senate Inquiry into Missing and Murdered Aboriginal Women and Children acknowledged the data gaps that prevent a complete understanding of the experiences of First Nations women and children (Senate Legal and Constitutional Affairs References Committee, 2024, p. 32).

In noting the higher prevalence rates of sexual offending victimisation among certain population groups, we are not intending to reduce a cohort to one aspect of its identity. Presenting a list of statistics can have the effect of removing nuance in our understandings. There are many other social factors that are relevant to sexual violence and sexual offending victimisation, such as alcohol and other drugs, mental health and geographic location. As another example, while interpersonal violence (including sexual offending) affects individuals across all socioeconomic levels, research suggests that there is a correlation between low socioeconomic household status and increased risk of interpersonal violence (ABS, 2013).

The experience of Aboriginal people also needs to be understood within the specific historical, current and cultural context of colonisation and systemic disadvantage. As acknowledged in the National Agreement on Closing the Gap, Aboriginal people and their cultures have prevailed and endured despite too many experiencing entrenched disadvantage, political exclusion, intergenerational trauma and ongoing institutional racism (Commonwealth of Australian et al., 2020). Acknowledging and understanding this context is important in any response to addressing sexual offending.

Perhaps even more important to preventing sexual violence and sexual offending is considering the characteristics of the perpetrators of sexual offending. Australian police records show that in 2019–20 males made up 97% of charged sexual assault offenders (ABS, 2022). Of these, men aged 25–34 were the largest cohort (19.4%). The 2021–22 PSS provided further insight into the relationship between these perpetrators and their victims. The survey found that in 2021–22, female victims were most likely to experience sexual violence from a male intimate partner (53%), followed by a male known to them (31%), which is consistent with the finding that 56% of sexual violence occurs in the home of either the victim-survivor or perpetrator. The least frequent relationship between female victims and perpetrators was men who are strangers to them, amounting to only 16% of all offenders (ABS, 2023a).

While statistics on sexual violence are collected at the national level, whole-of-population data specifically collected in WA is scarce (WA Department of Health, n.d.). WA Police provides some publicly available data on the prevalence of sexual offending in WA and contributes to the ABS collections on Recorded Crime Perpetrators and Recorded Crime Victims. In the 2022–23 financial year for instance, 7,280 sexual offences were formally reported and recorded. While perpetrators are visible within criminal justice statistics, however, data specific to victim-survivors remains relatively unavailable, inaccessible and almost entirely excluded from statistical conversation.

The PSS (2022) found that, in a given year about 1.6% of women and 0.6% of men experienced sexual violence nationally. This equates to more than 62,800 Western Australians per year. Even accounting for the difference in sexual violence and sexual offending definitions, this number is considerably higher than WA Police recorded statistics on sexual offending. While these statistics provide us with some insight into the scope and scale of sexual offending, it is also important to note the limitations. Statistics are collected through voluntary disclosure in surveys or research and via formal reporting channels. There are complex barriers to reporting sexual offending which have a direct and substantial impact on these numbers. These statistics, while harrowing, should be considered a conservative estimate. The true extent of sexual offending is likely significantly higher (ABS, 2013).

The LRCWA's Project 113 Final Report echoes concerns about the 'dark figure' of sexual offending in WA and provides recommendations specific to data collection and analysis to address this unknown. The importance of appropriate data collection was widely acknowledged in the submissions received by the LRCWA (2023, p. 413). Capturing accurate data helps in understanding the true scope and prevalence of sexual offending in the community. Formal means of data collection, such as police reports and court records, provide a certain level of insight; however, these are often limited by under-reporting due to stigma, fear of not being believed and other barriers (Orchowski et al., 2022). Informal methods such as victimisation surveys and fear of crime surveys can complement formal data by capturing incidents that are not reported to the police, providing a more accurate reflection of the experience of victim-survivors and the pervasiveness of sexual violence in WA.

We agree with and endorse the recommendations proposed by the LRCWA in Project 113 Final Report to improve efforts in collecting data from victim-survivor's and their lived experiences at each stage of the criminal justice system (LRCWA, 2023,

Recommendations 133 and 134). Collecting and analysing data is important to identify what works and what may not following policy reform, allowing for adjustments and improvements to ensure reforms are having the intended impact. Therefore, it is essential not only to create policy reforms based on empirical research and evidence, but also to evaluate these reforms both in the short and long term.

### **5.3 The impact of sexual offending**

All forms of sexual offending are serious and profoundly harmful for victim-survivors. The impacts of sexual offending on victim-survivors are wide-ranging and lifelong (Department of Social Services, 2022, p. 51). The Australian Institute of Health and Welfare (AIHW) classifies sexual assault (a term often used interchangeably with sexual offending) as a major health and welfare issue in Australia (AIHW, 2020a, p. 1). Victim-survivors are individuals and the impacts of sexual offending are unique from one person to another. Impacts are influenced by various factors including the nature of the offence, a victim-survivor's personal history of trauma, their relationship to the perpetrator, cultural beliefs, societal attitudes and support systems. The impacts can be far-reaching, often creating ripple effects that extend to families, including children of victim-survivors (AIFS, 2007) and communities. Some of the impacts of sexual offending are outlined in this section, but in no way is this an exhaustive list.

The impacts of sexual offending can be characterised as physical, mental health and welfare-related, but the interconnected nature of these impacts mean they often overlap or combine and should not be considered in isolation from one another. The impacts of sexual offending can be compounded by factors including gender identity, age, sexuality, culture, race, religion, geographic location and disability (George et al., 2023, p. 23). The differences in the impact that sexual offending can make in victim-survivors' lives underscore the importance of taking a person-centred approach to supporting victim-survivors in the criminal justice system.

We highlight the impact of sexual offending on victim-survivors because it is critical to understand that they will be engaging with the criminal justice system at a time when they have competing needs and face additional challenges. Unless there is a coordinated and holistic system in place to support victim-survivors (Wegrzyn et al., 2022), they will not engage with the criminal justice system and there is a substantial risk of further and profound harm if they do (Ahrens et al., 2009). Consequently, in this report we make recommendations in relation to associated supports but also note the role of the Strategy as the overarching framework to address sexual violence in WA, recognising that some of our recommendations may be best addressed through implementation of that framework.

#### **5.3.1 Physical impacts**

The injuries sustained during a sexual offence are influenced by the nature of the assault, the use of force and restraint (Zilkens et al., 2012). Injuries may include lacerations, abrasions, bleeding, bruising, broken bones, strangulation and bite marks (Sommers et al., 2012). However, sexual offending is about the absence of consent to a sexual activity and does not have to involve force or physical injury. Most reported cases of adult sexual offending in Australia do not cause physical injury (AIHW, 2020, p. 7). The number of sexual assault hospitalisations Australia-wide was relatively stable between 2017–18 and

2021–22, with between 220 and 280 hospitalisations recorded each year, although this figure does not include emergency department presentations (AIHW, 2024b). Despite this, sexual offending is often perceived to involve force or injury because of false assumptions that such offending is perpetrated by a stranger, committed in a public place and results in injuries (Quilter, 2020).

While we also instinctively focus on the immediate physical impacts that occur during the offence itself, we often overlook the longer-term physical impacts of sexual offending. Victim-survivors may be at risk of sexually transmitted infections (STIs) (ASHM, 2024) or unplanned pregnancy. Due to trauma and the impact of shame, many victim-survivors miss the window to receive time-sensitive treatments to STI exposure or make supported decisions in relation to pregnancy due to their decision to either delay clinical presentation or to not seek medical attention at all (Malek et al., 2013). The Australian Longitudinal Study on Women’s Health (ALSWH) is a national longitudinal study of more than 57,000 women which began in 1996.<sup>1</sup> Data from the ALSWH shows that compared with those who had not experienced sexual violence, women who had experienced sexual violence were 23–67% more likely to report high levels of bodily pain and 42–84% more likely to report a recent STI (AIHW, 2025b). We discuss access to medical care for victim-survivors in more detail in Chapter 9.

### 5.3.2 Mental health impacts

A victim-survivors’ experience in the aftermath of sexual harm varies as the psychological, emotional and cognitive impacts are diverse and may be acute or chronic. Data from the ALSWH shows that women who had experienced sexual violence were 39–62% more likely than other women to report a recent diagnosis of and/or treatment for depression and around 50% more likely to report a recent diagnosis of and/or treatment for anxiety (AIHW, 2025b). Increasingly, the evidence base acknowledges that victim-survivors suffer trauma following a sexual assault. The National Association of Services Against Sexual Violence, in its *Standards of Practice Manual for Services Against Sexual Violence* (2021, p. 16), describes trauma as:

*Result[ing] from an event, series of events or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual’s functioning and mental, physical, social, emotional or spiritual wellbeing. A person may experience a single incident of trauma, such as witnessing a car accident, or they may be exposed to multiple incidents or multiple forms of trauma.*

During and immediately after the event, many victim-survivors are not able to comprehend what is happening to them due to competing autonomic survival responses

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<sup>1</sup> The ALSWH involves three cohorts of women born in 1973–1978, 1946–1951 and 1921–1926. In 2012 a fourth cohort of women born in 1989–1995 was added. Participants are randomly selected from the Medicare database, with oversampling of women from rural and remote areas to ensure sufficient sample sizes for analysis. Surveys are generally conducted every 3 years, but more frequently for the eldest cohort from November 2011, and for the 1989–1995 cohort from 2013–2018. The survey explores factors which influence health over the life course among women who are broadly representative of the Australian population (AIHW, 2025b).

(flight, fight, freeze or fawn) (Mann, 2021). Many victim-survivors experience dissociation (Nöthling et al., 2915), leading to common emotions such as disbelief, shock and numbness. Autonomic nervous system responses are a normal bodily response to stress and threat and usually decrease soon after the threat has passed. When responses continue in the body and mind for a long time after the incident, it may be described as a trauma response and can negatively impact on a victim-survivors' life and wellbeing (McMullen & Dewar, n.d., p. 8).

Victim-survivors impacted by trauma often feel shame, fear, hopelessness and helplessness, and the trauma can stop their body systems from working together properly, making it hard for them to perform day-to-day functions (McMullen & Dewar, n.d., p. 8). Trauma responses can be triggered by things that remind the person of the traumatic event (whether they are aware of it or not), causing them to react strongly with anger, sadness or confusion and making it hard for them to manage these emotions (Blue Knot Foundation, n.d.b). Sexual violence is associated with poor mental health outcomes, and women who have experienced sexual violence are more likely to report depression, anxiety, high stress and psychological distress (Townsend et al., 2022, p. 72). Support and guidance are critical when victim-survivors make decisions on whether to seek crisis, medical and forensic services, or report the offence to police.

With the right support victim-survivors can and do move towards healing from the experience of sexual offending and trauma. Victim-survivors may receive this support from counsellors and doctors, as well as from trusted family and friends (Townsend et al., 2022, pp. 63–68). Research also shows that everyday interactions that are respectful and empathetic can help victim-survivors to heal (Blue Knot Foundation, n.d.b). The opposite is also true: interactions that are not respectful and empathetic can cause further harm to victim-survivors (Blue Knot Foundation, 2021). We talk about the provision of support services in greater detail in future chapters.

The LRCWA Project 113 Background Paper talks about being silenced as an injury caused by sexual violence. It notes that being muted, diminished, isolated or silenced features in the accounts of ongoing impacts of sexual violence as well as core feelings of shame (Tarrant et al., 2022, p. 13). In its submission, ANROWS told us that recent studies have suggested that shame creates an additional layer of harm for victim-survivors and that reducing it is critical in healing from violence. Much of the shame may stem from the myths, misconceptions and harmful community attitudes held in relation to sexual offending, which we talk about later in this chapter.

Even when not silenced, victim-survivors may experience poor recollection and recall of the offence itself. Repression is an unconscious mechanism that causes the mind to prevent distressing or threatening thoughts, memories or feelings from entering the conscious awareness. In its submission, Full Stop Australia explained that trauma can impact memory, the way victim-survivors recount events, and their tolerance for recounting what happened to them. Full Stop Australia noted that according to research:

- victim-survivors of one-off traumatic events (including sexual violence) typically recall only three to five clear details – therefore, many details are often lacking)

- following trauma, memories may be impaired with amnesiac gaps, or may contain differences between accounts (Holmes et al., 2005; see also Conway et al., 2024; McNally, 2003).

The impact of trauma on memory and recollection has implications for victim-survivors if they choose to engage with the criminal justice system. Gaps in recollection of the event can cause police officers or jury members (if the case reaches a courtroom) to be sceptical and feeds into the myths and misconceptions related to sexual offending. We discuss the need for implementing a trauma-informed approach in further detail in Chapter 7.

### 5.3.3 Welfare impacts

An often-overlooked consequence of sexual violence is the financial impact sexual violence can have on victim-survivors, their families, workplaces and the economy at large. Findings from the ALSHW indicated associations between sexual violence and education, employment and financial stress (Townsend et al., 2022, p. 71). The sense of safety and security for victim-survivors is often compromised, leading them to seek resources to restore these feelings in their daily lives. For instance, a victim-survivor assaulted on public transport may prefer travelling in a private vehicle or taxi post-assault. This process, which empowers or protects them, can be financially costly.

There are also financial costs associated with the anticipation of threats of sexual violence, particularly in contexts of sexual violence that occurs at the hands of a current or former intimate partner who has knowledge of where the victim-survivor resides and/or works. Victim-survivors often choose to invest in self-protection devices and technology such as alarm systems, CCTV, sensors, security screens and locks. The ALSHW found mixed and inconclusive results for health service use. Data showed there was a higher uptake of Better Access initiative mental healthcare services for women who experienced sexual violence, but no cost differential (Townsend et al., 2022, p. 73). It is possible that health care needs are being met through primary health care and other services not covered by Medicare, such as specialist counselling subsidised by state governments, but it is also possible that there remain unmet need in relation to support for victim-survivors (Townsend et al., 2022, p. 73).

Many victim-survivors may require sick or personal leave, which can result in lost wages, especially if they are casually employed or lack sufficient accrued leave. They will also need time away from work as they engage in the criminal justice process – for example, attending interviews or court. Many victim-survivors will need additional time to prepare for and recover from what are traumatising events. Victim-survivors may be faced with uncomfortable questions from employers about sudden requests for personal or medical leave. If a victim-survivor is assaulted by a colleague or manager, they may resign immediately without pay to avoid their perpetrator.

The Commonwealth Government introduced paid family and domestic violence leave in the provisions of the *Fair Work Act 2009* (Cth) (Fair Work Ombudsman, n.d.). Under the scheme employees can access 10 days of paid leave each year if they are experiencing family and domestic violence. This applies to all casual, part-time and full-time employees. In WA, employees are also entitled to five days of unpaid family and domestic violence leave under the *Minimum Conditions of Employment Act 1993* (WA). While each

organisation will have its own procedures, employers must take steps to ensure information concerning family and domestic violence leave is confidential. Consideration should be given to providing victim-survivors of sexual offending with access to additional leave entitlements to heal from their experience and to support their engagement with the criminal justice system. Such a measure will require further consultation with the Public Sector Commission and labour relations organisations and may be best approached through the Strategy.

#### **5.4 Myths, misconceptions and community attitudes**

A range of myths and misconceptions have historically underpinned the legal and evidentiary rules in sexual offence proceedings. They have been the subject of extensive commentary in the research literature and of considerable law reform in order to counter their persistence (ALRC, 2010d, 24.54). Yet in its submission, ANROWS explained that victim-blaming attitudes, rape myths and mistrust of women’s reports of sexual violence persist in Australia. Commonly held attitudes and cultural beliefs on the topic of sexual offending play an important role in disclosure rates and subsequent prosecution of sexual offending.

Myths and misconceptions are sometimes also known as ‘rape myths’, a term coined by Martha Burt in 1980. Burt defines rape myths as ‘prejudicial, stereotyped, or false beliefs about rape, rape victims, and rapists’ (p. 217). Rape myths highlight the difference between how rape is understood and perceived by society compared to how it actually usually occurs. This difference arises from cultural understandings about sexual violence mostly generated by imagination (O’Hara, 2012), mainstream or social media, word-of-mouth and the social construction of sexual violence, including rape proclivity (O’Connor, 2021). Rape myths have given rise to the misleading concept of ‘real’ rape which is determined by a strict and narrow set of culturally defined and accepted criteria as was highlighted by Susan Estrich (1987).

A stereotypical example of rape is one in which a female victim is raped by someone unknown to her in a public setting, where a high level of physical violence is used by the perpetrator and where, in response, the victim-survivor physically and vocally resists. The more closely a victim-survivor’s experience of sexual offending fits the narrative of a ‘real’ rape, the higher the degree of sympathy from the public and the more newsworthy the story becomes. However, the data tells us that most sexual offences occur in completely different circumstances. As discussed in the previous section, the statistics show that most sexual offences are perpetrated by someone well known to the victim-survivor (usually a current or former intimate partner) and usually in the home of the victim-survivor or perpetrator.

There are many myths and misconceptions about sexual offending, but the overwhelming proportion of these focus on the responsibility of victim-survivors to prevent their own victimisation. When one focuses on victims’ ability to prevent their abuse, the perpetrator’s responsibility is diminished and the blameworthiness of victim-survivors is increased. The shift of responsibility manifests in rape myths relating to victim-survivor characteristics including (but not limited to) any interpersonal relationship with the perpetrator, physical and vocal resistance, physical appearance and dress, and consumption of alcohol or drugs. A recent example is that most education campaigns aimed at preventing technology-

facilitated sexual violence focus on the consequences for the victim-survivor instead of the legal consequences for the perpetrator. While the campaigns are important, they emphasise that it is a potential victim-survivor's responsibility to 'stay safe online' (Australian Government, 2023; Kids Helpline, 2025; eSafety Commissioner, 2023).

Myths and misconceptions persist after the offence and victim-survivors are expected to reflect a narrative that includes seeking medical treatment for physical injuries arising from resistance, displaying emotional distress, having a consistent and detailed memory of the event, immediately ending the relationship if their perpetrator was an intimate partner, and making a prompt formal report. Failure to formally disclose their assault is known as the 'delay narrative' and leads to 'a presumption of fabrication on the part of the victim-survivor' (ALRC, 2010c).

Myths and misconceptions have real-world consequences for victim-survivors and reduced accountability for perpetrators. Most concerning is the capacity for rape myths 'to deny and justify sexual violence against women' (Lonsway & Fitzgerald, 1994). Mistrust of women reporting victimisation may be based on gendered and hostile stereotypes of women as malicious liars who routinely serve an agenda to harm and vilify men (ANROWS, 2021, p. 171). The 2021 National Community Attitudes towards Violence Against Women survey (NCAS) found that in Australia:

- 34% of respondents view allegations of sexual violence as a way of 'getting back at men'
- 24% of respondents agreed that allegations were often made in response to a regretted sexual encounter
- 14% of respondents agreed that many sexual assault allegations made by women are false (ANROWS, 2021).

The 2021 NCAS showed improvements in WA in rejecting sexual violence (ANROWS, 2021, p. 119), but recent ANROWS research found that participants defaulted to doubt and suspicion when asked to appraise a woman's allegation of sexual assault, imposing a range of unrealistic standards and conditions for the allegation to be believed (Minter et al., 2021). The acceptance of myths and misconceptions directly influences victim-survivors' experiences in the criminal justice system. We highlight two aspects – police responses and jury decision-making – below, and in the remainder of the report we discuss possible reforms to address the impact of myths and misconceptions on the criminal justice system.

Chapters 6, 7 and 8 further discuss the impact of community and police attitudes on victim-survivor reporting decisions and experiences, as well as education, awareness and training initiatives that could be implemented to dispel harmful attitudes and beliefs.

#### **5.4.1 Police responses**

As gatekeepers to the criminal justice system, the police hold enormous power in their day-to-day decision-making related to interacting with both victims and offenders. Although they are represented as a single uniform force, the police are made up of individual police officers who, like other community members, are affected by cultural norms, personal experiences and media influence. The police are not immune to myths

and misconceptions, and these may impact their perceptions of victim-survivor credibility. However, unlike other community members, the impact of police officers holding negative attitudes about rape victims may be far greater given their unique position of power in the criminal justice system. Acceptance of myths and misconceptions may have a direct impact on legal decision-making processes such as interview/questioning approach, investigative effort and decisions to charge (Sleath & Bull, 2017).

In Shaw et al.'s (2017) analysis of 248 police records, a substantial number of reports included statements written by investigators directly blaming the victim for their behaviour or actions or emphasising victim characteristics that reflect myths and misconceptions. When victim-survivors are met with a sceptical, critical, judgemental or insensitive response during disclosure they 'may refuse to participate or cooperate with police in an investigation' (Garza & Franklin, 2021). However, other studies suggest that rape myths are not ineradicable. Myths considered old-fashioned – such as the concept of rape only occurring to promiscuous women or that rape always leaves a bruise or physical mark – appear to be widely rejected by the police. This shows the ability to shift attitudes and within police culture.

#### 5.4.2 Jury decision-making

Juries can also be influenced by myths and misconceptions about sexual violence that exist in the broader community (WSJT, 2022, p. 341). WA's adversarial criminal justice system relies, in most cases, on the jury to examine the facts and evidence of a case to arrive at a verdict of either guilty or not guilty. The role of the jury is to decide whether the prosecution has proven the offence(s) charged beyond reasonable doubt (LRCWA, 2022, p. 156). In WA, a criminal jury consists of 12 jurors who are representative of a cross-section of the general community. As the Law Commission of New Zealand (2015, 6.4) has observed:

*A jury is not an expert in the law or in the conduct being tried before the court. Their function is to make a determination, from a layperson's perspective, on whether or not the conduct in question has been established to a criminal standard of proof. Juries are not to apply moral judgements to the people involved, but jurors are to bring their collective life experience and common sense to bear on the case before them.*

Jurors sitting on sexual offence trials can be at a particular disadvantage because of the unique nature of sexual offences (LRCWA, 2022, p. 167). The Law Commission of New Zealand notes that the problem is not always individual juror prejudice but the idea that 'common sense and experience can be applied to the facts of a specific form of criminal offending which, because of its distinctive features, is at risk of illegitimate reasoning and incorrect decision-making when handled by people who have no prior experience in the area' (2015, 6.15).

Jury members are unlikely to be educated or experienced in understanding the nature of sexual offending and may hold commonly perceived views in relation to rape myths and other misconceptions. Such beliefs about sexual violence can affect jury decision-making if jurors' unconscious biases influence how they think about the victim-survivor, perpetrator and evidence in a case. For example, research commissioned by the WSJT

found some evidence of rape myths influencing participating community members' understanding of and attitudes to sexual consent and that community members struggled to apply the correct principles about sexual consent to real-life scenarios (WSJT, 2022, pp. 346–347).

Research studies reveal that the more jurors endorse rape myths based on common stereotypes, the more likely they will blame the complainants, perceive the accused as low in culpability and return not guilty verdicts (Cossins, 2020, p. 340). Mock jury research provides evidence that jury verdict decisions are influenced by myths and incorrect beliefs about sexual violence and that this affects jurors' evaluation of evidence and decision-making in trials (Leverisk, 2020, p. 255). One study found that many mock jurors expressed incorrect beliefs that false allegations of rape are common and that a genuine victim of rape would fight back against their offender to the point of sustaining physical injury (Cossins, 2020, p. 269).

Researchers have contemplated how myths and misconceptions can be overcome to ensure jurors take an impartial view of the evidence. Mock jury research has demonstrated that instructions and directions provided to jurors requiring them to refer exclusively to the evidence has minimal effect reducing the influence of rape myths and incorrect beliefs on juror decision-making (Cossins, 2020, p. 274). Mock jury trials also found that juror education via expert witness testimony produced a minimal shift in juror beliefs and attitudes, concluding that while education and directions are beneficial the effects are limited as jurors are unlikely to completely transform their attitudes and beliefs in a short period of time (Cossins, 2020, p. 274).

Perhaps what the research suggests is that while expert evidence and jury directions (which we discuss briefly in Chapter 11) play an important role in challenging myths and misconceptions during the jury decision-making process, more emphasis is needed on addressing myths and misconceptions about sexual violence at a societal level. The WSJT heard that education is essential to combating rape myths and that education at all levels of schooling, throughout the community and ongoing professional development, was critically important (WSJT, 2022, p. 74). We discuss community education and awareness in more detail in Chapter 6.

#### ***Rape trial juror found in contempt of WA Court***

A juror in a WA sexual offence trial was ordered to pay nearly \$15,000 for discussing the case with a friend, who went on to contact the alleged victim-survivor. The juror in a District Court trial revealed details of the case and the jury's deliberations (in direct breach of the judge's directions) to five male friends in a Facebook messenger group. One of the friends asked if it was a case of 'he said she said', to which the juror replied 'at this stage it is'. The juror also disclosed the identity of the alleged victim-survivor.

The juror's friend contacted the alleged victim-survivor via social media and phone messages implying that the jury did not believe her. The messages he sent claimed the State's case was weak, there was no forensic evidence, she had made a false allegation and that taxpayers' money had been wasted. The friend later plead guilty to a stalking charge and was fined \$8,000.

Source: Weber (2024).

### 5.4.3 Healing and recovery

Perhaps the most damaging aspect of rape myths is the impact they can have on a victim-survivors' own sense of self, their healing and survivorship. As many myths endorse a stereotypical script blaming the victim-survivor for their role and the actions that led to their victimisation, victim-survivors may engage in self-blame. As a result, the victim-survivor may not consider themselves a genuine or real victim (Koss, 1985). Not only does this lack of self-acknowledgement of victimisation have an impact on reporting, it also has a profound impact on the recovery and healing process. This point underscores the need for specialist support and trauma healing services provided to victim-survivors as they engage with the criminal justice system.

The collective evidence suggests the need to challenge and overturn myths and misconceptions for the sake of victim-survivors' healing and recovery – redirecting the community's and criminal justice system's attention to accord blame to the perpetrator rather than the victim-survivor, diminishing excuses and justifications for sexual violence perpetration and fostering a culture that validates and empowers victim-survivors.

In Project 113 Final Report, the LRCWA discussed including objectives and guiding principles in the chapter of the Criminal Code that deals with sexual offences. Stakeholders supported including objectives and guiding principles for reasons including to help mitigate the effect of rape myths on legal processes, as well as on the mental health and wellbeing of victim-survivors (LRCWA, 2023, p. 28).

In its submission to Project 113, the Centre for Women's Safety and Wellbeing (CWSW) stated (LRCWA, 2023, p. 28):

*CWSW believes the [Criminal] Code should serve both a regulatory and educative function. As understandings of sexual consent and sexual assault within the community are often shaped by pervasive stereotypes, myths and misconceptions about rape, sexual violence, people who experience it, and people who perpetrate it, it is imperative that the Code clearly articulate guiding principles that factually correct myths and misconceptions about the nature of sexual assault and victim-survivors.*

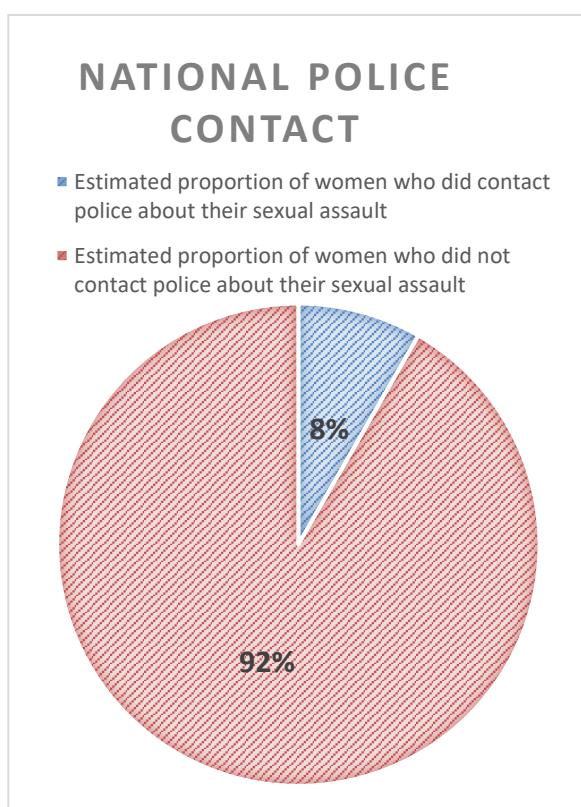
Ultimately, the LRCWA formed the view that objectives or guiding principles should not be introduced into the Criminal Code. In forming that view, the LRCWA agreed with the reasoning of the Queensland Law Reform Commission in its 2020 review of consent laws, and the WSJT, which expressed concern that objectives or guiding principles would not fit within the structure of the Queensland Criminal Code and may lead to confusion in statutory interpretation. The LRCWA considered that the same concerns arise in the context of the WA Criminal Code, which is similar in structure and operation to the Queensland Criminal Code (LRCWA, 2023, p. 33).

However, the LRCWA noted that its view does not mean that sexual offence laws should not reflect the objectives and guiding principles put forward in stakeholder submissions; rather, they should be reflected in the wording of the specific provisions of the Criminal Code themselves. The LRCWA also acknowledged the potential benefits of such provisions and noted the WSJT's suggestion of including the relevant information in a sexual assault bench book or a training program for lawyers and judicial officers (LRCWA,

2023, p. 33). The LRCWA supported attempts to improve training of lawyers and judicial officers to understand the nature of sexual offending and made recommendations about education and training in Chapter 14 of Project 113 Final Report. We discuss training in further detail in Chapter 7.

## 6 Factors contributing to under-reporting of sexual offences

Reporting to police is the first step in a criminal justice system response to sexual offending. The criminal justice system is one of the only mechanisms available to hold perpetrators to account and impose legal consequences, and yet sexual offending has one of the lowest reporting rates of all crime types (VLRC, 2021, p. 26). In the 2021–22 PSS, nationally 92% (or 680,000) of women who had experienced sexual assault by a male in the last 10 years said the police were not contacted about the incident (ABS, 2023a; AIHW, 2024c). If we are to increase the rates of reporting from their current low levels then we need to understand why victim-survivors are choosing not to report. The terms of reference for this review asked us to consider the factors that contribute to under-reporting of sexual offences, and why people report but do not continue with the formal legal process.



**Figure 2 Rates of sexual assault reporting**

Source: <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22#data-downloads>

This chapter explores the factors which contribute to the under-reporting of sexual offences and recommends reforms to address some of these factors. However, to address under-reporting of sexual offending more broadly, victim-survivors' experiences of the criminal justice system will need to improve overall. Trying to increase rates of reporting without improving overall criminal justice responses for victim-survivors is unlikely to be successful and, even if it is, risks causing further harm.

## 6.1 Why victim-survivors report sexual offending

Research shows that victim-survivors seek support from informal sources including friends, family, colleagues, religious/spiritual advisers and/or formal support from police and sexual violence, health or other support services. Some victim-survivors do not seek support at all. The ABS found that 57% of women who experienced sexual offending by a male sought support of some kind. Women were more likely to seek informal (46%) than formal (27%) support (ABS, 2023c). The most common sources of support for women were:

- friend or family member (45%)
- counsellor or support worker (15%)
- other (non-General Practitioner) health professional (14%) (ABS, 2023c).

The response sexual offence victim-survivors receive from the person to whom they first disclose the assault – be it an informal or formal support person – has a significant impact on whether they chose to report to police and their ongoing engagement with the criminal justice system (Ildias, 2020; Lievore, 2025, p. vii). First responders can play a key role as sources of information and emotional supporters for victim-survivors, helping them to clarify and name their experiences, validating their feelings and assisting them in determining the right course of action (Lievore, 2025, p. vii). Reactions of disbelief, trivialisation or judgement can deter victim-survivors from reporting or seeking help (Taylor & Norma, 2013).

The act of reporting an offence to police has the potential to be a positive step towards victim-survivors' justice needs, including the need for voice and validation (see VLRC, 2021; Clark, 2010).

During the consultation process we heard that the victim-survivors who did report sexual offences to police had a range of reasons for doing so. The most common reasons we heard for victim-survivors wanting to report were:

- wanting the perpetrator to understand that the offence was wrong and be held accountable
- wanting to have their experience recognised and the harm they had suffered to be acknowledged
- to prevent the experience happening to someone else.

*I reported to prevent others being assaulted and so that this person faced justice and couldn't hurt another child.*

*Victim-survivor*

## 6.2 Barriers to reporting

Where possible, reporting a sexual offence should be a choice for a victim-survivor,<sup>2</sup> but systemic issues and harmful community attitudes create barriers to having genuine and

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<sup>2</sup> Mandatory reporting requirements for certain child sexual abuse offences exist in legislative instruments across Australia. For example, see the *Children and Community Services Act 2004* (WA).

informed choice around reporting. While a variety of situational and personal factors influence a victim-survivor's decision not to report an incident to police, key themes emerge in the research literature and align with our consultation findings. There is limited national data to show how reporting (or not reporting) varies across population groups, but research shows there can be additional barriers for individuals from different population groups (AIHW, 2024c). Intersecting personal, situational, social, cultural, economic and political factors associated with inequality and discrimination may also impact victim-survivors' likelihood of reporting sexual assault to police (AIHW, 2024d). In the following section we outline the key themes or barriers identified in our consultation findings. We also discuss additional barriers for people who may experience intersecting forms of inequality and discrimination.

### 6.2.1 Trauma, blame and shame

During the consultation we heard that victim-survivors chose not to report to police because they felt that the offending was 'their fault', particularly in instances where they did not 'fight back' or where the offending was perpetrated by a partner or family member. A national survey found that 79% of victim-survivors surveyed did not go to police following a sexual offence because they were 'concerned that the incident would be viewed as their fault' or they did not think 'they would be believed' (Full Stop Australia submission). Shame is also a key barrier to help-seeking, with 63% of victim-survivors in a recent survey identifying 'feeling ashamed' as the reason they did not seek help following violence (Hegarty et al., 2022, p. 17).

*I was too scared to go to the police station and have to justify my experiences. I could not handle the thought of being cross-examined on the stand on the small per cent chance it even got that far. The biggest fear [for] myself and everyone I have spoken to is not being believed and being grilled about something so private.*

*Victim-survivor*

In Chapter 5 we discussed myths, misconceptions and harmful community attitudes about sexual offending and how they can influence victim-survivor decision-making around disclosure. Victim-survivors experience shame when they cannot see themselves within the very narrow criteria and set of cultural expectations of 'real rape' or 'real victim'. They also fear the systemic response to their disclosure.

*What I experienced was being 'the perfect victim' as I was the victim of a home invasion. I am also white, middle class and tertiary educated. I was invited onto decision-making tables not that long after the assault. This kind of access is not the norm. Many women I met over my healing journey were not confident about making the approach to police.*

*Victim-survivor*

During the consultation process we heard that victim-survivors had internalised blame for their own behaviour and minimised the perpetrator's culpability, and this impacted their ability to identify their experience as sexual offending. We heard that some victim-survivors did not fully understand the physiological fight, flight, freeze and fawn responses to trauma,

or the impacts of grooming and coercive control, leading them to believe that they were somehow to blame for the offending because they did not fight back or flee the situation.

*It took me many years to realise that my experience was sexual assault, as it didn't fit the most societally accepted depiction of assault. I was manipulated into sexual situations, as a minor, and experienced this over three years of an abusive relationship. I was also put into a situation where I went along with it, because of fear that it would become violent.*

#### **Victim-survivor**

##### ***Intimate partner sexual violence***

We heard that victim-survivors experiencing sexual offending by an intimate partner find it particularly difficult to recognise that the behaviour is offending, and to report it. Research suggests that victim-survivors of intimate partner sexual violence are less likely to report than women who experience sexual violence perpetrated by a stranger or women who experience non-sexual family and domestic violence (Women's Legal Service submission; ANROWS, 2019). We heard that the reluctance to report was influenced by feelings of shame and community attitudes that minimise or excuse sexual violence within intimate partner relationships based on notions of men's sexual entitlement and myths about stranger rape and 'deviant' perpetrators.

Stakeholders emphasised that patterns of grooming and coercive control can lead victim-survivors to normalise the sexual offending they experience. Younger women in particular are unlikely to identify sexual violence by an intimate partner (ANROWS, 2019). The NCAS (2021) reported that 30% of respondents thought intimate partner sexual violence was 'less severe and more acceptable' than sexual violence committed by a stranger, and 20% of respondents still did not know that non-consensual sex in marriage is an offence (ANROWS, 2022).

We heard that victim-survivors of intimate partner sexual violence often comply with the perpetrator as a result of normal trauma responses and to manage the perpetrator's behaviour and prevent further abuse. These factors can cause victim-survivors to feel a sense of complicity in the offending (ANROWS, 2019, p. 4). A recent study identified shame as the most common (63.2%) barrier to help-seeking for victim-survivors of intimate partner sexual violence (Hegarty et al., 2022, p. 61). Stakeholders noted that while community awareness and discussion about family and domestic violence and coercive control has increased in recent years, intimate partner sexual violence remains largely absent from the public discourse and is still poorly understood even by people working in the criminal justice and support sectors.

*We rarely see the same level of outrage [in the community] for sexual violence committed in intimate partner relationships as we do for sexual violence perpetrated by strangers or 'monsters'.*

#### **Women's Legal Service of WA**

*I did not want to report my partner/did not understand at the time it was rape if it was your partner.*

#### **Victim-survivor**

Stakeholders emphasised to us that the trauma resulting from the sexual offence can be a significant barrier to reporting or disclosing the offence to anyone at all. As discussed in Chapter 5, sexual offending victimisation can have impacts across many areas of a person's life, including symptoms of shock, fear, anxiety, depression, confusion, anger, sadness and distress (Australian Institute of Family Studies, 2007, p. 56). Reporting decisions are often made in the immediate aftermath of an offence, when victim-survivors are experiencing these impacts acutely and their ability to process information is impaired (Lievore, 2025, p. 10).

*I didn't know what to do or where to go. The shock of the incident overwhelmed me so much.*

***Parent of victim-survivor***

*I also recall being condescended [to] after I called emergency services in an extremely panicked and distressed state immediately after the assault because the operator kept asking me which service I needed (i.e., ambulance, police, etc.) but I didn't know.*

***Victim-survivor***

### **6.2.2 The impact on relationships, community and socioeconomic circumstances**

Stakeholders reported that sexual offending perpetrators were usually someone known to the victim-survivor – either a family member or friend. The PSS (2022) reported that in most recent incidents of sexual assault against women by a male, the perpetrator was most likely to be someone they knew (84%) than a stranger (16%). The perpetrator was most commonly an intimate partner (53%), including a cohabiting partner (28%) or boyfriend or date (25%), followed by a friend or housemate (14.4%), acquaintance or neighbour (11.7%) and co-worker (4.7%) (ABS, 2023e). Reporting can therefore have significant impacts on victim-survivor's life, family and social networks.

Stakeholders told us that a fear of retribution by the perpetrator is a major barrier for people experiencing intimate partner sexual violence. Intimate partner sexual violence is an indicator of escalation of the frequency and severity of family and domestic violence and puts the victim at a much higher risk of being killed (ANROWS, 2019).

*Coercive control creates a climate of entrenched fear which makes it difficult to facilitate or negotiate safe sexual activity, so women in intimate relationships agree to sex rather than take the risk of triggering an escalation of violence or abuse.*

***Women's Legal Service WA***

As well as an escalation of violence, we heard that victim-survivors fear other consequences of reporting such as loss of financial stability, homelessness, concern for the welfare and wellbeing of children, family law implications and other major disruptions to their lives. These impacts were directly inflicted by the perpetrator or arose as part of the systemic issues affecting women escaping family and domestic violence.

*[W]omen who experience IPSV [intimate partner sexual violence] are likely to face a myriad of challenges when confronted by the criminal justice system. They may be dealing with the trauma of physical, emotional and sexual assault, the stress and confusion of multiple and interrelated legal proceedings, the financial and emotional cost of separation, the threat of child removal and guilt over reporting a loved one.*

#### **Women's Legal Service WA**

Stakeholders stressed that women experiencing IPSV often face multiple intersecting legal and social welfare issues when they chose to report and/or leave a relationship. These issues included family court matters, child protection matters and restraining order applications as well as housing, tenancy and financial issues. The complexity of dealing with multiple systems, without consistent support, was seen as a barrier to reporting.

During the consultation, we heard that victim-survivors who were offended against by a family member or friend did not want to report because they were concerned about the perpetrator's welfare, felt guilty about reporting them, or did not want them to be charged or prosecuted (but sometimes did want them to be held accountable for the offending). For victim-survivors who had experienced sexual offending as a child by a family member, a fear of consequences for themselves and the entire family unit was a significant barrier to reporting. We also heard that people with disability were fearful of repercussions to their care and living needs where the perpetrator was a caregiver.

Where the perpetrator was a public figure or had a position of status in a small community, victim-survivors felt less empowered to report the offence and more fearful of the consequences if they did. Research confirms that for men accused of sexual offending, status in the community was seen as a factor in the believability of a woman's report of sexual offending (Enhance Research, 2022, cited in WSJT, 2022, p. 79). A fear of backlash, stigmatisation or isolation from wider community networks was identified as a major barrier by stakeholders.

*I was scared of trouble from other family members if I reported him.*

#### **Victim-survivor**

*Due to the size of the town, the remoteness and the demographic, an immediate challenge is keeping the offender and victim apart as well as all their families. It is a small town. News travels fast and things like sexual assault are very emotionally charged subjects, often leading to unrest in the community when families clash.*

#### **WA Police – Regional**

*Hearing stories from other women, I don't know if I would ever report...he pleaded guilty, went to prison, but the message to other victims was 'You are losing everyone if you do it'. Everyone will turn their backs on me. They don't want to see me heal; they want me to take their shit.*

#### **Victim-survivor**

### 6.2.3 Mistrust of the criminal justice system

We heard that for many victim-survivors the impact of the offending was compounded by fear of the negative impacts of the criminal justice process. These fears were based on the victim-survivor's own previous experiences, hearing stories about other people's poor experiences with the criminal justice system and media reporting on high-profile cases that were critical of the victim-survivor or highlighted the negative mental health impacts of the trial process. Due to the hidden nature of sexual offending and the criminal justice process, most community awareness is gained through mainstream or emerging media (Tidmarsh & Hamilton, 2020, p. 1).

The evidence base indicates that widely known issues with the criminal justice system, such as long waiting times for trials, cross-examination and low conviction rates, are significant barriers to reporting (KPMG & RMIT, 2023, p. 24). As we discuss further in Chapter 7, the potential for retraumatisation by the criminal justice system is well established in research and we heard this reflected during consultation. Considering what we know about victim-survivors' experiences of the criminal justice system, the decision not to report to police can be viewed as a rational choice based on the goal of avoiding reprisal, stigmatisation or retraumatisation (Lievore, 2025, p. 10).

*My experience with the criminal justice system was almost equally traumatising as the assault itself.*

#### *Victim-survivor*

In Chapter 5 we explained the community attitudes that can shape (consciously or unconsciously) responses from friends, family, police, the judiciary, juries and other actors in the criminal justice system. In its submission, ANROWS referenced a 2023 report which found that police responses in particular were often 'mired in concepts of "real rape" and victim-blaming narratives' (KPMG & RMIT, 2023, p. 41). Other studies, including a survey of front-line family, domestic and sexual violence (FDSV) workers across Australia, also found that victim-survivors reporting sexual violence are frequently met with disbelief and victim-blaming attitudes when first reporting to police (Cullen et al., 2022, p. 47). Stakeholders told us that fear of being subject to negative responses by police or other first responders creates a significant barrier to reporting.

*I did not want to report because...I was drunk and did not feel I would be believed.*

#### *Victim-survivor*

*Make sure the police officers arriving at the callout do not degrade, shame or have misogynistic views towards the victim!*

#### *Victim-survivor*

Stakeholders commented that in regional and remote areas the local police were sometimes friends or acquaintances of the perpetrator, leading victim-survivors to fear that police would not believe them or would 'take his side' if they reported the offending.

*[Victim-survivors may not report due to a] belief that they may not be believed as offender comes from prominent family or may know local police.*

#### **Victim-survivor**

The consultation heard that other victim-survivors do not report due to a mistrust of government institutions, including police. Such distrust could be based on a range of reasons, including previous criminalisation, negative experiences as victims of previous offences or other personal and historical factors. A mistrust of police was cited as a significant barrier for groups who have experienced historical mistreatment and discrimination by police and other government institutions, including Aboriginal people, people from refugee backgrounds and people who engage in sex work.

*[A] survivor's decision whether to report a sexual offence may be influenced by the survivor's experience of marginalisation. This is also consistent with our experience. Knowmore assists many survivors, who, for a range of reasons, do not trust the police.*

#### **Knowmore Legal Service**

People in contact with the justice system as offenders or accused can be particularly reluctant to report sexual offending to police, given that police officers represent the same institutions that are criminalising them. Stakeholders saw this as concerning given the link between offending and the experience of family domestic and sexual violence. It is estimated that between 70% and 90% of women in custody in Australia have experienced family, domestic and sexual offending (ANROWS, 2020b, p. 2).

#### **6.2.4 Lack of information, support and safety**

Victim-survivors and other stakeholders told us there is a lack of community awareness about how to report sexual offending, options for support and the criminal justice process. There is a lack of accessible information, including information tailored to different groups. Stakeholders commented that many victim-survivors choose not to report because there are too many unknowns and they cannot find the right information to help them. While some stakeholders noted that there are various sources of information about the reporting process available online, the information was not easily accessible or appropriate. Information was spread across multiple websites, including some that many victim-survivors would be unlikely to know about. This fragmentation was seen as a particular barrier for victim-survivors and their families who may be experiencing the impacts of trauma in the aftermath of an offence. Research suggests that if outcomes are uncertain or processes are too complex, victim-survivors are less likely to engage with the criminal justice system (Garnelo et al., 2109, cited in VLRC, 2021, p. 144).

*Many victim-survivors don't even know how to report – they only know to call triple zero. But there's not enough of the right information. Victims don't know what happens next after they report.*

#### **Victim-survivor**

*Prior to my reporting experience, there was very little information available online about what the reporting and investigation process entailed.*

#### **Victim-survivor**

Stakeholders also told us that not having a readily available source of professional support to assist with the decision to make a report, the report itself and the criminal justice journey thereafter was a barrier for victim-survivors engaging with the system. In Chapter 7 we explain that a lack of availability of specialist sexual assault support services, including counselling services, was consistently raised throughout the consultation process. We heard that in some regional and remote areas there is a complete absence of specialist support for victim-survivors. Where services are available, there are significant waiting lists for victim-survivors to receive counselling, and this has a direct impact on reporting decisions.

We heard that while many dedicated people provide essential services to victim-survivors, often going beyond the scope of their roles, they are consistently constrained by a lack of resourcing to meet the level of demand in their communities. This was a systemic issue in regional and remote areas, with service providers stating that in some cases funding was available but they were unable to recruit or retain suitable staff as there was a lack of affordable housing and childcare in the town. This lack of essential services also impacted on victim-survivors' reporting decisions, as they may have few options for safe accommodation and other essential services if they live with or near the perpetrator.

*Isolation can be a big issue. Isolation from police facilities, support services, support networks, friends, and family. This isolation may often be used by an offender (e.g. in family domestic situations) to control the victim; with those victims often having far less options for escape in remote communities (e.g. shortage of available housing).*

#### **WA Police – Regional**

In most regions, the criminal justice and support service systems simply did not have the capacity to respond to victim-survivors in a timely, trauma-informed and culturally appropriate way. Not being able to create a safe environment for reporting was seen as a major barrier. In regional and remote areas in particular, fears about a lack of confidentiality and privacy can prevent reporting. Victim-survivors described not wanting to attend police stations that were in the middle of town, not wanting to speak with police officers who they knew socially and fearing gossip about them spreading in the community.

*Anonymity of victim is almost impossible to maintain in small remote communities.*

#### **WA Police – Regional**

### **6.3 Intersectionality and barriers to reporting**

While all victim-survivors face barriers to reporting, cultural, community and individual characteristics can add complexity to the experience of help-seeking and reporting. While women are the overwhelming majority of victim-survivors of sexual offending, they are not

a homogeneous group. An intersectional lens can deepen our understanding of the systems of inequality and discrimination that make it harder for some victim-survivors to report. In this section we discuss many of the personal and systemic barriers highlighted in the previous section, but we seek to explain how they affect some cohorts differently or in compounding ways. Many of the barriers to reporting discussed in this chapter, and particularly in this section, remain relevant throughout a victim-survivor's experience in the criminal justice system. Reporting is simply the first point of contact with the criminal justice system, but the social factors, inequality and discrimination persist at each stage and will often lead to high rates of attrition and disengagement throughout the criminal justice process.

We have highlighted the population groups that were raised with us most often in consultation, but this is not an exhaustive list. We also note that not each population group is self-contained; many victim-survivors will have multiple cultural, community and individual characteristics, adding complexity to their experience of sexual offending and their decision on whether to report. We heard that for some victim-survivors who were facing multiple forms of disadvantage – including mental health issues, substance misuse, homelessness and poverty – reporting a sexual offence was simply not a priority or possibility. The effort of addressing and coping with more urgent issues left them without the physical, emotional or practical resources to report sexual offending. This speaks to the impact of broader inequality in our community on victim-survivor choice. While policy on many of these social factors is beyond the scope of this review, it is important that any reforms to the criminal justice system are cognisant of the needs and experiences of all victim-survivors and are aligned with government actions that address these issues.

### 6.3.1 People with disability

In WA, there are more than 411,500 people living with disability (WA Department of Communities, 2020, p. 15). *A Western Australia for Everyone: State Disability Strategy 2020–2030* identified 'Justice' as a strategic priority under the Rights and Equity pillar, and this includes providing tailored support for people with disability who are victims of crime (WA Department of Communities, 2020, p. 59). People with disability are diverse and active contributors to communities right across WA, but they are vulnerable to sexual violence victimisation – the rate of sexual assault of people with disability is double that of people without disability (Disability Royal Commission, 2023a, p. 47). They are also at risk of being victimised by perpetrators who provide essential care, including intimate partners, family members, carers and other support providers (Our Watch, 2022, p. 117). People with disability also face additional barriers to reporting and remaining engaged with the criminal justice system. In consultation we were told that these barriers include a lack of accessible information about what constitutes sexual offending and their rights, restrictions on their decision-making and autonomy, lack of accessible information about, and communication options for, reporting, and a fear of consequences due to their reliance on the perpetrator for care and daily living. Many of these barriers are driven by attitudes and systems that disadvantage people with disability in our community.

*Ableism is when people without disabilities are privileged, and people with disabilities are disadvantaged and excluded, because of social standards about who is worthy or ‘normal’.*

### ***Our Watch, Changing the Picture***

*People with disabilities get even less information than the general population and require more supports when dealing with the criminal justice system.*

### ***Disability support organisation***

We heard that societal fears, prejudices and discrimination against people with disability influence interactions between people with disability and police. When reporting incidents of sexual violence, people with cognitive impairment are often not taken seriously. Their credibility is frequently questioned due to misconceptions about their ability to understand or accurately recount their experiences. As a result, victim-survivors with disability may hesitate to disclose their experience of sexual offending or may be discouraged from pursuing support or justice. People with disability who are victims of crime consistently report fearing that they will not be believed or protected by police if they report a crime (Maher et al., 2018, p. 30).

Additionally, the power differential that exists between police and victim-survivors with disability (Disability Royal Commission, 2021, p. 108). Research reinforces views we heard in consultation that ableist attitudes lead police to view people with disability as less credible and/or reliable (AHRC, 2014, cited in Disability Royal Commission, 2021, p. 100). Other stereotypes and practices that can influence reporting decisions by, and police responses to, people with disability, include:

- normalisation or victim-blaming of people with disability
- the ‘halo effect’ whereby a partner or carer of a person with disability is seen as an angel who can do no wrong
- control of decision-making for people with disabilities
- social segregation and exclusion, including institutional settings that isolate people with disability from support networks and limit options for disclosure (Our Watch, 2022, p. 41).

The high rates of criminalisation of people with disability, particularly Aboriginal people with disability, can act as another barrier to reporting as victim-survivors may mistrust police and/or fear further criminalisation (Disability Royal Commission, 2021, p. 100). Stakeholders noted there are additional barriers for people who are assaulted by service providers or support people; often the matter is dealt with internally and the victim is afraid of retribution or of what might happen to them.

*There is a lot of inappropriate behaviour from service providers that are not reported to an external provider, matters that are dealt with internally. They are related to those systems.*

### ***Disability support organisation***

Access to safe housing, economic security and care will also impact on people with disability's decision to report. Without a secure living situation, responses to violence have little chance of succeeding (Maher et al., 2018, p. 4). As noted by Maher, people with disability require safety and security, including access to appropriate support services, to achieve access to justice and to make informed decisions about reporting (p. 40).

### 6.3.2 Aboriginal people

Aboriginal people face unique and complex barriers to reporting. These barriers relate to the continuing legacy of colonisation and systemic disadvantage. There is limited data on reporting rates among Aboriginal peoples; however, some studies show that they are lower than for non-Indigenous communities (Willis, 2011, p. 1). While Aboriginal peoples' strength and resilience have sustained the world's oldest living culture, the repercussions of the continuing harm of colonisation are still evident today in systemic disadvantage, systemic and institutional racism and intergenerational trauma. The Senate Inquiry into Missing and Murdered First Nations Women and Children noted that Professor Tom Calma AO, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, identified 'colonisation and related violence perpetuated by intergenerational trauma and the undermining of traditional gender structures as the root cause of domestic, family and sexual violence' (Senate Legal and Constitutional Affairs References Committee, 2024, pp. 37-38; Guthrie & Lovett, 2020, p. 7).

Aboriginal communities provide unity and solidarity through their shared experiences, culture and spirituality. While a close-knit community provides support for victim-survivors of sexual offending, it may also present challenges. Stakeholders told us that sexual offending is a taboo topic in some Aboriginal communities. An Aboriginal Community Controlled Health Organisation said that many Aboriginal victim-survivors do not report because they feel shame and fear and because they do not have the words or tools to talk about sex, let alone sexual offending. In smaller communities this shame and silence is further compounded by a lack of privacy and confidentiality.

*Sex and sexual violence is a taboo thing to talk about in small communities – shame, stigma, people just go along with it. Sex is taboo, people don't talk about sex in general. How do you communicate when something horrible happens to you? How do you understand the difference of what is normal and what is not? In the community (small communities), it is a taboo thing to mention.*

#### *Aboriginal Community Controlled Health Organisation*

Stakeholders reported mistrust of police and government institutions as a strong barrier to reporting for Aboriginal people. This mistrust can stem from previous experiences of racism and discrimination but may also stem from current interactions with government services. For example, Aboriginal victim-survivors may choose not to report out of a fear that their children may be removed by child protection services as a result. Their experience of previous criminalisation may also create a barrier to engaging with police because of previous poor treatment or the fear of being arrested.

*There is a general fear of the justice system, particularly if they have made contact with the system before due to offending behaviour... [many have*

*experienced] unfair treatment by police, they will not trust the justice system as a victim-survivor...Often people we provide services to are going through the system as offenders. That adds another layer of complexity. If they walk into a police station they fear they will be arrested themselves...[these] may be minor technical breaches like breaches of bail/parole or missing court. But it still stops them reporting serious offences like sexual violence.*

### ***Aboriginal legal service***

The Senate Inquiry into Missing and Murdered First Nations Women and Children identified harmful institutions and structures that help to create intersectional discrimination and barriers to help-seeking or reporting. The Australian Human Rights Commission (AHRC) submitted to the Inquiry that policing and justice systems throughout Australia have engaged in discriminatory treatment of First Nations women and children and that this treatment has manifested in a range of acts and omissions that undermine the equal enjoyment of human rights (Senate Legal and Constitutional Affairs References Committee, 2024, p. 44).

It is important to highlight that many perpetrators of sexual violence against Aboriginal women are non-Indigenous. However, a long history of discrimination and mistrust of criminal justice processes may also inform Aboriginal victim-survivors' decisions not to report because they do not want to see another person in their community go to prison. Often victim-survivors prefer to have options that do not involve incarceration for the perpetrator and may instead seek responses based in community decision-making and accountability for the person using sexual violence (Lievore, 2025, p. 113). We discuss some alternative justice responses further in Chapter 12.

*There is fear of the consequences within family and community. Particularly in a small community where shame and stigma can be stronger. Those are some of the barriers. Victims might not want to report because of the consequences they can face after such as conflict in the community.*

### ***Aboriginal Community Controlled Health Organisation***

Other research has found that structural factors such as poverty, a lack of housing and a lack of culturally appropriate supports, particularly in regional areas, contribute to Aboriginal women's decisions to report or not report sexual offences (Lievore, 2025, p. 110). Many support services are concentrated in metropolitan areas or regional towns, making them difficult to reach for those in remote locations, especially if reliable transportation is lacking. Even if victim-survivors can make the journey, there is a general shortage across the state of support services that are Aboriginal-led or culturally sensitive to ensure the support is both safe and effective. Consultation with regional stakeholders in WA also pointed to the lack of housing as a strong deterrent to reporting; there was simply nowhere for the victim-survivor (or perpetrator) to go.

#### **6.3.3 Women from refugee and migrant backgrounds**

Women from refugee and migrant backgrounds have vastly different lived experiences, which influences how they understand sexual violence, engage in society and disclose offending. During consultation, we heard that barriers to reporting for victim-survivors in

CALD communities include language barriers, social isolation, a reliance on the perpetrator for financial support or migration status, a lack of information on what sexual offending is and how to report it, and a fear of family and community backlash.

Women from refugee backgrounds may have endured hardship and trauma prior to and during the relocation process, with research indicating that many female refugees have experienced gender-based violence, including the use of sexual violence as a weapon of war (Simon-Butler & McSherry, 2019, p. 9). This can increase a victim-survivor's risk of experiencing family and domestic violence, including sexual violence (Vaughan et al., 2020, p. 11), and adds a layer of complexity when responding to sexual offending in Australia.

*Victims from culturally and linguistically diverse (CALD) communities, are unlikely to come forth due to a facet of reasons. Firstly, and most obviously, there is often a language barrier that is difficult for CALD victims to overcome. Secondly, there is a lack of understanding or awareness of Western Australia's sexual offending laws due to not growing up in Australia and not have legal influences around them. Thirdly, there is fear and stigma surrounding coming forth to report sexual offending due to cultural norms for CALD victims.*

#### *Community member*

We heard that cultural differences and community dynamics may deter victim-survivors from pursuing matters in the criminal justice system. Research indicates that victim-survivors often view family and domestic violence, including sexual violence, as a private matter which should be dealt with within the family (AIHW, 2025a). Victim-survivors may face direct or indirect pressure from their families and communities to keep the matter private (Lievore, 2025, p. 105). The 2021 *Migrant and Refugee Women in Australia: The Safety and Security Study* found that the most common reason (around 50%) victim-survivors of family, domestic and sexual violence did not disclose their experience was because they felt it was a 'private/personal/family matter' (Segrave et al., 2021). Women may be or feel entirely dependent on their partner for visa status security and will prioritise staying in Australia and cohesion of the family unit over reporting.

One stakeholder told us that members of some CALD communities may not recognise intimate partner sexual offending as a criminal offence. This can be linked to cultural beliefs around gender and relationships as well as a lack of accessible information about rights and laws in Australia. The 2021 NCAS found that respondents who had been born overseas and lived in Australia for less than five years were significantly less likely to demonstrate an 'advanced' understanding (21%) and rejection (13%) of violence against women than respondents born in Australia (48% and 38% respectively) (ANROWS, 2021).

*Misperceptions about the ambiguity of consent in different relationships (intimate, domestic, de facto) contributes to IPSV [intimate partner sexual violence] and in the case of CALD communities protects perpetrators in forced marriages.*

#### *Women's Legal Service WA*

A lack of culturally safe and appropriate services for victim-survivors of sexual offending was raised as a barrier to reporting during consultation. Stakeholders felt that victim-survivors often did not feel safe reporting directly to police and that there were few culturally safe services to help them with the process. Stakeholders reported a fear or mistrust of police as a barrier to reporting for victim-survivors from refugee backgrounds who may have faced discrimination, persecution or corruption of police and public institutions in their country of origin.

Appropriate professional support was seen as critical to victim-survivor reporting decisions for recent migrant and refugee victim-survivors, as they were often isolated from wider family and friend support networks who would usually provide emotional, social and practical supports to the victim-survivor. This was exacerbated in regional communities where any sexual violence support services were scarce, let alone culturally appropriate.

*There's a lot of burden on police to provide case management and it is not ideal because they are not equipped and don't have the resources to do so.*

#### ***Community support organisation for refugee and migrant women***

*In the CALD community, for refugees, there's no representation in the agency. We know there's underreporting from CALD communities.*

#### ***WA Police***

Challenges with communication and accessing information about sexual offending, reporting and support options greatly inhibit people with limited English proficiency from reporting (Vaughan et al., 2016, p. 5). The availability and quality of interpreter services was seen as a particular problem by specialist multicultural service providers. Stakeholders reported interpreters being unprofessional and bringing their own biases to interviews, and victim-survivors being concerned about confidentiality, particularly in smaller communities. Research suggests that interpreters working in settings where they were exposed to family domestic and sexual violence often lacked both training and support in this area (Vaughan et al., 2020, pp. 58–59).

#### **6.3.4 LGBTQIA+ communities**

Research shows that people from LGBTQIA+ communities are likely to experience higher rates of sexual violence than those outside the community (AIHW, 2020). Gay and bisexual men report higher levels of sexual victimisation than heterosexual men and bisexual women more than lesbian or heterosexual women (Tidmarsh & Hamilton, 2020, p. 10). The 2019 *Private Lives 3* survey of the LGBTQIA+ community found that half of all respondents had experienced sexual assault and three in five had experienced intimate partner violence (Hill et al., 2020, pp. 75–76).

The LGBTQIA+ communities also face specific barriers to reporting sexual offending. During consultation we heard that these were related to discriminatory attitudes, a lack of training of police and other first responders, and a lack of appropriate supports and services. A 2022 study of LGBTQIA+ people's experiences of sexual violence found that of the majority the people who had experienced sexual offending did not report it to the police, and that 100% of transwomen surveyed did not report to police (Layard et al., 2022, p. 34).

Research confirms that the experience of sexual offending in the LGBTIQA+ community can remain hidden because of hetero- and cis-normative attitudes towards sex and sexual violence and that broader social discrimination against people from the LGBTIQA+ community may create a barrier to reporting and seeking help (VLRC, 2021, p. 24). We heard that people from the LGBTQIA+ community may not feel safe reporting to police or engaging with the criminal justice system because of previous poor treatment or discrimination. A fear or mistrust of police occurs in the context of homosexuality having been illegal in Australia within the living memory of some members of the LGBTIQA+ community (Mitra-Kahn et al., 2016, p. 29).

The 2020 study into LGBTIQA+ people's experience of sexual violence found that many participants felt police were 'not skilled in understanding LGBTQ+ identities, and relationships' and that there were broader failings in the criminal justice system that contributed to their decision not to report (Layard et al., 2022, p. 36). People who identify as transgender report particularly poor experiences with police, with a fear of being misgendered being a barrier to reporting (KPMG & RMIT, 2023, p. 22). During the consultation we heard of instances of transgender people also being misgendered at specialist sexual assault services and referred to by their 'dead names'. Stakeholders also told us that male victim-survivors and victim-survivors of a female perpetrator feared that they would not be believed because of rigid gender norms and myths about 'real' victims.

*Some of our members see the police as a social threat rather than a social help for historical reasons. Many of the older members of the community spent a great part of their lives having their identity criminalised.*

#### **LGBTIQA+ support organisation**

Stakeholders reported that not having access to safe, appropriate and welcoming support services was a barrier to reporting for this group. There are no sexual violence or family and domestic violence support services in WA designed specifically for, or run by, LGBTIQA+ communities, although other LGBTIQA+ organisations may provide this support. Specialist sexual assault services that are delivered through women's health and support organisations may not feel safe or appropriate for some members of the LGBTIQA+ community. A lack of shared understanding when communicating about events related to a sexual offence, including terminology used to describe it, can cause confusion and frustration for the victim-survivors and the responder (Workman & Dune, 2019, cited in WSJT, 2022, p. 100).

A wider lack of appropriate services for LGBTIQA+ victim-survivors escaping intimate partner sexual violence, such as refuges and emergency accommodation, may also contribute to reporting decisions. Research has found that this is a significant issue for victim-survivors who identify as gay males, non-binary and transwomen (Layard et al., 2022, p. 52).

*[T]here are a lot of difficulties faced by the LGBTQIA+ community. There's a lack of understanding and systemic barriers. The system is very set up for heterosexual relationships.*

#### **Legal Aid**

### 6.3.5 People who engage in sex work

While there is limited data available, existing research shows that people who engage in sex work experience high levels of sexual violence and have some of the lowest rates of reporting (Quadara, 2008). The level of engagement with sex workers during the consultation process was low, so we have supplemented our consultation outcomes with findings from research. However, we did receive written submissions from two organisations representing sex workers in WA. Both submissions focused on the need to decriminalise sex work in WA, which would involve removing criminal penalties for sex work.

Research shows that the contexts in which people engage in sex work, as well as their working conditions, greatly influence their risk of experiencing sexual offending (Quadara, 2008). In WA, it is legal for an adult to engage in sexual activities for money, but most sex work-related activities are illegal, including street-based sex work (LRCWA, 2023, p. 54). The *Prostitution Act 2000* (WA) gives police a range of powers to enter properties and search, seize and detain without warrant and issue move on notices.

Stakeholders reported that this legal framework may prevent sex workers from reporting sexual offences out of fear of being penalised or subject to prosecution. Police are not viewed as being safe when they are the same people, or represent the same institution, that criminalises them. This mistrust can also be based on previous experiences of poor treatment by police and in the criminal justice system, as either complainants or accused persons. Sex workers working in brothels or escort agencies may be dissuaded from reporting to police by management out of a fear of prosecution, and workers may not want to get a reputation for ‘making a fuss’ and jeopardise their employment (Quadara, 2008).

The experience of sexual offending for people who do sex work, whether it occurs at work or in their private lives, is often disbelieved, ignored or silenced (Quadara, 2008). Sex workers may be seen by the community as undeserving of justice because they are sex workers. The idea that sex workers are to blame for the sexual offences they experience because of the work they do deeply influences the responses they experience when they disclose sexual offending victimisation (WSJT, 2022). We heard that the desire to avoid disbelief, judgement and stigma creates a strong barrier to reporting. Community attitudes about gender, sex and male entitlement both drive the perpetration of sexual offending against sex workers and inhibit their access to justice as victim-survivors (Quadara, 2008).

*The criminalisation of most aspects of sex work under our current legislation means sex workers feel they have little rights and protections under the law and are unwilling or unable to report crimes against them for fear of judgement or prosecution. This makes clients feel they have the ‘upper hand’ in sexual transactions and feel they can get away with inflicting violence against sex workers. Until WA sex workers are able to work under a fully decriminalised model with full worker’s rights and anti-discrimination protection, this trend of violence experienced by sex workers will continue.*

**SWEAR WA**

### 6.3.6 Older people

The Australian Institute of Health and Welfare defines older people as individuals aged 65 and over. This cohort represents one in six Australians (AIHW, 2024a). Older people face varying risks of sexual violence due to the diverse impacts of ageing. Two individuals of the same age may experience very different risks based on their overall health, physical wellbeing, mobility and cognitive functioning. These are all risks which tend to increase with age, leaving older Australians at greater risk of sexual offending.

Cognitive impairments such as dementia and Alzheimer's disease are more common in older people, with a prevalence of up to 33% (Keramat et al., 2023). These conditions dramatically impact victim-survivors in multiple ways that can compound and increase vulnerability. Cognitive impairments and lack of knowledge and rights can make it difficult for victim-survivors to recognise they have experienced sexual offending. If they do recognise the abuse and attempt to report it, they may struggle to clearly articulate their experience, leading to doubts about the accuracy or reliability of their accounts.

There are multiple social factors that impact older Australians and exacerbate their vulnerability to sexual violence. Older people are at greater risk of being isolated, often living alone or in aged care facilities where they depend on caregivers. Aged care settings are high-risk environments for sexual offending due to the inherent power dynamics and complex care requirements. The Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) heard accounts of sexual offending by residents and carers that were deeply concerning (2021, p. 96).

The Aged Care Royal Commission noted that the number of allegations of sexual assault has increased over the six years to 2021, in line with overall assaults. There were 426 allegations of sexual assault in 2014–15, which increased to 851 reports in 2019–20 (2021, p. 142), but this number was likely to significantly underestimate the true extent of alleged assaults in residential aged care because resident-on-resident alleged assaults are generally not reportable. Since 1 July 2007 the Australian Government has required approved providers of residential aged care to report certain alleged or suspected physical and sexual assaults against residents. This requirement does not apply if the alleged perpetrator is a fellow resident with a diagnosed cognitive or mental impairment and the provider puts in place arrangements to manage the alleged perpetrator's behaviour (p. 45).

Older people may rely on their caregivers to meet basic living needs such as medication, hygiene and food. Victim-survivors may also fear repercussions for reporting sexual offending, such as the abuse worsening or becoming more frequent, or having care withdrawn. If sexual violence is perpetrated by a staff member, the institution may discourage reporting or investigation of allegations to preserve its reputation. Finally, there is a stigma that surrounds sexual offending against older Australians as it is an uncomfortable truth that many prefer not to believe (Barrett, n.d.). This stigma is largely associated with ageism and ageist attitudes that incorrectly render older people as incapable of being either targets or perpetrators of sexual offending (Lyons, 2024).

### 6.3.7 Men

Male victim-survivors of sexual offending face unique challenges and societal perceptions that often complicate their experiences and access to support. Stereotypical notions of masculinity dictate that men are expected to be strong and self-reliant. Male victim-survivors of sexual offending may encounter stigma and scrutiny of their status as ‘legitimate’ victims due to deeply ingrained myths and misconceptions based on rigid gender norms. Such stigma often dismisses them and disregards sexual offences that may result from coercion or stupefaction.

Yet sexual offending can have a profound impact on how men view themselves as it may challenge and undermine their self-worth and self-esteem. Evidence shows that male victim-survivors are unlikely to seek either formal or informal support. This is a result of broader social patterning, with men being unlikely to use mental health and social services or seek informal support from friends and family in response to victimisation (Kaukinen, 2022). For the victim-survivors who do choose to seek support, WA offers fewer services and resources specifically tailored to male victim-survivors of sexual offending.

The 2024 Community Development and Justice Standing Committee Report, *Seeking Justice: Improving Options for Survivors of Institutional Child Sexual Abuse Volume 2* (Seeking Justice Report), notes that WA lacks gender-specific services to support victims of child sexual abuse, especially men (p. 53) and yet the 2021–22 PSS tells us that 3.6% of men had experienced sexual abuse perpetrated by an adult before the age of 15 (ABS, 2023a). The Seeking Justice Report also commented that having gender-specific services is important as men and women often react, behave and process things differently, and that men thus might not feel comfortable in a mixed-gender environment (p. 53).

## 6.4 Measures to address barriers to reporting

Addressing the factors that contribute to under-reporting is highly complex and requires tackling multiple interrelated social and economic issues. This section outlines three measures that may address the barriers discussed above. However, it is well established that measures to address barriers to reporting are likely to increase demand for response services downstream as awareness increases and opportunities for disclosure are created (Our Watch, 2021b, p. 18). It is therefore crucial that the response systems, including the criminal justice system, are adequately resourced to respond to this demand. Failure to do this would be counterproductive and create a significant risk of retraumatisation for victim-survivors.

### 6.4.1 Awareness, education and prevention

As described above and in Chapter 5, a lack of understanding about sexual offending, along with adherence to certain social norms and harmful community attitudes around sex, gender and sexual violence, contributes to the under-reporting of sexual offences. We also heard that victim-survivors do not always have access to accurate, timely and accessible information. While sexual violence (including sexual offending) awareness, education and prevention reform is broader than the scope of this review, such reform will help to transform the social conditions that contribute to under-reporting.

Awareness, education and prevention initiatives can also help the community to recognise sexual offending and empower victim-survivors to make informed choices about reporting and support. Improved community understanding will ultimately strengthen the formal and informal support systems available to victim-survivors. This will encourage reporting and improve overall experiences of the criminal justice system.

*An awareness program for persons in community concerning sexual offences. This program should identify what is sexual offending, how does it impact families and the risks to children from witnessing sexual offending or becoming direct victims of it themselves.*

#### **WA Police – Regional**

Addressing attitudes and social norms requires a whole-of-community response, which operates at every level of the socio-ecological model (Our Watch, 2021b, p. 6). As we noted in the introduction to this report, the Sexual Violence Prevention and Response Strategy is intended to be the framework for driving long-term cultural change around sexual violence in WA and will complement other key state and national strategies to tackle the drivers of sexual violence. The Strategy will also identify sexual violence as a *distinct* form of violence. A 2020 stocktake of Australian primary prevention initiatives in sexual harassment and sexual violence, commissioned by the Commonwealth Department of Social Services, found that most primary prevention initiatives fell within broader family and domestic violence or gendered violence frameworks, and recommended implementing initiatives with a targeted focus on sexual violence (Deloitte, 2020, p. ii).

During the consultation process stakeholders consistently supported the implementation of primary prevention initiatives to address sexual offending in WA. Many stakeholders suggested community education and awareness campaigns, particularly targeted to young people, to promote acceptable behaviour, healthy relationships and the support available to victim-survivors of sexual violence. Stakeholders felt that these initiatives should be delivered in schools and that programs such as Respectful Relationships and the recent introduction of mandatory consent education in WA schools were positive foundations to build on.

*I would also like to see community awareness campaigns about how immense an impact sexual assault trauma has on lives, and how common it is.*

#### **Victim-survivor**

Other stakeholders noted the lack of coordination and significant gaps in primary prevention campaigns in WA and emphasised the need for an increased focus on men and boys and for initiatives to be delivered across a range of different settings in the WA community. Some stakeholders also noted the limitations of broad community awareness campaigns, emphasising the need to also tailor initiatives to specific communities and to work with those communities to develop and deliver programs in effective ways. This was seen as crucial in regional and remote areas, where the expertise of local service providers who have trusted relationships within communities could be leveraged.

*We are trying to talk with the community about it [sex and sexual violence]. There's some progress, people are starting to come forward.*

### *Aboriginal Community Controlled Health Organisation*

During the consultation process we heard that the primary prevention workforce is still developing in WA. While we heard about pockets of good practice, this was often being undertaken by sexual assault specialist and other response services on top of their core roles, usually without additional resourcing. Our Watch (2021b, p. 9) also notes the importance of developing specialist primary prevention networks in Australia, noting that much of the expertise is in Victoria and the eastern states. Evaluations of primary prevention programs in other states have found that 'investment in a coordinated and funded approach to primary prevention of violence is essential to success' (Our Watch, 2021a, p. 2).

It is well established that primary prevention is most effective when it includes a range of mutually reinforcing community-level strategies tailored to diverse audiences (Rafael Almeida et al., 2016, cited in VLRC, 2021, p. 40). Primary prevention initiatives delivered under the Strategy should include tailored approaches for groups who are impacted by multiple forms of oppression and disadvantage around sexual offending and access to justice and support. Initiatives should recognise the unique drivers, contexts and impacts of sexual offending in these communities. They should be evidence-based and build on the success of existing frameworks and programs that have been proven to be effective.

*People with disabilities are an overrepresented population [as victim-survivors of sexual offending]; there could be more targeted efforts within this population and sector to disseminate information and resources'*

### *Disability support organisation*

We recommend that further consultation be undertaken to co-design and implement community-led approaches. This should involve working with people with lived experience, other community members and the many individuals and organisations with expertise in the subject matter and community. Research demonstrates that resourcing communities to develop their own primary prevention initiatives is more effective and builds more engagement in the community than approaches imposed from outside (Our Watch, 2021b, p. 8). In line with the *Aboriginal Empowerment Strategy 2021–2029*, *Aboriginal Family Safety Strategy 2022–2032* and *Delivering Community Services in Partnership Policy*, self-determination should be a key principle when working with Aboriginal communities on primary prevention, and partnerships with Aboriginal Community Controlled Organisations should be prioritised.

#### **Recommendation 1:**

The WA Government develop and implement targeted awareness, education and prevention initiatives as an action under the Sexual Violence Prevention and Response Strategy.

Initiatives should be informed by, and align with, national and state policies, programs and strategies, represent a diverse range of experiences and be community-led where possible.

#### 6.4.2 Information about the criminal justice process

We heard from many stakeholders that victim-survivors, their families and some service providers were not aware of options for reporting to police, what happens after reporting or who to go to for help. The lack of readily available information was seen as a significant barrier to reporting. While some stakeholders recognised that this information is available on various government agency websites, others, including victim-survivors, outlined that they struggled to find this information, particularly information on what happens after reporting.

As discussed earlier in this chapter, we know that most victim-survivors of sexual offending will disclose the experience to informal supports such as friends, family and other social contacts (informal supporters are sometimes referred to as bystanders) (ABS, 2023c). We also discussed the importance of bystander responses in influencing victim-survivor decision-making around reporting to police. Research shows that a substantial number of initial contacts and reports to police are made by friends, family members or bystanders (Lievore, 2025, p. 13). For these reasons it is essential that the entire community has baseline knowledge of, and ready access to information on, reporting, support options and the criminal justice process.

Stakeholders suggested that a single, easily searchable website with all the information about identifying sexual offending, reporting options, support services, criminal justice processes and compensation information would be beneficial to victim-survivors, service providers and the wider community. We heard that online resources were particularly useful for victim-survivors and their families who wanted information about reporting but were not yet ready to speak to someone directly on the phone or face to face.

*[It would be helpful] to have clear guidelines and understanding of what sexual assault is, and to understand that for many people, they are not going to realise what happened to them was assault or be able to talk for many years.*

##### **Victim-survivor**

The VLRC and the RCIRCSA recommended the creation of a central ‘gateway’ to meet sexual offending victim-survivor information needs (VLRC, 2021, p. 7; RCIRCSA, 2017, Recommendation 9.5). The development of a gateway website should be guided by evidence from evaluations of similar sites, as well as established principles for the design of legal and other help-seeking websites, and should integrate existing services (VLRC, 2021, p. 149; RCIRCSA, 2017, vol. 9, pp. 176, 178). The website should also incorporate best practice elements for alternative reporting, as outlined by the AIC in its 2023 report on alternative reporting options for sexual assault (Heydon et al., 2023).

*I would support community education campaigns. For instance, would be good for female toilets at schools, universities and clubs to have signage with a QR code to the booklet, as there will be a whole host of victims who may not even want to look at a police website for information. The message of being listened to should be central in any such signage.*

##### **Victim-survivor**

While a website is seen as an effective way to disseminate information broadly across the community, stakeholders pointed out that websites will not be accessible or preferable for everyone, including people in regional and remote areas where they may be little or no internet access, older people and some people with disability. Stakeholders suggested that the information provided on the website should also be disseminated via other methods, including written materials, social media and via community and other service providers, and that these communication and education methods should be tailored to the needs of different groups.

*An information package stating what the [reporting and criminal justice] process involves would be useful.*

**Victim-survivor**

*I believe an easy read and video short versions of the [Telling your story] brochure should be produced as the current written document may be overwhelming for victims.*

**Victim-survivor**

#### **6.4.3 Improved responses to disclosures and help-seeking**

While most victim-survivors will seek informal support in response to sexual offending, research has found that a substantial percentage (27%) of women reached out to formal sources of support after their most recent incident of sexual offending by a male, but only around 5% of women contacted police for advice or support (ABS, 2023d). During consultation we heard that common points of disclosure for victim-survivors in WA include FDSV services, other community organisations, schools and tertiary education providers, mental health services, health services, community legal services and religious/faith organisations. This aligns with evidence from the PSS (2022) which found that for women who experienced sexual assault by a male, the most common sources of formal support were counsellors and support workers (15%) and other (non-GP) health professionals (14%), followed by GPs (9%) (ABS, 2023b). It is also well established that victims of sexual offending frequently face complex circumstances that require multiple interventions from a range of community-based agencies (Breckenridge et al., 2016, p. 1).

*I felt that if there was a lot of support provided to a victim-survivor I may have reported my abuser then. Without the right support reporting an abuser is much scarier and it's something you feel as if you don't have the strength or courage to take on.*

**Victim-survivor**

Stakeholders viewed community, health, mental health, education and legal services as having a key role in supporting victim-survivors to report and linking them to sexual assault specialist services. These organisations are ubiquitous, accessible and often have long-standing relationships with their clients (VLRC, 2021, p. 167). They are often embedded in the communities they support and have the knowledge and expertise to provide culturally safe care.

*[What would improve the reporting process?] The ability to report through such agencies as Dept of Health, Communities or non-government agencies with the understanding that any reporting is referred to police for follow up.*

#### **WA Police – regional**

Service providers reported that victim-survivor disclosures were most likely to emerge over time as relationships of trust are built with workers. It was considered rare for a victim-survivor to approach a service directly for support with their experience of sexual offending; rather, disclosures tended to emerge during conversations about their other needs or circumstances. This is supported by evidence that victim-survivors seek support from known sources, and that the establishment of trust is a key factor in sexual violence disclosures (Victorian Royal Commission into Family Violence, 2016, p. 1; Lievore, 2025). These organisations can extend reach into communities that may not otherwise engage with police (VLRC, 2021, p. 180).

*Make it [the reporting process] less stressful for victims/survivors. Provide as much support to them and to their supporting network and families.*

#### **Victim-survivor**

The 2021–22 PSS showed that, in Australia, younger women aged 18–34 were more likely to seek informal support from friends and family (52%) than were women over 35 (35%) (ABS, 2023c). Given that young women are at particular risk of sexual offending, but are less likely to seek formal support, consideration should be given to which services and institutions they most interact with in our community and efforts should be focused on building the capacity and culture in these organisations to create safe and supportive environments that encourage help-seeking. Stakeholders felt that schools, universities and TAFE campuses were particularly important sites to upskill staff, and that this should build on existing efforts such as the whole-of-school approach to delivering Respectful Relationships and anonymous online reporting options at some universities.

#### **Services for women experiencing intimate partner sexual violence**

We heard that women experiencing IPSV as part of a broader pattern of FDV usually made disclosures to FDV services after they initially engaged with the service and once immediate safety, housing and family needs were met and trust had been established with workers. While we heard that FDV services provide an invaluable source of support to many women who have experienced IPSV (and other types of sexual offending), it was noted that in WA there is inconsistency in the level of understanding and expertise in responding to IPSV across the FDV sector.

We heard that for women experiencing IPSV who are not engaged with FDV services, women's health centres, child and maternity health services, Aboriginal health services and multicultural health services were safe places they could attend without (or with less) restriction from the perpetrator, and where they felt comfortable disclosing sexual offending. However, we also heard that victim-survivors did not always receive appropriate responses or care when they disclosed sexual offending in these places, and that further work is needed to ensure victim-survivors receive a consistent response.

At a minimum, organisations should be equipped to provide trauma-informed and person-centred responses to victim-survivors who disclose sexual offending, including through education, training and workforce development. The VLRC noted that unless we provide organisations in our community with specific training and education around responding to disclosures, they may share ‘the same systemic blindness we have as a community about sexual offending’ (VLRC, 2021, p. 44). Research supports the use of cross-sector workforce development and collaboration to acknowledge that there are multiple pathways to help-seeking (Cortis et al., 2018, p. 41). Training and workforce development should be funded appropriately and delivered by highly skilled professionals who specialise in responding to sexual offending but developed in consultation with community organisations who are specialists in their communities’ needs and informed by lived experience.

We heard that pockets of good practice in this area already exist and work in this area should build on the success of existing programs. WA Police has a crime prevention and community liaison unit, and the Sexual Assault Resource Centre (SARC) delivers training for health and other sectors and provides comprehensive resources on its website (North Metropolitan Health Service, 2025c). The Office of the Chief Psychiatrist publishes the *Chief’s Psychiatrist’s Guidelines for the Sexual Safety of Consumers of Mental Health Services in Western Australia* (2020), which includes a section on responding to sexual safety incidents.

A dedicated phone (and online) service to link professionals from a range of sectors to specialist advice and information to help them respond to sexual offending disclosures could be established. During consultation we heard that people working in a range of sectors, and particularly those who receive disclosures less frequently, would appreciate the opportunity to speak to an expert to guide them in helping their clients navigate reporting and support options. SARC already advertises a phone number health professionals can call at any time for advice (North Metropolitan Health Service, 2025c). Building on this service could be a cost-effective way to improve responses in regional areas where there is less access to specialist police and sexual assault services.

*Reporting through a doctor/social worker or counsellor without the police initially [would assist victims reporting sexual offending].*

**WA Police – Regional**

**Recommendation 2:**

The WA Government progress workforce development and build capacity for support organisations operating in diverse sectors on responding to sexual offence disclosures as a priority action in the Sexual Violence Prevention and Response Strategy.

#### 6.4.4 The legal status of sex work

As outlined above, stakeholders have reported that existing legal frameworks may prevent sex workers from reporting sexual offences out of fear of being penalised or subject to prosecution.

Other Australian states have decriminalised sex work, including NSW and Victoria. In 2021, the Queensland Government asked the Queensland Law Reform Commission (QLRC) to conduct a review and recommend a framework for a decriminalised sex work industry in Queensland, which culminated in *A decriminalised sex work industry for Queensland* (QLRC, 2023). The report made 47 recommendations. Similar to WA, in Queensland sex work was regulated under a partial criminalisation model established by the *Prostitution Act 1999* (QLD). This allowed licensed brothels to operate under strict regulations but criminalised independent sex work and street-based sex work. This meant that sex workers who operated outside licensed brothels faced legal penalties, which forced many to work in unsafe environments. For example, independent sex workers were prohibited from working together for safety or hiring personal security, and street-based sex work remained illegal, exposing workers to heightened risks of violence, exploitation and abuse.

The QLRC identified that the current Queensland laws stigmatised sex workers, increased their vulnerability to exploitation and violence and failed to protect their human rights. Following a consultative process, QLRC recommended a framework for moving towards decriminalisation (QLRC, 2023, pp. 3, 5).

The QLRC noted that a period of time would be needed to transition to the decriminalisation framework. This period would require awareness-raising programs, education and training to promote health and safety in the industry, address stigma and attitudes to sex work and sex workers. Building relationships of trust between sex workers and police would also need to be a focus. The QLRC was asked to consider whether the criminal law should be changed to address concerns about fraudulent promises to pay sex workers for agreed sexual services, and submissions to the review also raised issues about stealthing (QLRC, 2023, p. 17).

On 24 April 2023, the Queensland Government indicated its broad support for the recommendations. On 15 February 2024, the Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Bill 2024 was introduced into parliament. The *Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024* (QLD) (the Act) received assent on 9 May 2024. Following the introduction of the Act, sex work has been decriminalised, removing previous criminal charges and penalties for workers and businesses. Soliciting sex work in public is no longer a criminal offence. This means sex workers now have greater rights and protections under the law, and their work is treated the same as any other lawful profession. Workplace health and safety laws now apply to sex work businesses.

Issues similar to those examined in Queensland were considered by the LRCWA in Project 113 Final Report. The LRCWA stated (p. 54):

*[O]ne of the guiding principles of this review is that sexual offence laws should be non-discriminatory: everyone is equally deserving of the*

*protection and sanction of the law. This includes people working in the sex industry. The fact that an individual works in the sex work industry does not mean they have fewer rights to sexual autonomy or bodily integrity, or that they do not deserve to be protected from sexual exploitation.*

**LRCWA (2023, p 54)**

The LRCWA recommended repealing section 191 of the Criminal Code (procuring a person to be a prostitute) on the basis that it is rarely used and the language is archaic (2023, Recommendation 60). We recognise that sex workers experience many barriers to help-seeking and rates of disclosure are impacted by factors other than legislative frameworks. However, to protect the safety of people who engage in sex work, support their engagement with the criminal justice system and uphold their human rights, we recommend consideration be given to developing a framework for moving to decriminalisation of sex work.

**Recommendation 3:**

The WA Government consider developing a framework for moving to decriminalisation of sex work.

## 7 Overview of the criminal justice system

In this chapter, we provide an overview of the criminal justice system in WA, discuss its impact on victim-survivors and look at the critical whole-of-system reforms that may support victim-survivors through the process and improve their experience. Any reforms must be understood in the context of victim-survivors' justice needs and the concept of procedural justice, so we discuss both in this chapter. Subsequent chapters look at specific aspects of the criminal justice system such as reporting, investigating, pre-trial and going to trial.

### 7.1 The criminal justice system

The criminal justice system is an overarching term used to describe all the processes and organisations that provide a legal response to criminal offending. The criminal justice system is complex, and we know that many victim-survivors find it traumatising and overwhelming (WSJT, 2022, Recommendation 50; WSJT, 2023; VLRC, 2021; Judicial Council on Cultural Diversity, 2015).

WA has an adversarial criminal justice system. The aim of the adversarial system is to ensure a fair process for determining whether a person accused of an offence is guilty or not guilty of the crime. The State of WA (represented by WA Police or the ODPP) will bring a case against the person accused of the sexual offence to be tested in court and, if the accused pleads not guilty to the charges, requires the jury to be satisfied that the charges are proved to a standard of proof that is 'beyond reasonable doubt'. In certain circumstances, a charge may be heard in the Magistrates Court, or by judge alone in the absence of a jury in the higher courts.

For the purposes of this report, we define the criminal justice system starting from the point of reporting to police to the point at which the offender is released from custody. The criminal justice system includes organisations and people such as WA Police, the ODPP, court staff, judges and lawyers. Working alongside criminal justice organisations are organisations and people that provide support to victim-survivors, including sexual assault specialist services, victim support services and healthcare providers.

Figure 3 below illustrates a victim-survivor progression through the criminal justice system that is similar to one we used as a consultation tool. This diagram is a simplification. The criminal justice system does not operate in isolation; there is a complex interplay of circumstances that impact the victim-survivor in the criminal justice system and many factors that contribute to victim-survivors' decisions to engage with or disengage from the criminal justice system. Many of the factors contributing to the under-reporting of sexual offences, which we discussed in the previous chapter, continue to impact victim-survivors throughout their engagement with the criminal justice system.



Figure 3 Victim-survivor journey through the criminal justice system

## 7.2 Attrition

In Chapter 5 we discussed the discrepancy between the self-reported incidences of sexual violence collected in ABS victimisation measures and the number of sexual offences reported to WA Police. The data highlights the very large number of sexual offences that go unreported. Research has established that the small proportion of sexual offences that are reported face a range of barriers and filtering mechanisms, which means that few result in a charge, prosecution or conviction (ALRC, 2010a). This phenomenon is known as attrition. Sexual offences have one of the highest attrition rates of all offences in WA (Tarrant et al., 2022; LRCWA, 2022, p. 35). In 2021 only one in eight reports of sexual violence led to police laying charges. Moreover, in cases where a person was charged, rates of conviction for sexual offences were the lowest of all offences (Tarrant et al., 2022; LRCWA, 2022, p. 25).

Decades of research shows that prosecution of adult and child sexual assault cases is characterised by:

- relatively high attrition rates both after the first report to police and prior to trial
- a relatively low guilty plea rate for those charged
- a relatively low probability of conviction if the case goes to trial
- relatively high rates of success on appeal (Cossins, 2020, p. 29).

During consultation, stakeholders outlined that attrition occurs for a variety of reasons. For example, victim-survivors can disengage if they do not receive a positive police response, or an investigation process can be too demanding for a victim-survivor, particularly if they do not have supports in place to help them. Matters may also fail to progress if the police or prosecution decide not to pursue charges, or the accused may be acquitted at trial. This echoes the findings from a review in England and Wales that attrition can occur because:

- the complainant (victim-survivor) decides not to continue with the case
- there is not enough evidence to prosecute the accused
- the accused is acquitted in court (Stern, 2010, cited in VLRC, 2021).

The terms of reference for this review asked us to consider why people report but do not continue with the formal legal process. We outline some of the reasons why victim-survivors disengage at each stage of the criminal justice process in certain chapters in the report, but the overall attrition rate highlights the justice gap for sexual offending and how difficult it is to secure a conviction for sexual offences. Increasing the rate of convictions is important and many reforms suggested in this report may assist in this regard, but the attrition rate is only part of the picture. Securing more convictions for sexual offending cannot be the sole purpose of criminal justice reform (Stern, 2010, cited in VLRC, 2021, ch 1, fn 26). Conviction rates are only one measure of the effectiveness of reforms focused on the investigation and prosecution of sexual offending (Cossins, 2020, p. 4).

In her foreword to the 2022 annual UK victims of crime survey, the UK Victims' Commissioner stated that 'victims care deeply about how they are treated and place a high value on procedural justice. Indeed for over half of those we surveyed, how the justice system treats them matters more than securing a conviction' (2023, p. 2). In the remainder of this chapter we discuss the impact of the criminal justice system on victim-survivors and how it may be falling short of providing the procedural justice they need. We look at victim-survivor justice needs and how overarching reforms may effectively address such needs.

### **7.3 Victim-survivors' experience of the criminal justice system**

For many victim-survivors entering the criminal justice system, the single biggest shock is discovering how little they seem to matter. Despite the crime itself having a profound impact on their lives, the central focus of the criminal justice system is on the accused (Herman, 2005, p. 581). Victim-survivors have many reasons for engaging with the criminal justice system and each survivor will have a unique experience. Some will feel empowered by being able to speak out about their experience (North Metropolitan Health Service, 2024) and possibly preventing similar abuse happening to another person. Others will express satisfaction with their interaction with investigatory, prosecuting and victims' service agencies and increased confidence in the justice system. Many other victim-survivors express profound dismay at the way they were treated by the criminal justice system (VLRC, 2016, p. 22). What is clear from our consultation and from other inquiries is that navigating the justice system can be just as – or sometimes even more – challenging for a victim-survivor than their experience of the offence itself (ACT Government, 2021).

*I work within the [criminal justice system] and specialise in making sexual offences more safe for victims to report, and I still do not feel like I would personally report future crimes which says to me we have a long way to go to make victims feel safe and believed.*

### **Victim-survivor**

The Australian Senate Legal and Constitutional Affairs References Committee recently heard that the criminal justice system is significantly retraumatising victim-survivors and that they have little hope of achieving justice through the process (2023, p. 104). In the 2022 annual UK victims of crime survey, respondents reported having a low level of confidence and trust in the police and the criminal justice system, which often led to feeling let down by those responsible for investigating or prosecuting the crime (Victims' Commissioner (UK), 2023, p. 13). We have discussed the impact of sexual offending in Chapter 5, but the long-term harm of sexual offences is often compounded by interaction with the criminal justice system and the experience can prolong a victim-survivors' recovery (KPMG & RMIT, 2023, p. 100).

In Chapter 5 we discussed the myths and misconceptions in relation to sexual offending and how they impact almost every aspect of the criminal justice system. In its submission, ANROWS noted that 'victim-blaming narratives, rape myths, and mistrust of women have negative impacts on victim and survivors' experiences with the criminal justice system'. Recent, high-profile sexual offence trials and media reporting highlight the myths and misconceptions about sexual offence victimisation. In reporting on the trial of an accused former rugby union player, the complainant was characterised by defence counsel as 'a manipulative person who curated circumstances to turn herself into a victim' (Reix, 2024). In another high-profile trial, supporters of the offender encouraged journalists to depict the victim-survivor as an escort (AAP, 2024).

Yet recent media reporting has also highlighted the deficiencies of the criminal justice system in responding to sexual offending. What this means for victim-survivors is an embedded fear and mistrust of the criminal justice system's ability to meet their needs, and this is a significant hurdle to overcome before they even decide to report to police. We do not acknowledge nearly enough the strength and courage of victim-survivors who engage with a system that is portrayed as being so heavily stacked against them.

*[There is] a gigantic disconnect between the foundational principles of our legal system and the reality of how sex crimes take place. It's appropriate that crimes should have to be proven so you don't just go around prosecuting people who are innocent. But the whole nature of how the law works — in tandem with the way the police investigate crimes — is a horror show for victims of sexual assault. The legal principle of 'innocent until proven guilty', for example, takes on a whole different meaning in the 'typical' rape case. When it's one person's word against another's, the presumption that the accused is innocent is also a presumption that the victim is lying.*

*Ting & Palmer (2020)*

### 7.3.1 The system is complex and difficult to understand

The criminal justice system consists of multiple components, each with its own principles and processes. The complexity of the system makes it difficult for victim-survivors to navigate. Criminal justice system processes are also difficult for victim-survivors to understand without support from the system. A government agency told us that it is important to manage victim-survivors' expectations about how long investigations and court processes take, and about how long sentences are likely to be in the event of conviction. Victim-survivors noted that being kept informed, rather than being left in the dark and feeling neglected, can help support their mental and physical wellbeing.

*We go to law school for six years to understand the processes and its complexities. We can't expect people to grasp it right away. Victims need help in understanding why there must be a high burden of proof and that the concept of justice that operates in the system might be different from what they expect.*

#### *Legal assistance provider*

Stakeholders stated that the process of filing a police report, obtaining a restraining order or participating in a trial involves a large amount of information and paperwork that is difficult to understand. Stakeholders also noted that the terminology and language used throughout the criminal justice system is confusing and intimidating. This can be exacerbated for some population groups who may need easy read materials, interpreters or other communication support.

*The biggest [challenge] from my perspective is about people understanding the court process and the bit around that. The police, the family liaison, more than one charge or more than one victim, what does it mean.*

#### *Government agency*

### 7.3.2 The system is not person-centred and does not offer continuous support

The criminal justice system and associated support services often operate models that are rigid and lack flexibility to tailor supports to victim-survivors. Stakeholders emphasised that this results in an impersonal, one-size-fits-all approach that does not respond to individual needs. Inflexible service models and lack of resourcing mean victim-survivors are not receiving the support they need when they need or want it.

The 'black and white' or binary nature of decision-making in the criminal justice system – such as the police decision to charge or not charge, the prosecution decision to proceed or not proceed and even the verdict of guilty or not guilty – does not reflect the reality of victim-survivors' needs, which one service provider described as often far more 'grey'. This contributes to a feeling of powerlessness, which can be heightened when the victim-survivor does not fully understand the system or the process.

*There didn't seem to be any respect or consideration about what it takes as a citizen to report a crime and see it all the way through the justice system.*

#### *Victim-survivor*

We heard from many stakeholders that the criminal justice system is not culturally safe for some population groups. This was emphasised by Aboriginal legal assistance providers and Aboriginal Community Controlled Health Organisations, who said many Aboriginal people view the criminal justice system as alien and not aligned with their cultural values and practices. Systemic racism and discrimination within the criminal justice system towards Aboriginal people can further contribute to feelings of alienation and disconnection.

*The system needs to think about how to make it more secure, appropriate and supportive for Aboriginal people. You need to do that to increase the number of complainants that come forward.*

#### *Aboriginal legal assistance provider*

Despite therapeutic and counselling support being critical for victim-survivors as they engage with the criminal justice system, stakeholders commented that such support is not consistently provided or funded, and that there are discrepancies between what is available in the Perth metropolitan area and regional WA. Of the services that are provided, stakeholders noted that victim-survivors are required to meet strict eligibility criteria for access. For example, there are criteria to be registered on the Victim Notification Register (VNR) or to receive support from the Victim Support Service (VSS).

A victim-survivor's progression through the different stages of the criminal justice system is often disrupted, with limited continuity of support. A stakeholder outlined that ongoing contact between the victim-survivor reporting to police and the ODPP taking over the case is important; if this continued contact is not provided, the victim-survivor may become disengaged and the pre-recording of evidence for trial can fall through. Continuity of support and communication is particularly difficult in regional and remote WA.

*You begin with one person or agency and move through various processes that are dealt with by different organisations. This inevitably leads to you being completely alone or having to retell your story multiple times.*

#### *Victim-survivor*

Stakeholders shared examples of services collaborating well to support victim-survivors, but there remains scope for improvement. We heard that while there is some level of support provided to victim-survivors by the system there is no joined-up approach. Many stakeholders highlighted the need to provide victim-survivors with wrap-around and holistic support. There are examples of wrap-around and holistic support models, such as the Multiagency Investigation and Support Team (which we discuss further in Chapter 8), but this model is only provided to victim-survivors who are children.

*From an FDV perspective and sexual offending within that, a victim-survivor and children will often have a number of victim advocates engage in their journey through the Department rather than one consistent representative, i.e. Victim–Offender Mediation Unit, Family Violence Service, FDV Advocates in FVRO [family violence restraining order] applications and again the victim advocate should the offender engage in an FDV treatment program (best practice). This means that they will get different types of*

*support, different service boundaries, different confidentiality agreements and often have to tell their story many times.*

***Government agency***

### **7.3.3 The system causes trauma and long-term suffering**

While we heard from victim-survivors who had positive interactions with the criminal justice system and with individuals who provided great care and respect, victim-survivors also told us that the criminal justice system and its processes caused them more trauma and pain, with some saying the process was worse than the sexual offence itself. We heard that even in cases where the offender was convicted, victim-survivors would not recommend anyone go through the process.

*What your system has done to me is beyond what I have the strength to deal with... but you won. How dare you. You took something and made it worse.*

***Victim-survivor***

*Why did I put myself and my family through this? The process has made me more powerless and left me feeling worse than I did in the beginning. It has taken away any chance I had to heal or recover. The court process has broken and silenced me.*

***Victim-survivor***

For cases that progress to trial, proceedings can take years before they are finalised. The reasons for delay are complex and we discuss them in greater detail in subsequent chapters, but the impact is substantial. The time waiting causes disruption in the lives of victim-survivors. Stakeholders noted that trial delays can cause further distress and impatience among victim-survivors and exacerbate their trauma and uncertainty. Service providers and victim-survivors also shared that during this period the criminal justice system may impact the care that victim-survivors receive. We heard that victim-survivors are advised they cannot access certain counselling as it will risk their credibility as a witness in trial.

*[My counsellor] told me not to go through counselling because we want you to be emotive in court... but I'm at this phase where I just want to heal.*

***Victim-survivor***

*We do not provide active trauma healing work for victims that are going through court proceedings to avoid contaminating evidence.*

***Specialist service provider***

Further trauma and harm caused by participating in the justice system is sometimes referred to as secondary victimisation. In this context, it is common for victim-survivors to state that the justice process was worse than the original victimisation experience. Research confirms that the criminal justice system often causes secondary victimisation and also that secondary victimisation is not caused solely by the outcome (conviction or acquittal) but also reflects the victim-survivors' sense of procedural justice (Victorian Victims of Crime Commissioner, 2023, p. 132, citing Orth, 2002).

This highlights the profound impact and possible failure of the criminal justice system to meet victim justice needs. In the interview study *This Is My Story. It's Your Case, But It's My Story*, participants (victim-survivors) described the system as inherently broken, with one suggesting we 'burn it down' (KPMG & RMIT, 2023, pp. 105–106). Perhaps the most significant source of systemic trauma comes from insensitive and disrespectful interactions with police, legal professionals, and the courts. Whether during a police interview or cross-examination in court as a witness, some victim-survivors report that professionals are dismissive, sceptical and judgemental, with lines of questioning that are blatantly victim-blaming.

The questioning component can also be a source of secondary victimisation as it forces victim-survivors to relive the trauma of their experience of sexual offending. While victim-survivors can share their experiences during the reporting phase and parts of the court process, they often feel like passive observers rather than active participants. Their voice is frequently perceived as merely a tool to build a case against the perpetrator, rather than being heard because the justice system genuinely cares about their experience, what they have endured and what justice would look like for them. Consequently, many victim-survivors feel ignored and abandoned.

#### 7.4 Victim justice needs, procedural justice and trauma-informed practice

Victim-survivors of sexual violence often report being confused and alienated when engaging with formal justice processes and the criminal justice system, leaving many feeling revictimised and retraumatised. In the adversarial justice process, victim-survivors are considered a witness to the crime committed against them and are rarely treated as an interested party in the events. In its report *The Role of Victims of Crime in the Criminal Trial*, the VLRC spoke of the need to reassess the victim's role and characterise it in a new way. This new conception should change perceptions of victim-survivor's contribution to the criminal trial process and their place in the criminal justice system so that victim-survivors are treated as insiders, rather than outsiders looking in (VLRC, 2016, p. 23).

Victim-survivors have a legitimate interest in the way criminal justice is administered in terms of substance, process and outcomes (VLRC, 2016, p. 24 citing Doak, 2008). While each victim-survivor enters the criminal justice system with unique needs and expectations, common themes emerge. These can be described under the umbrella term of victim justice needs. The impacts of sexual offending are often severe and lifelong. Therefore, it is important that victim-survivors' needs are acknowledged and upheld throughout criminal justice responses and processes. Whether the criminal justice system meets a victim's justice needs has a direct bearing on their experience and short and long-term impacts.

Daly identified a shortlist of needs that are crucial for ensuring the criminal justice system effectively addresses the experiences and expectations of victim-survivors (regardless of outcome), including:

- participation
- voice
- validation
- vindication
- offender accountability/taking responsibility (Daly, 2017).

Participation means more than just being involved in the legal process; it is about ensuring victim-survivors are not sidelined. Participation includes being kept informed throughout the process, receiving updates about the progress of the investigation and case, understanding procedures and having a say in decisions that affect them. Voice refers to the power of feeling heard, acknowledged and considered within the justice system. The nature of sexual offending often leads victim-survivors to suffer in silence due to shame, embarrassment, fear and stigma. Victim-survivors who feel comfortable, confident and free from judgement in sharing their story may overcome the silencing that sexual offending causes.

Validation involves affirming the victim-survivor's experiences, trauma and impact of the crime. Through validation, victim-survivors can overcome the fear of not being believed, a fear that often leads them to remain silent and not report their victimisation. Practising validation in interactions with victim-survivors means avoiding victim-blaming questions, acknowledging the crime occurred and recognising the harm done to the victim-survivor. Vindication affirms that the perpetrator's decision-making and choices that led to their actions were wrong and caused immense and irreversible harm. Vindication can be informal or formal. Examples may include an apology, monetary payments, community service or criminal justice responses such as securing a conviction and incarceration.

Daly defines offender accountability/taking responsibility as 'requiring that alleged perpetrators are called to account and held to account for their actions, and if admitting to or convicted for offences, expecting that they will take active responsibility for their wrongful behaviour, by, for example, sincere apologies or expressions of remorse and completing prescribed justice requirements' (Daly, 2017, p. 219). Accountability is not limited to punishment-based or retributive forms of justice. While a criminal justice response is the focus of this review, we also discuss alternative justice responses in a later chapter and we recognise that communities must play a large role in holding perpetrators to account for their actions and for the harm they cause.

Victim justice needs can underpin a justice system that prioritises procedural justice and choice, rather than focusing solely on achieving an outcome. Choice refers to the ability of victim-survivors to make informed decisions about their own healing journey, informal support mechanisms and formal and legal options for potential next steps. Choice involves giving victim-survivors control over the decisions that affect their lives, empowering them to guide their own paths to healing rather than having a system make decisions on their behalf. Victim-survivors emphasised the importance of being able to make decisions, particularly after experiencing a crime that often involves a loss of autonomy and control over their own lives.

Procedural justice recognises the importance of how justice is achieved and the processes within the adversarial justice system, not just the outcome. Procedural justice emphasises healing through a system that is trauma-informed, gentle, compassionate, fair, transparent and respectful and that prioritises actively listening to victim-survivors and amplifying their voices rather than silencing them. This approach contrasts with a criminal justice system that is highly outcome-focused, often to the detriment of the victim-survivor and their healing journey.

At the core of upholding victim justice needs is trauma-informed care and practice. The National Plan to Reduce Violence against Women and Children 2010–2022 Fourth Action Plan defined trauma-informed care and practice as recognising the prevalence of trauma and its impacts on emotional, psychological and social wellbeing of people and communities Australian Government, 2019, p. 60). Initially used within the context of delivering human and health services, the key principles of trauma-informed care and practice are:

- Safety – ensuring physical and emotional safety.
- Choice – individuals have choice and control.
- Empowerment – prioritising enablement and skills building.
- Trustworthiness – task, clarity, consistency, interpersonal boundaries.
- Collaboration – sharing decision-making and power (National Association of Services Against Sexual Violence, 2021, p. 30 citing NSW Agency for Clinical Innovation, 2019).

The concept of trauma-informed care and practice is referenced heavily in many policies, strategies and plans, including the most recent National Plan to End Violence against Women and Children 2022–2032, but it is not always well understood. Confusion about the concept has led to recommendations for whole-of-government coordination of trauma-informed practice across sectors (National Association of Services Against Sexual Violence, 2021, p. 30 citing Salter et al., 2020).

During consultation, many stakeholders told us about the need to introduce a trauma-informed approach in the criminal justice system. In its submission, Knowmore recommended a ‘commitment to ensuring that every level of the criminal legal system operates within a trauma-informed framework should be incorporated into the Guidelines as to how victims should be treated in the *Victims of Crime Act 1994 (WA)*’. ANROWS commented that ‘trauma informed responses within the criminal justice system could support the safety of victims and survivors and improve their experiences’. ANROWS also explained that a trauma-informed response must be underpinned by an understanding of complex trauma, the impact of sexual violence, the dynamics and impacts of IPSV, cultural competency and disability awareness.

The RCIRCSA acknowledged that the criminal justice system is unlikely to ever provide an easy or straightforward experience for a victim-survivor (2017a, p. 13). In this review we do not make a blanket recommendation to introduce a trauma-informed approach to all aspects of the criminal justice system. Part of the rationale for this position is recognising that elements of the criminal justice system, and the organisations which operate in the criminal justice system, are governed by strict legislative frameworks that cannot always adhere to the principles of trauma-informed practice.

Just one example is that victim-survivors will, in most cases, have no choice about whether they are cross-examined during trial. Instead, throughout this report we discuss and make recommendations for specific reforms that aim to improve understanding of trauma, embed the principles of trauma-informed care and practice and address victim justice needs. While victim-survivors may have no choice about being cross-examined,

they may be able to have some control and choice over how they present their evidence with robust protections for their safety and wellbeing in place while they do so.

By focusing on victim justice needs, procedural justice and trauma-informed practices, we can create a more responsive and compassionate system that supports healing and victim-survivor empowerment. Such reforms will not only help reduce secondary victimisation but also foster greater trust and confidence in the justice processes in WA, from police to courts and post-sentence.

## **7.5 Whole-of-system measures to improve victim-survivors' experience in the criminal justice system**

When we talk about whole-of-system measures, we mean reforms that impact or influence the criminal justice system in its entirety, from reporting to parole. In this section we outline the whole-of-system measures that may improve experiences of victim-survivors, including strengthening the *Victims of Crime Act 1994 (WA)* (Victims of Crime Act), improved communication and collaborations between criminal justice agencies, increasing access to support services, training and introducing victim advocates.

### **7.5.1 Strengthening the *Victims of Crime Act 1994 (WA)***

The Victims of Crime Act is the legislative framework containing the entitlements and protections afforded to victims of crime, including victim-survivors of sexual offending. The Victims of Crime Act provides guidelines for how victim-survivors must be treated and supported by public officers of the WA justice system at every stage. These guidelines (contained in Schedule 1 of the Act) contain provisions for:

- being treated with courtesy and compassion, and with respect for the victim's dignity
- accessing information about the availability of welfare, health, medical and legal assistance services and criminal injuries compensation
- receiving information about the availability of lawful protection
- minimising inconvenience
- protecting privacy
- staying informed about the progress of an investigation and charges laid
- having property returned
- receiving information on the trial process as a witness
- receiving information on sentences, appeals, offender release or offender escape.

In 2021, the Department of Justice conducted a statutory review of the Victims of Crime Act (the Statutory Review) on behalf of the Attorney General to determine its effectiveness in achieving its purpose (WA Department of Justice, 2021). The Statutory Review offered 17 recommendations to better meet the justice needs of victim-survivors, many of which centre on expanding the definition of victim. Of particular relevance to this review is Recommendation 11, which proposes the consideration of the benefits of moving away from guidelines towards a victims' rights-based framework.

Section 3(1) of the Victims of Crime Act specifies that public officers and bodies are authorised to have regard to and apply the guidelines in Schedule 1 and should do so to the extent that is relevant and practicable. The intent of section 3(1) is to create a positive duty on public officers and bodies to be sensitive to victims' needs by having regard to the guidelines. This positive duty is not enforceable as a legal right; in fact, the *Victims of Crime Act* explicitly states that 'nothing in this Act provides, or is to be taken as providing, any person with a legally enforceable right or entitlement' (s 3(3)).

In its submission, Knowmore recommended strengthening the Schedule 1 guidelines 'in line with the recommendations from the RCIRCSA and having regard to the model provided by the ACT's *Victims of Crime Act 1994*'. The ACT's *Victims of Crime Act* sets out a number of victim's rights that reflect trauma-informed responses and victim justice needs. These can be summarised as:

- respect, privacy and safety
- access to support, services, legal and financial assistance
- information about investigations proceedings and decisions
- participation in proceedings (Pt 3A, divs 3A.2, 3A.3, 3A.5, 3A.6).

Some of the rights set out in the *Victims of Crime Act 1994* (ACT) are reflected in the Victims of Crime Act Schedule 1 guidelines, but in much less detail. The Victims of Crime Act is relatively brief and succinct compared to similar legislation in other jurisdictions, such as Victoria's *Victim's Charter Act* (2006) or South Australia's *Victims of Crime Act 2001*. Indeed, Victoria's and South Australia's equivalent Acts are over double the length of the Victims of Crime Act at 31 and 29 pages respectively, compared with 12 pages.

While the Victims of Crime Act provides a foundational framework for victim support it lacks the comprehensive detail found in other states' legislation, which often includes extensive provisions on victim rights, support services, and procedural protections. One example is that WA's Act makes no mention of victim impact statements, which can be submitted to the court by victims prior to sentencing (see discussion in Chapter 11).<sup>3</sup> Another example relates to victim's property which is held by the courts or police. The Act briefly notes that 'evidence should be returned as soon as possible', whereas Victoria's Act elaborates on how the property should be handled, stored, secured and returned. Although these may seem like minor details, they are crucial in granting victim-survivors dignity and ensuring they feel acknowledged and respected.

Section 18(1) of the *Victims of Crime Act 1994* (ACT) also confers a positive duty on justice agencies to comply with victims' rights. Failure to comply with victims' rights confers on victims the ability to make a complaint about the justice agency to the agency itself, to the ACT Victims of Crime Commissioner or to the ACT Human Rights Commission (s 8D(2)). The Statutory Review explained that in a number of other Australian jurisdictions victim rights do not constitute enforceable legal rights, but non-compliance is grounds for a complaint. NSW (*Victims Rights and Support Act 2013*, pt 1, div 2) and Queensland (*Victims of Crime Assistance Act 2009*, ch 2 and sch 1AA) have

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<sup>3</sup> The Statutory Review of the Victims of Crime Act recommends amending the guidelines in Schedule 1 of the Act to include the provision of assistance to a victim in preparing a Victim Impact Statement under Recommendation 13.

legislated a Charter of Victims' Rights and Victoria has Charter principles (*Victims' Charter Act 2006*, pt 2).

In its 2016 report *The Role of Victims of Crime in the Criminal Trial*, the VLRC noted that the *Victims Charter Act 2006* (VIC) did not contain robust compliance mechanisms. While the legislation imposed obligations to provide information to victims, treat them with respect, courtesy and dignity and be responsive to their needs, such obligations were not enforceable as legal rights (VLRC, 2016, p. 58). The VLRC considered proposals to enforce compliance with victims' rights, ranging from a legal right to enforce through court proceedings to a centralised complaints process and a firmer legislative footing (VLRC, 2016, pp. 58–63). In its view, the requirement that criminal justice agencies implement the Victim's Charter principles needs to be underpinned by robust processes for handling complaints. The VLRC (2016) recommended that the *Victims Charter Act 2006* (VIC) impose 'an obligation on investigatory, prosecuting and victim services agencies to provide accessible and transparent complaint handling systems and offer fair and reasonable remedies' (Recommendation 7) and also that the Victorian Victims of Crime Commissioner be empowered to review the outcome of complaints (Recommendation 8).

WA Police (WA Police, 2025), the ODPP (WA Government, 2020) and the judiciary (WA Supreme Court, 2007) have existing internal complaints processes. Victim-survivors are also able to raise a complaint with the Office of the Commissioner for Victims of Crime, but there is no formal, independent mechanism for raising a complaint, seeking a remedy or requesting a review of a complaint handling decision. In 2024, the Hon John Quigley MLA, former Attorney General, announced that legislation would be drafted to establish a new judicial commission to investigate complaints made by the public, legal professionals or other judges against any magistrate or judge across the state (*The West Australian*, 2024). The independent body will be tasked with investigating allegations of improper or offensive behaviour and be given powers to caution, counsel or reprimand officials for their actions

There is scope to improve the Victims of Crime Act to be more comprehensive and to embed victim justice needs and trauma-informed responses, aligning it with the standards of other jurisdictions. We agree with recommendation 11 of the Statutory Review but we also go further than the recommendation of simply considering the benefits of a rights-based framework. We recommend that the Victims of Crime Act should explicitly articulate comprehensive victim entitlements and consider including a robust complaints process for reviewing and seeking remedy for non-compliance.

**Recommendation 4:**

The Department of Justice undertake further policy work to strengthen victims' entitlements under the *Victims of Crime Act 1994* (WA). The framework should consider:

- explicit inclusion of victim justice needs
- a complaints mechanism for raising, reviewing and seeking remedy for criminal justice agencies' non-compliance with victims' entitlements.

### 7.5.2 Access to therapeutic supports

Having access to the right therapeutic supports, such as counselling, can help victim-survivors of sexual offending overcome some of the deep psychological impacts such as shame, guilt and underlying trauma. The Victims of Crime Act provides that 'A victim should be given access to counselling about the availability of welfare, health, medical and legal assistance services'. In this section, we look at how the response system could be reformed to increase access to specialist support for victim-survivors and, in line with victim justice needs, how we can emphasise victim-survivors' choice in accessing services that meet their needs.

Specialist sexual assault services are a critical part of the sexual offending response system in WA. They provide victim-survivors with specialist crisis and ongoing therapeutic support, information and referrals to other services, and some provide advocacy services. A near-universal theme of the consultation process was the need for specialist support for victim-survivors at every stage of the criminal justice process. Evidence shows that if victim-survivors receive the necessary support, including therapeutic support, they are more likely to report and remain engaged with the criminal justice process (VLRC, 2021, p. 241).

*[H]olistic psycho-social support aids in victim-survivor recovery and safe participation in the criminal justice system.*

#### *Women's Legal Service WA*

In WA, SARC is the primary provider of specialist support for victim-survivors of sexual offending. It is a free service located in metropolitan Perth providing crisis medical, forensic and counselling services to people who have experienced a recent sexual assault (in the last two weeks) and counselling for sexual assault experienced recently or in the past (North Metropolitan Health Service, 2024b). Services are available for people of all sexualities and gender identities aged 13 years and above. In regional WA there are five specialist sexual assault specialist services that provide support for adult victim-survivors affected by recent sexual assault, current sexual abuse and past sexual abuse as well as their partners or family members. There are also specialist non-government organisations which provide support for adults who experienced child sexual abuse.

In consultation, we heard that specialist sexual assault services were struggling to meet demand for their services within existing funding and that many victim-survivors were missing out on critical support. Victim-survivors living in regional and remote areas were disproportionately impacted by a lack of specialist services. The VLRC noted that the first and most urgent task for reforming responses to sexual offending is to implement a sustainable funding model for the specialist sexual assault service sector (VLRC, 2021, p. 54). Opportunities for links between the criminal justice system, the specialist sexual assault support sector and other community support or health sectors should also be explored. Victim-survivors may have a mental health care plan in place and be seeking support and treatment from a private practitioner. For victim-survivors with acute mental health care needs, it may be safer and more appropriate for them to be referred to specialist mental health facilities or organisations.

Many community, health and other non-government organisations are already providing crucial therapeutic support to sexual offending victim-survivors during the criminal justice process, but this is often not funded/under-funded and inconsistent due to resourcing constraints. During the consultation we heard that this fragmented service system risks retraumatising victim-survivors, as they are required to tell and retell their stories multiple times to different workers. It also requires victim-survivors to identify and reach out to multiple organisations to have their needs met.

The VLRC recognised the value of community organisations and recommended formalising their role in responding to sexual offending to increase access to justice for different communities (VLRC, 2021, p. 164). While the recommendation related specifically to disclosures and reporting, we think it has wider relevance and application. The benefits of collaboration and integrated service delivery models include:

- a broader range and duration of service provision beyond the initial crisis period
- improvement of the professional knowledge base and relationships
- more responsive and prompt decision making
- expansion of entry points to supports (Breckenridge et al., 2016).

Community and health organisations play a critical role for people who have specific needs that may not be addressed through the specialist sexual assault services. We heard that for some groups, including Aboriginal people, LGBTQIA+ communities, refugee and migrant communities, people in contact with the justice system and people with disability, there were fewer sources of formal support available. This was because mainstream specialist services were perceived not to be accessible, safe or culturally appropriate spaces for these victim-survivors. WA has organisations providing specialised sexual health care or counselling, including the Sexuality Education Counselling and Consultancy Agency (SECCA) – which has provided education and therapeutic support for people with disability for more than 30 years – the WA AIDS Council, Magenta and Sexual Health Quarters.

Whatever model of support and care a victim-survivor chooses to access, collaboration across services is critical to providing effective responses. WA's specialist sexual assault services sector is small and yet it contains a substantial level of expertise. It is critical that this expertise is recognised and funded to provide input into workforce development for other community, health and therapeutic services. It is also critical to fund organisations with expertise in working with their communities and population groups. We note the 2024 review of specialist sexual assault support services by the Centre for Women's Safety and Wellbeing to assess current and emerging issues, equity of access to services, demand, best practice service models and workforce development. The outcomes and recommendations of this review should inform future models of care.

A 2022 ANROWS study highlighted the need to invest in evidence-based programs and policies for Aboriginal and Torres Strait Islander victim-survivors of sexual assault. Collaboration and partnerships between service providers, community groups, funding bodies and researchers are critical for systematically building the evidence on what works and under what conditions, particularly at the community level. The evaluation of public health and other responses to sexual assault in Aboriginal and Torres Strait Islander communities is heavily under-resourced and requires investment (Coates et al., 2022,

p. 15). WA's *Aboriginal Family Safety Strategy* and *Aboriginal Empowerment Strategy* set out a way of working that ensures Aboriginal people have a genuine say in the design and delivery of policies and programs that affect them and which priorities Aboriginal community-led and owned responses that are culturally informed and secure.

While in this report we recommend increasing access for victim-survivors to therapeutic, health and other forms of support during their engagement in the criminal justice system, we also acknowledge the essential role these organisations play in supporting victim-survivors' long-term recovery and healing. Determining how best to resource and deliver a model of care for victim-survivors in all parts of WA requires a coordinated response from the government and non-government sector and is best progressed through the Sexual Violence Prevention and Response Strategy, which is providing the State's framework to address sexual violence across the four domains of prevention, early intervention, response, and recovery and healing.

**Recommendation 5:**

The WA Government progress access to consistent, timely and high-quality therapeutic support and counselling for adult victim-survivors of sexual offences as a priority action under the Sexual Violence Prevention and Response Strategy.

### 7.5.3 Communication and collaboration between agencies

Effective communication and collaboration between agencies is critical in preventing sexual offending, reducing the trauma experienced by victims (particularly when going through the reporting and investigation process) and enhancing their healing. Conversely, siloed communication between agencies assisting sexual offending victim-survivors may retraumatise survivors. By not coordinating their efforts, organisations often force victim-survivors to retell and revisit their experience of sexual offending over and over.

Siloed communication and coordination between agencies such as police and support services can also result in the victim-survivor receiving inconsistent messaging, which may be harmful rather than helpful. Receiving unclear or contradictory information can create confusion, frustration and mistrust in the system itself. A commonly reported example of inconsistent messaging exists between WA Police and the ODPP. Perhaps to be encouraging and supportive of a victim-survivor, police may overstate the strength of their case and in doing so create expectations of a swift and favourable legal outcome. When the victim-survivor communicates with the ODPP, however, they may receive advice that there is insufficient evidence to meet the burden of proof and proceed with the case. This mixed messaging often leads victim-survivors to feel a deep sense of betrayal and loss of confidence in a system that appears uncoordinated and incompetent.

This disjointed approach has long been discouraged in light of trauma-informed research on handling victim-survivors and their cases. Effective communication between agencies helps victim-survivors feel a sense of consistency and relieves the mental burden during an already psychologically taxing time. Therefore, it is important that the communication

between agencies is clear, accurate and unified to provide victim-survivors with aligned expectations about timelines, legal outcomes and support options.

In this report we talk about multiple criminal justice agencies including WA Police, the ODPP and Court and Tribunal Services. We also focus on support organisations for victim-survivors including VSS, VNR, Victim Engagement Unit (VEU), the Office of the Commissioner for Victims of Crime, and the specialist sexual assault service sector. We also recommend introducing victim advocates, independent legal advice and victim liaisons. This long list demonstrates the potential for a very crowded space with many potentially conflicting voices for a victim-survivor to hear and understand. For each service to be effective and meet victim-survivors' justice needs, there need to be mechanisms that support collaboration, integration, information sharing and consistent messaging. Otherwise, victim-survivors are likely to feel confused, overwhelmed and uncertain.

In our conclusion we talk about governance to support implementation of recommendations in this report, but there also needs to be a structure in place that supports collaboration over the long term. Currently in WA, the Sexual Assault Specialist Advisory Group (SASAG), is the mechanism for collaboration between the criminal justice organisations and specialist sexual violence services. There are also SASAGs in the regions which include sexual assault specialist services, along with WA Police and WA Country Health Services. During consultation we heard that the SASAG model is a useful form for collaboration and that it does result in improved outcomes for victim-survivors. However, not every region in WA has an active SASAG.

In the United States, Sexual Assault Response Teams (SARTS) models have been in operation for some time. While the SARTS service model varies across the USA, a key element is the development of local protocols between existing services in the community, based on the needs of that community (US Office for Victims of Crime, n.d.). Other commonly used methods of collaboration are cross-agency training and case management-style meetings (Greeson & Campbell, 2013, p. 85). In Queensland, the Townsville Sexual Assault Response Team provides a holistic response to victim-survivors in that community. Research has found SARTS, and particularly models that involve more formal structures, improve responses to sexual violence. In WA, the Multi-agency Investigation and Support Team provides a holistic response to child sexual abuse.

Multidisciplinary reporting centres or co-located services are also part of the continuum of service integration that have proven benefits for victim-survivors (Coates et al., 2022, p. 3) and we discuss these further in Chapter 8. However, research from the UK, where multidisciplinary centres have been operating for some time, suggest that we consider a range of methods of collaboration beyond multidisciplinary centres (Robinson & Hudson, 2011). Some victim-survivors, including Aboriginal people, may be reluctant to report at a multidisciplinary centre because of the possible presence of police or child protection officers. At a minimum, we recommend creating or adapting an existing interagency group to enhance collaboration, integration and information sharing between all stakeholders in the criminal justice system. As a priority, we suggest the interagency group develop a protocol that clearly sets out:

- the role and responsibility of each stakeholder in or working with the criminal justice system
- referral pathways for support organisations
- communication guidelines for consistent messaging that can be tailored to different cohorts.

Given the geographic diversity and scale of WA, consideration should be given to developing groups for different locations and involving local providers who will have expertise in servicing their communities. There are currently 16 place-based District Leadership Groups (DLGs) around WA which comprise the most senior leaders from each core state government human services agency in each region, in addition to representatives from local and Commonwealth government, the not-for-profit sector and Aboriginal Community Controlled Organisations. It may be that forming subgroups within the DLGs with a priority on sexual violence is a useful model. Regardless, victim-survivors must be a stakeholder informing any interagency group. Their voice and considerable expertise is critical to effective reform. However, this expertise needs to be properly recognised and victim-survivors should receive support, training (if requested) and remuneration to participate in such groups.

**Recommendation 6:**

The WA Government create or adapt an existing interagency group to enhance collaboration, integration and information sharing between all stakeholders in the criminal justice system. As a priority, the interagency group should develop a protocol that clearly sets out:

- the role and responsibility of each stakeholder in the criminal justice system
- referral pathways between organisations
- communication guidelines for consistent messaging that can be tailored to different cohorts.

#### 7.5.4 Training

In its submission, Full Stop Australia recommended mandatory training on trauma and gender-based violence for any police officer who might receive or deal with a complaint of sexual offending. Full Stop Australia advocates training that specifically focuses on the gendered drivers of sexual violence and that equips police to deal with cases where sexual violence is perpetrated by an intimate partner or another person known to the victim.

In its submission, ANROWS consistently highlighted the need for education, training and resourcing for police and legal actors to address mistrust and victim-blaming attitudes. During consultation, stakeholders outlined the importance of specialist training for police (and those who work in police call centres) who may be the initial point of contact for victim-survivors. This view was echoed in the Australian Senate Inquiry into current and proposed sexual consent laws in Australia (Senate Legal and Constitutional Affairs References Committee, 2023, p. 55).

*More training in how to handle questioning around sexual offences, even when I talk to friends who are in the criminal justice system, the prevalence of misconceptions and subtle/unconscious victim-blaming is still very high. It is improving but it still exists.*

#### **Victim-survivor**

A recent quantitative systematic review to examine the effect of sexual offence training on police outcomes demonstrated a positive trend of improved outcomes after receiving sexual assault investigation training. All the studies included in the review demonstrated positive effects on police behaviours, including simulated police interviewing, victim engagement and written reports. Most of the studies also showed an improvement in police attitudes, such as reduced acceptance of rape myths and victim responsibility (McQueen & Murphy-Oikonen, 2023, p. 21). However, the review acknowledged this area is under-developed and recommended further research to investigate best practice in sexual assault training (p. 25).

Currently in WA, training is only provided to police and detectives in specialist roles. In 2021, WA Police undertook research to identify exemplar training programs for supporting police responses to sexual offences (WA Government, 2021, p. 26). Through this research a successful training program was identified in Queensland which grounds police responses in trauma-informed principles and practices. WA Police sourced the Queensland training program and commenced a review to adapt the content. WA Police also commenced a project in 2024 to provide trauma-informed training to all new police recruits. Advice of this program was provided directly to the review. Training is not currently available for existing front-line and locally based police officers and, as many of the stakeholders noted in consultation, much of the deficiency in trauma-informed practice and misconceptions of sexual violence arises at the local front-line level. The Australian New Zealand Policing Advisory Agency is developing education and training guidelines for responding to and managing sexual offences and WA Police are involved in this process. Once the guidelines are finalised they will guide sexual violence policing knowledge, person-centred and trauma-informed practice and interviewing. The guidelines will take a comprehensive approach and guide WA Police first responders, investigators and supervisors.

*All police and staff at stations should be trained to take any report seriously and to at least record any incidents and document any person coming in with a disclosure, not deciding on the spot whether or not there is enough evidence to investigate further. They need to take the time to complete an assessment and ask the right questions as not all victims will have professional supports with them to assist.*

#### **Service provider**

The Queensland Police Service promotes sexual violence awareness and trauma-informed practices in policing, primarily through online and blended training, including the Child Sexual Abuse Fundamentals in Education. This online training package addresses child sexual abuse, trauma, survivors from diverse backgrounds, child development and effective communication. It is aimed at all police officers and client service officers at

front counters in stations (WSJT, 2023, p. 148). A second stage of generalist investigators' training was released in 2022 and addresses:

- biases in decision-making
- myths and misconceptions of child sexual violence, sexual violence, and domestic and family violence
- trauma and complex trauma
- vicarious trauma and self-care (WSJT, 2022, p. 148).

Training can take a variety of forms, such as an evidence-based resource for police called *Challenging Misconceptions about Sexual Offending*, developed by the Australian Institute of Family Studies and Victoria Police (2017). The reference booklet addresses some of the most significant myths and misconceptions about adult sexual offences and child sexual abuse. In NSW, the Criminal Justice Support Network and Intellectual Disability Rights Service have produced a resource kit for local police officers responding to sexual offence victims with intellectual disability (Intellectual Disability Rights Service, n.d.).

The Women's Justice and Safety Taskforce (WSJT) in Queensland noted that specialist sexual assault support services often provide police with formal and informal training on the misconceptions about sexual violence and their impacts. However, the services are rarely funded to provide this training. WSJT noted that specialist sexual assault services should receive funding and other workforce development measures if asked to perform this role (WSJT, 2022, p. 147). In WA, SARC offers a range of professional development resources in form of e-learning, online presentations and workshops (Northern Metropolitan Health Services, n.d.). There may be an opportunity for WA Police to build on its existing working relationship with SARC or other specialist sexual assault support services to develop a training package for police at the local front-line level, but additional funding and resourcing for the services to support such a measure is critical.

The consultation findings are clear that further police training in relation to sexual offending is needed, particularly for local front-line officers. Further research may be needed at the national level to determine best practice in this area, and the Commonwealth Attorney-General's Department (2025) is leading a scoping study to inform the development of national training package to enhance the effectiveness of police responses to family, domestic and sexual violence.

Training should not be limited to police. Stakeholders told us repeatedly that training is needed for all professionals in the criminal justice system. While most training may need to be adapted to individual organisations, there are also examples of resources that can be used by multiple organisations to ensure consistent understanding of the issues impacting sexual offending and victim-survivor experiences. The Australian Institute of Family Studies is developing a national education resource on the myths and misconceptions related to sexual violence, as part of a program of national education and training for the justice sector on the nature and impacts of sexual assault.

In *Hear Her Voice – Report 2, volume 1*, WSJT reaffirmed its recommendations from *Hear Her Voice – Report 1* in relation to training and recommended they be expanded to include sexual violence. Some of the recommendations included:

- considering new prescribed areas of knowledge for undergraduate students on substantive law relating to family and domestic violence and Indigenous perspectives and cultural competency
- working with the Queensland Law Society to ensure that all lawyers understand the nature and impact of family and domestic violence
- requiring all lawyers to regularly complete continuing professional development in family and domestic violence
- implementing a trauma-informed practice framework for legal practitioners
- requiring lawyers on Legal Aid Queensland's preferred supplier lists for criminal, family law and civil law participate in regular training on the nature and impact of domestic and family violence
- requiring all legal staff from the ODPP and Queensland Police Service in relation to police prosecutors, Legal Aid Queensland, and community legal centres, including the Aboriginal and Torres Strait Islander Legal Service, to participate in regular training on the nature and impact of domestic and family violence, as well as on the relevant law (WSJT, 2021, Recommendations 38–48).

The VLRC (2021, p. 395) noted that reform requires cultural change, which requires education for everyone in the criminal justice system. It recommended focusing on collaborative and regular training for lawyers and judicial officers on trauma-informed practice, getting the best evidence and respecting victims. The VLRC discussed the challenges of entrenching training and recommended an accreditation scheme for counsel (prosecution and defence) appearing in sexual offence cases to achieve the objective of a highly skilled legal workforce (p. 407). It did not prescribe how to deliver the scheme as this requires further consultation with the legal profession.

The ODPP delivers graduated in-house advocacy training for State Prosecutors as they progress from junior to intermediate practitioners. The program culminates in the 'Sexual Offence Advocacy Course', a 2-day intensive course comprising both presentations and exercise-based applied learning for State Prosecutors. In its submission, the ODPP supported specialised training or accreditation for police interviewing adult victims of sexual offences, and for state prosecutors, defence counsel and judicial officers at all levels. For defence counsel, this could include a requirement to demonstrate competency in examination and cross-examination of victim-survivors. However, the ODPP also noted that any accreditation would need to be carefully designed and properly administered and enforced.

In Report 148, *Consent in Relation to Sexual Offences*, the NSW Law Reform Commission (NSWLRC) recommended that the NSW Department of Communities and Justice fund the design and delivery of a comprehensive education program targeting judicial officers, prosecution and defence lawyers (NSW Law Reform Commission, 2020, p. 199). The VLRC likewise concluded that training for all judicial officers in sexual offences was needed and should be compulsory to bring about cultural change in courtroom practices and ensure a safe and respectful environment for victim-survivors (2021, p. 409).

WA does not have a judicial college or commission as operates in some other jurisdictions to develop or deliver training, but the judiciary does hold its own conferences and includes training on various subjects. The Commonwealth Attorney-General's

Department is funding a judicial training program on managing sexual assault hearings which is delivered by the National Judicial College of Australia, with training taking place in each state and territory. WA hosted the training program in October 2024 and high numbers of judicial officials attended.

Stakeholder submissions to the LRCWA Project 113 supported education programs for participants in the criminal justice system, such as the programs recommended by the NSWLRC and the VLRC (LRCWA, 2023, p. 409). The LRCWA agreed with the stakeholders and recommended the Government should develop and deliver a program to educate and train police, lawyers and judicial officers on:

- the nature and prevalence of sexual violence in the community, including the relationship between sexual violence and intimate partner violence
- the effects of trauma on victim-survivors of sexual violence; including the freeze and the befriend or fawn responses
- ways of reducing the risks of further traumatising victim-survivors of sexual violence
- barriers to disclosing and reporting sexual violence
- identifying and countering misconceptions about sexual violence
- how to respond to diverse experiences and contexts of sexual violence
- how to effectively communicate with and question victim-survivors of sexual violence, including children (2023, p. 410).

We support recommendation 130 in the LRCWA's Project 113 Final Report and agree with the LRCWA's views on specialist training for participants in the criminal justice sector. We also consider that further policy work is required to determine what form of training can be implemented in WA, and that this policy work should reference work being undertaken at the national level and in other states and territories. The training should consider the dynamics of IPSV and the realities that sexual violence presents differently for different groups of people, that misconceptions about specific groups may have additional adverse impacts and that different groups of people will require different responses.

WA may be able to learn from the experience of other jurisdictions as they seek to implement their recommendations in relation to training. There will also be scope to consider the recommendations from the ALRC inquiry into justice responses to sexual

#### **Recommendation 7:**

The WA Government undertake policy work to determine a best-practice training model for responding to sexual offending. This model should consider:

- training for local and front-line police officers
- training for the legal profession on myths, misconceptions and harmful community attitudes in relation to sexual offence victimisation
- supporting work being undertaken at the national level to design and deliver training for the judiciary
- training on trauma-informed practice when responding to victim-survivors for all professionals in the criminal justice system.

violence, which is looking at training and professional development for judges, police and legal practitioners to enable trauma-informed and culturally safe justice responses.

#### 7.5.5 Independent legal advice and representation

It is widely acknowledged that victim-survivors of sexual assault need to understand their legal rights and options so that they can exercise them (VLRC, 2021, Submission 2, Dr Kerstin Braun). Other state and Commonwealth Government reviews on sexual offending have received submissions on establishing specialised and trauma-informed legal services for victim-survivors of sexual assault. The discourse has highlighted the complexity of integrating trauma-informed independent legal representation for victim-survivors of sexual offending within the current adversarial system. Many jurisdictions have demonstrated the benefits of independent legal representation; however, this is best balanced by focusing on support, preparation and advice within phases of the criminal justice process.

In *Hear Her Voice – Report 2*, WSJT considered arguments for victim-survivors to have independent legal representation in criminal proceedings (2022, pp. 275–280). The WSJT highlighted that providing legal representation for victim-survivors throughout a trial would be a fundamental change to the adversarial system and, consequently, defining the role would be challenging. The WSJT saw merit in expanding the range of matters for which victim-survivors can be legally represented, but noted that this would require legislative reform. The WSJT concluded the development and implementation of a non-legal victim advocate model should monitor demand for legal support services by victim-survivors of sexual offending before recommending funded independent legal representation. Evaluating the victim advocate model will enable consideration of whether it collectively addresses the legal and non-legal needs of victim-survivors before further measures are implemented.

The VLRC recommended funding legal advice and, where necessary, representation until the point of trial and in related hearings (2021, p. 268). Noting the complexities of introducing independent legal representation for victim-survivors in the adversarial system, the VLRC recommended legal representation that focuses on the substantive legal entitlements of complainants in order to strike the right balance between a fair trial and protecting the rights of the victims.

In October 2022, following national consultations, the Australian Government committed \$8.4 million over three years from 2023–24 to 2025–26 for the piloting of legal service models in the ACT, Victoria and WA for supporting victim-survivors of sexual violence. This initiative, which aligns with the National Plan (Department of Social Services, 2022) and Work Plan (Attorney-General’s Department, 2022), aims to enhance access to specialised and trauma-informed legal services for victim-survivors of sexual violence.

Victoria Legal Aid, Women’s Legal Service Victoria and Djirra are partners within the Victorian pilot and focus on providing information to victim-survivors at key stages of the criminal process. Consistent with the VLRC’s recommendation to focus on distinct elements and services rather than independent legal representation, the pilot provides legal information to victim-survivors seeking to protect their confidential communications and health information, such as medical or counselling records in court (Victoria Legal Aid, 2024). Women’s Legal Centre ACT and Victims Support ACT were also selected to participate in the national pilot. The wrap-around service is provided to victim-survivors at

all stages of the criminal justice process, including support and advice during the criminal proceedings and post-sentence (ACT Government, 2023).

In WA, the Sexual Assault Legal Service Western Australia (SALSWA) pilot is a partnership between Women's Legal Service WA, Aboriginal Family Legal Services and Ruah Legal Services. SALSWA delivers a service that focuses on legal assistance at known points of victim-survivor disengagement and withdrawal from the legal process. SALSWA does not represent victim-survivors in the criminal matters that are managed by the ODPP but provides ongoing legal assistance to ensure victim-survivors have the appropriate support and are connected to other services as required.

The WA pilot is unique in convening an interagency reference group. Alongside the leading partners, the reference group comprises multidisciplinary stakeholders from the ODPP, WA Police (Legal Assistance Branch), the Office of the Commissioner for Victims of Crime and the WA Council of Social Services (WACOSS). Importantly, it is informed by a lived experience advocate and the reference group continues to develop mechanisms for lived experience engagement. By enhancing collaboration, integration and information sharing between all stakeholders, SALSWA can provide free, independent and trauma-informed legal assistance to victim-survivors of sexual assault.

On 26 November 2025, the Australian Government announced further funding to support the expansion and extension of the pilots in the ACT and WA. The pilots will now run until at least 2027-28. Separately, the Government is supporting the establishment of new sexual assault legal services pilots in the NT, SA, and Tasmania, and is working to establish further pilots in Queensland, Victoria and NSW (Attorney-General's Department, 2025a).

We acknowledge the important role of independent legal advice for victim-survivors. As discussed in preceding chapters, many victim-survivors face multiple challenges as a result of their victimisation. The challenges may involve interrelated legal problems such as family violence restraining orders, family law, employment law, migration law, guardianship law or child protection matters. Having legal advice and assistance is invaluable. In subsequent chapters we highlight specific areas, such as disclosure and evidence collection, where victim-survivors may benefit from independent legal advice.

We strongly support the availability of independent legal advice for victim-survivors of sexual offending and will continue to collaborate closely with SALSWA. The pilot programs in all three jurisdictions will be evaluated in 2026, but we consider there is a need for the availability of independent legal advice for victim-survivors on a permanent basis. In light of the complexities raised by the WSJT and the VLRC we do not, at this time, recommend independent legal representation for victim-survivors during criminal trials without substantial further consultation and analysis.

### **7.5.6 Victim advocates**

The majority of stakeholders, including victim-survivors, government agencies and service providers, enthusiastically supported introducing victim advocates for victim-survivors of sexual offences in WA. Victim advocates were seen as an effective response to a range of issues victim-survivors face throughout the entire criminal justice process.

*Independent victim advocates are an essential part of the journey to justice for victims and their families.*

### **Victim-survivor**

*There needs to be end-to-end support from service providers, and this implies having appropriate funding models...services that support victim-survivors through the whole process, including liaising with victim-survivors' support systems, legal services and attending court with them. The importance of this needs to be recognised as well as the resourcing implications. This is invisible work that is not recognised.*

### **Specialist sexual assault service provider**

Although models vary (as does the terminology), victim advocates provide a case management approach of support for victim-survivors, acting as a consistent, central point of contact through criminal justice process – from the reporting (or pre-reporting/decision-making) stage through to the time after an offender is released from custody. Key features of a victim advocate model include:

- providing a first point of contact for victim-survivors to seek information about reporting options
- helping victim-survivors to understand the criminal justice process, their role within it and their rights or entitlements
- linking the victim-survivor with specialist sexual violence support services, as well as services for their broader needs such as legal, housing and financial needs
- liaising with police, prosecution and other criminal justice actors to relay information to victim-survivors in a way they can easily understand, and improving channels of communication in both directions
- advocating for victim-survivors' justice needs throughout the criminal justice process, including advocating for additional supports such as witness intermediaries, interpreters or other communication supports
- providing emotional support, including working with family members and other loved ones of the victim-survivor
- providing in-person support at key points of the process, including the police reporting stage and in court.

#### ***Victim advocates in the UK – Independent Sexual Violence Advisors***

Independent sexual violence advisors (ISVAs) have been operating in the UK since 2005. They provide emotional support, impartial information to victim-survivors around reporting to police, the journey through court proceedings and accessing other supports including specialist and community services. ISVAs also support individuals who do not want to report the crime to the police.

They are based in Sexual Assault Referral Centres, within the UK's National Health Service, or in voluntary organisations. Practitioners are required to obtain an ISVA Practitioner Diploma, a 10-day learning course which ensures participants are equipped

to meet the requirements and challenges of working with sexual violence victim-survivors in the criminal justice system.

An independent review found that the ISVA role is cost-effective and improves victim-survivors' experiences throughout the criminal justice process (Horevath et al., 2021).

*End-to-end independent advocacy support. The Independent Sexual Violence Advocate model has been in the UK for a very long time.*

### **Victim-survivor**

Providing case management-style support with continuity of care from a consistent and trusted professional is widely recognised as a best-practice response to violence against women, including sexual violence (Salter et al., 2020, p. 11; Hester & Lilley, 2018). Victim advocates have been used in the UK and other jurisdictions for several decades to support victim-survivors of family and domestic violence and sexual offending. Reviews of victim advocate models in other jurisdictions have found that it is a cost-effective and efficient model to improve support for victim-survivors (Stern, 2010, cited in WSJT, 2022, p. 119) and keep them engaged in the criminal justice system (Welland et al., 2024, p. 6). Victim advocates are effective as:

- an enabler – enabling victims to continue their journey transitioning to a survivor
- a holder – ‘holding’ victim-survivors through the justice process in a way that makes them feel safe
- a mender – mediating where the impacts of sexual offending affect a family (Horevath et al., 2021, p. 11).

Recent reviews of criminal justice responses to sexual offending in NSW, Victoria and Queensland have all recommended that victim-survivors have access to consistent, wrap-around support such as a victim advocate (KPMG and RMIT, 2023, Recommendation 2, p. xi; VLRC, 2021, Recommendation 45, p. xxxvi; WSJT, 2022, Recommendation 9). Victim advocates can play a particularly important role during the reporting stage, providing emotional support and information about the criminal justice system (Lea et al., 2015, p. 16). A 2024 review of victim advocates in the UK found that they helped reassure victim-survivors who were hesitant or unsure about their decision to report (Welland et al., 2024, p. 16). An earlier survey of rape victims in the UK found that victim-survivors who did not receive support from an advocate were twice as not to pursue their case (20%) as those who did have that support (10%) (Welland et al., 2024, p. 15 citing Victims' Commissioner (UK), 2020).

Victim advocates have also been found to play an important role in translating victim-survivors' description of their experiences into language that aligns with policing practice (Welland et al., 2024, p. 16). Victim-survivors who participated in the 2024 review of victim advocates in the UK felt that police took their complaint more seriously once an advocate became involved (Welland et al., 2024, p. 17). Other studies have shown that victim-survivors who received specialist support during the reporting phase were 42% less likely to have police take ‘no further action’ in response to their report and were significantly more likely to have their case deemed a crime, charges laid and ultimately convictions made. Victim-survivors who received support from victim advocates were also 49% less

likely to withdraw from the criminal justice process than unsupported victims (Walker et al., 2021, p. 304).

There are multiple organisations supporting sexual offending victim-survivors in different ways in WA, including VSS, which provides in-court support, SARC counsellors and many community organisations. However, in many ways these services are limited due to the complexity of the criminal justice process. For example, some services are only available at certain points of the process, have restrictive eligibility criteria, are time-limited, are only available in certain locations, do not have access to all the case-related information, or are not specialised in providing trauma-informed care. Having a single person, with expertise in the criminal justice process, travel alongside the victim-survivor provides holistic rather than fragmented support for victim-survivors. The development of a victim advocate model for WA should include consideration of how the model can complement and integrate existing support services and link victim-survivors with the support they need at the appropriate time, rather than duplicating any existing services.

*In our experience, survivors are often particularly frustrated by their inability to meaningfully participate in police and prosecution processes...These problems are compounded by a lack of appropriate, dedicated support for victims and survivors throughout their engagement with the criminal legal system. While many of our clients have been very grateful for the information and assistance provided by the Victim Support Service, for example, they often remain frustrated by their ability to access truly independent support and have their individual interests represented throughout the process.*

#### **Knowmore**

In Chapter 8 we discuss the WA Multi-Agency Investigation and Support Team (MIST) which responds to child sexual abuse. The MIST model includes a Child and Family Advocate who works with the family to understand their context and needs, provides support to the family while the child is being interviewed and helps them to engage with therapeutic and other local support services. The Child and Family Advocate follows up with the family post-interview and continues to provide emotional support, help them access services including specialist counselling and provides information on the status of the case. The Advocate attends case meetings with the multidisciplinary team to discuss the child and family's needs as the case progresses. If the matter goes to trial, the Child and Family Advocate will introduce the family to the Child Witness Service and continue to provide support to the family throughout the court process if required.

An evaluation of the MIST model found that the Child and Family Advocate role was effective in engaging children and families with therapeutic support and other services (Herbert & Bromfield, 2017, p. 11). Staff involved in that evaluation saw the consistent support provided by Child and Family Advocates to both children and their family members as a key advantage of MIST, and one which filled a gap in practice-as-usual responses to child sexual abuse (p. 46). Caregivers expressed a high level of satisfaction with the MIST response and the support it provided to them and their children (p. 70). The development of a victim advocate model in WA should consider how the strengths of the MIST model could be adapted for adult sexual offending victim-survivors.

*The role of the advocate involves taking care of the welfare of the victim. When a victim comes in, having someone tell them that it's about them and, what they want and what they need is a game changer. You probably can't measure how significant that is.*

**WA Police (MIST team)**

Evidence from other jurisdictions points to the importance of ensuring victim advocates are appropriately trained and have a strong understanding of criminal justice processes as well as expertise in trauma-informed practice with sexual offending victim-survivors. As a new role in WA, consideration should be given to the types of professional qualifications required for the role and any additional training courses that should be developed to ensure advocates are equipped for the job. The 2024 review of victim advocates in the UK found that improvements to the model were needed to ensure advocates' professional status and role were recognised by other players in the criminal justice system (Welland et al., 2024, p. 7). Collaboration with police, the ODPP, courts, specialist sexual violence services and other support and criminal justice entities will be crucial to ensuring the successful development and delivery of a victim advocate model in WA.

Further policy work also needs to determine how a victim advocate model could integrate with existing support services and other reforms recommended in this report, including the multidisciplinary centres described in Chapter 8. For example, victim advocates may operate out of multidisciplinary centres, separately or both. Consideration should also be given to how a model could service metropolitan and regional areas of WA, how it could be scaled up, and how it can provide safe supports to diverse populations groups.

*Establish support service provider that assists in the initial reporting process, post offence trauma, and support throughout judicial process. Support service required in remote communities [as well].*

**WA Police – Regional**

**Recommendation 8:**

The Department of Justice establish a victim advocate model for victim-survivors of sexual offending. The model should:

- provide end-to-end coordination and support for victim-survivors including links and referrals to other organisations as required
- commence as a pilot in both a metropolitan and regional location

In doing so, delivery approaches that can adapt to the needs of diverse population groups should be considered.

## 8 Reporting sexual offences

The first step in the criminal justice process is reporting the sexual offence to the police. In this chapter we look at victim-survivors' experiences of reporting sexual offending to police in WA, and at possible reforms to improve that experience. Police practices and attitudes have the power to help or to harm victim-survivors. The evidence base suggests that how a victim-survivor is treated when they first report a sexual offence has a significant impact on whether they will continue through the criminal justice process (RCIRCSA, 2017a, p. 20; Tarrant et al., p. 29 citing Douglas, 2021; LRCWA, 2022). Research also recognises that kind and respectful interactions, including with people in authority, can help victim-survivors heal from trauma (Blue Knot Foundation, 2021, p. 2). In Discussion Paper 2 we asked the following questions:

- How well is the police reporting process working?
- How can it be improved?

### 8.1 The reporting process

Sexual offending (against adults or adult victims of child sexual abuse) can be reported to WA Police in the following ways:

- calling the 000 emergency line
- calling the 131 444 non-emergency police line
- calling Crime Stoppers on 1800 333 000
- using the Crime Stoppers online form or Eyes on the Street app
- visiting a police station
- using the Safe2Say online portal.

Information about reporting sexual offending to police in WA is available on various websites and other sources. The WA Police website includes several pages related to sexual offences as well as the brochure *Telling Your Story and Getting Help; Reporting Sexual Offences; Information for Persons Who Are 16 Years and Older*. The brochure provides information about what constitutes sexual offending, the reporting and police investigation process and support services.

When an adult victim-survivor makes a report via the emergency or non-emergency phone lines, in person or via Crimestoppers, the first responder will ask them brief questions about the incident but will not ask them to go into detail. The first responder should also offer options for support, including forensic medical and counselling services such as those available at SARC. The first responder is usually not a specialist detective assigned to the Sex Crime Division. If a victim-survivor reports through the Safe2Say online portal they can choose to speak with a specialist detective from the outset.

The first responder will arrange a face-to-face meeting with a police officer who will ask further questions about the incident(s). Depending on the offence type, a report will then be sent to the Sex Assault Squad (SAS) within the Sex Crime Division, or the matter will be retained by the local metropolitan or regional police station and a senior officer will ask the victim-survivor more questions to determine if there is an immediate risk to the victim-survivor or public safety.

## 8.2 Victim-survivors' experience of the reporting process

We heard that reporting a sexual offence to police can be a challenging experience for victim-survivors and that it often takes significant time and courage for them to report. Stakeholders emphasised the importance of this first interaction with police and the potential for it to have an enormous impact on victim-survivors' wellbeing.

*The experience of our clients indicates that arguably the most significant aspect of the police reporting process is the initial police response to the complaint.*

### *Knowmore*

In Chapter 7 we explained that voice and validation are key victim justice needs and are essential to a trauma-informed approach to responding to sexual offending. The act of reporting can contribute to meeting these needs, as well as enabling the cognitive and emotional processing of trauma, which can contribute to victim-survivors' healing (Gorissen et al., 2023, p. 829). Research shows that responses from police have the potential to provide the victim-survivor with validation, or, conversely, to deter them from reporting and continuing with the criminal justice process, and that the initial interaction with police frames victim-survivors' perceptions of the entire criminal justice process (Iliadis, 2020 cited in Cowell & Howman, 2022, p. 16).

We heard from victim-survivors and service providers who had positive experiences of reporting to police. Positive experiences were associated with feeling safe, heard and supported and contributed to victim's justice needs of voice and validation. We heard that providing choice and flexibility to victim-survivors made the reporting process more positive for them. For example, victim-survivors appreciated being offered the option of speaking with a female officer, or police arranging to travel to their home rather than having to attend the station. Stakeholders also noted the importance of police being respectful and courteous and clearly explaining options and next steps to victim-survivors.

Many stakeholders said that positive experiences of the reporting process occurred when specialist officers or units, such as the SAS or the MIST (for child sex offences), were involved. We heard that specialist units are generally better equipped and trained to offer trauma-informed responses, facilitate referrals to relevant services and collaborate effectively with other service providers.

*The MIST team at Midland were amazing with my daughter. They were empathetic, kind, patient and gentle with us. We are currently going through the court process now and the detective is still in regular contact with us.*

### *Parent of victim-survivor*

Stakeholders also relayed negative experiences of reporting to police. We know from research in Australia and overseas that the police reporting process can be upsetting and even traumatic for victim-survivors (WSJT, 2022, Recommendation 50; WSJT, 2023; VLRC, 2021; Judicial Council on Cultural Diversity, 2015, p. 20). During consultation, victim-survivors described feeling disbelieved, unsupported and/or blamed for the offending. Victim-survivors also found the setting of police stations to be intimidating and the lack of

choice, agency and sensitivity to their needs distressing. In this section, we report on some of the common themes raised in consultation.

### **8.1.1 Feeling blamed, judged, dismissed or disbelieved**

Victim-survivors told us that when they reported to police, they felt that police did not treat the sexual offending as a serious crime. We heard that police responses were sometimes dismissive or disrespectful, and victim-survivors described officers making them feel as though they were wasting police time. Stakeholders explained that while technology-facilitated sexual violence such as intimate image abuse is increasing, particularly among young people, police did not always treat this type of sexual offending with the same level of seriousness as other sexual offences. A recent research paper confirmed that police are largely failing to meet the needs of victim-survivors of intimate image abuse, and often display victim-blaming attitudes (Huber, 2023, p. 12; Flynn et al., 2022, p. 3).

*When I tried to report, I was not believed, and I was told that there was not enough evidence to write a statement... The police officer complained about being harassed in the workplace herself and that she had to 'toughen up' and then moved to a new place of work. This should never have happened.*

#### *Parent of victim-survivor*

We heard that victim-survivors often felt invalidated and dismissed when police told them it was unlikely that the report would be progressed or result in a conviction. One victim-survivor described being told by police that there was '0 [per cent] chance of conviction' because she disclosed that she had had two standard drinks at the time of the incident. Stakeholders commented that victim-survivors should have more agency and choice in the reporting process, rather than police making an on-the-spot judgement about whether to accept a formal report.

*People at the front desk of police stations should not act as gatekeepers and decide if there is enough information told to them to decide whether a report is taken or not.*

#### *Support worker*

Some stakeholders felt that police did not always make a careful assessment of the situation when a victim-survivor first presented at a station to report. Officers on the front desk at police stations were unlikely to have specialist training in sexual offending and were more likely to respond in ways that made victim-survivors feel judged, blamed or disbelieved. This issue was exacerbated in regional areas where there is less police expertise in sexual offending.

*[The police] then spoke to me and it felt like I didn't have the option of doing anything further, they said things such as 'If you report this his kids will be taken off of him' and 'his life will be ruined'. This process did not make me feel heard or safe. Both of the police officers were also male.*

#### *Victim-survivor*

*When we present to a police station to support a client to make a report and the people at the front desk turn them away, this is really disheartening and prevents someone from pursuing a report. There appears to be little understanding of empathy around sexual coercion or abuse at the police station especially those that are general officers and there appears to be a lack of will to liaise further with special units for advice.*

### ***Support worker***

As we explained in Chapter 6 on barriers to reporting, some cohorts may experience additional inequality and discrimination which impacts on their engagement with the criminal justice system. The same factors and attitudes prevail during the reporting process and, in consultation, stakeholders raised several examples. We heard that victim-survivors from Aboriginal communities and refugee and migrant communities find reporting experiences distressing because the process is not culturally safe – for example, female victim-survivors having to report sexual offending to male police officers or speak about topics that are taboo in their culture.

*[How can the process of reporting be improved?] Culturally safe and knowledge of what my submission will do as I'm well aware nothing changes it's a long drawn-out process with the victim having to be interrogated with no outcome.*

### ***Victim-survivor***

#### **8.1.2 Physical settings and logistical problems**

Physical settings and logistical problems with police stations contribute to negative reporting experiences for victim-survivors. Some victim-survivors told us that when attending police stations to report, they were asked to come back later or had to wait a long time to speak to an officer. Several said that they were told to go to a different station to report but that police did not call ahead to the other station or assist with this process. Others said they were not given the opportunity to speak with a female police officer when this was their preference. Stakeholders explained that staff shortages and a lack of resources were often the cause of these issues.

*The station wasn't equipped with staff that day to take my statement and see other people in a timely manner.*

### ***Victim-survivor***

*The first time I called, they told me they were too busy, which completely put me off. It made me think, 'maybe it's not the right time,' and I didn't pursue it further for a while.*

### ***Victim-survivor***

Other stakeholders described feeling discomfort and embarrassment speaking to the officer at the front desk of a police station in a busy public area where there was a lack of privacy. Police stations, and particularly interview rooms, were described as cold and intimidating environments for victim-survivors.

*I know too that women would make the mistake of turning up to a police station – this usually did not end well. Women would need to be aware they should make an appointment with specialist police officers and allow enough time and space in their schedule – i.e. a whole week – to allow both for the gruelling process of reporting and managing the emotional fallout that can be generated by undertaking the process of reporting.*

### **Victim-survivor**

Victim-survivors may experience additional logistical problems with the reporting process. Victim-survivors who speak English as a second or third language may not have ready access to interpreters or translated information. Victim-survivors with vision, speech, hearing and communication impairments may face additional challenges when they report online, over the phone and in person. Transport and accessibility can be challenging for some victim-survivors with physical impairments. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) found that police often fail to identify or accept victim-survivors' disabilities and, as a result, failed to provide appropriate support (2023b, p. 262). This was particularly the case for victim-survivors with mental health issues, intellectual disability, acquired brain injury and foetal alcohol spectrum disorder (p. 262).

We heard that victim-survivors in regional and remote areas faced higher levels of difficulty during the reporting process. Victim-survivors reported travelling significant distances to attend a police station or, conversely, attending a station in the middle of town, raising privacy concerns. A lack of confidentiality and privacy more generally caused distress for victim-survivors reporting in regional areas, where the victim-survivor and/or perpetrator often knew police in a personal capacity. Overall, regional police stations were also less likely to have the resources and facilities to support trauma-informed reporting processes.

#### **8.1.3 Inadequate information about the criminal justice process**

As highlighted in Chapter 7, victim-survivors do not have a clear understanding of the criminal justice process. Their fear and distress is exacerbated during the reporting process because the process is unclear. Stakeholders commented that there are communication issues at the time of reporting, with victim-survivors being left unsure as to what the next steps are. For example, victim-survivors may think that the process ends after they report to police, and may not understand that interview, investigation, charge and court processes may follow and that these can be lengthy, involve retelling their story multiple times and include varying levels of engagement.

Police officers and others working in the criminal justice system told us that sometimes victim-survivors and their supporters did not understand evidence requirements and other factors that police had to consider when receiving a report of sexual offending. This lack of understanding contributed to them feeling disbelieved or dismissed by police. We heard that police may sometimes unintentionally discourage victim-survivors from reporting by informing them that they will likely face tough cross-examination if the matter goes to trial, that there may not be sufficient evidence or by pointing out other difficult aspects of the criminal justice process. Stakeholders recognised the difficulty police face in finding the

balance between encouraging reporting and providing realistic information about the criminal justice process and likely outcomes.

*We need to be very clear in our communication with victims, striking a balance between encouraging them to report and not creating unrealistic expectations about the potential outcomes is crucial.*

#### **WA Police**

*[What would improve the reporting process?] Specific information about timelines provided to victim-survivors. More context around processes provided to victim-survivors.*

#### *Victim-survivor*

Service providers outlined that managing victim-survivor expectations is a key challenge, and that the challenge is exacerbated by inconsistency in advice from professionals in the criminal justice process.

#### **8.1.4 Lack of referral to support services**

The mental health impacts of making a disclosure can be substantial, and many victim-survivors require therapeutic support at this point (Ullman, 2024, p. 285). However, we heard that victim-survivors are not always linked with support services when they report to police. Victim-survivors may have a range of other support needs relating to the offending, including housing, civil and family law matters, health and financial issues, which are also not being met. Victim-survivors who were not effectively linked to support after reporting described feeling overwhelmed and often unable to continue with the criminal justice process.

There is no formal or systematic approach across WA for connecting victim-survivors to support services during the reporting process. While some services reported that police refer victim-survivors to them, other stakeholders reported that the effectiveness of these referrals was often reliant on individual relationships rather than formal, consistent referral pathways. Stakeholders shared examples of government services collaborating well to support victim-survivors, such as referrals from WA Police and ODPP to SARC and VSS. Less consistent were referrals to non-government support organisations.

*Having a referral made to a specialist service like Phoenix would have made a huge difference for me [when disclosing to police]. My disclosure came as a result of a nervous breakdown... to have known about service would be amazing. If VSS could have emailed me with services I can access, referred me or even said that I could self-refer... it boggles my mind, why it never came up that I could access specialist services.*

#### *Victim-survivor*

*[Our] relationship with the sexual assault squad is positive and beneficial in terms of referrals and support. However, this relationship was established by individuals currently working in the squad, and I fear that without proper*

*handover, the relationship may be lost as officers working in the squad move on every 18 months.*

### **Community-based service provider**

We also heard that while many police officers do their best to connect victim-survivors with support services, this was not always considered a core part of their role and the demands on their time, combined with a lack of formal and efficient referral pathways, made it difficult for them to assist in some cases. Sometimes there are simply no specialist services for victim-survivors in their region or waiting lists are many months long. In regional and remote areas, access to specialist services is particularly limited. Victim-survivors in these parts of WA often had to bear costs associated with travel and time off work, along with disruption to their lives, in order to report to police and access critical services. In Chapter 7 we discuss the need for improved collaboration between agencies responding to sexual offending and increased access to counselling and other therapeutic supports for all victim-survivors.

*There are no doctors or support services for victim-survivors in town and they would have to travel for face-to-face support or have telehealth appointments arranged. There is reduced access to VSS due to victims having to travel to access the service.*

### **WA Police**

## **8.2 Measures to improve the reporting process**

Reforms and recommendations discussed in earlier chapters of this report will contribute to improving the reporting process for victim-survivors, including measures such as improved information, collaboration, community awareness, training, introducing victim advocates and improved access to counselling. In this section we discuss specific measures to improve the reporting process, including alternative reporting options and multidisciplinary reporting centres.

### **8.2.1 Practical measures**

Stakeholders told us that some practical and relatively simple changes could be made to the existing reporting process to make it less intimidating for victim-survivors and embed trauma-informed practice. Several stakeholders said that being able to book a time to make a report at a police station would help victim-survivors prepare emotionally and practically for the reporting process. This would mitigate some of the issues victim-survivors experience when they attend a police station ‘cold’, such as being made to wait for long periods of time, having to discuss sensitive matters in a public area and potentially speaking to an officer who does not have specialist training in sexual offending. A booking process may also allow for appointments with specialist officers from the SAS or local officers with experience or training in sexual offence matters.

We heard that being able to prearrange a time to report may also be helpful for people with communication and other needs. For example, it would allow for interpreters, witness intermediaries, victim advocates or other support persons to be arranged.

*Allowing victims to make appointments with the police would help them access the right officer immediately and would also benefit our services. Sometimes, our counsellors/case workers have to book an entire day or afternoon to go to the police station with the client, and there is the risk they won't be able to complete the reporting.*

#### ***Support service***

The Disability Royal Commission reported that ‘police officers who understand disability and what can be done to assist communication are likely to obtain more useful information from victims of sexual and family violence’ (2023b, p. 266). We support WA Police’s continued efforts towards implementing recommendation 8.20 of the Royal Commission, which states: ‘The Australian Government, state and territory government and police services should collaborate with people with disability in the co-design, implementation and evaluation of strategies to improve police responses to people with disability.’

*[How could the reporting process be improved?] Use other forms of communication to help a person report their abuser, i.e. picture cards, counselling support etc.*

#### ***Victim-survivor***

Victim-survivors who attended police stations to make reports said that they felt uncomfortable and exposed speaking about the matter at the front desk, which was in an often busy public area, or in an open-space office area where others could overhear their conversation. While some police stations, especially larger, metropolitan stations, had suitable interview rooms, not all stations are equipped with such spaces. Stakeholders recommended that private, comfortable and unintimidating spaces be provided at all stations for victim-survivors wishing to report sexual offending.

Offering these options could be part of standard protocol developed by WA Police and clear signage could be included in the foyer so victim-survivors know they can ask to use this facility to make their report. Providing private spaces was recommended by the RCIRCSA (2017a, pp. 194) and the VLRC (2023, p. 341). Consideration of police facilities, including private interview rooms, should also include an assessment of accessibility for people with physical impairments. Other stakeholders suggested police could travel to meet the victim-survivors in a space they feel comfortable in, rather than requiring them to travel to the police station.

*Make it less stressful for victims/survivors. Provide as much support to them and to their supporting network and families. Arrange to meet in a safe space so the person reporting feels comfortable and can trust the process.*

#### ***Victim-survivor***

Stakeholders suggested providing victim-survivors choice about the gender of the officer they speak to when making their report. We heard that many victim-survivors feel more comfortable speaking about sexual offending with a female officer, but in many cases they were not offered this opportunity. Providing choice about gender was considered particularly important for Aboriginal women and victim-survivors from other cultural backgrounds for which speaking about sex or sexual offending with a male is taboo.

**Recommendation 9:**

WA Police develop a protocol for local police stations which sets out minimum standards for supporting victim-survivors reporting sexual offences. The protocol should include:

- ability to book an appointment
- privacy and where possible a separate room when making a report
- where possible choice of gender of the officer to whom the report is made
- referrals to support services
- availability of communication supports.

#### 8.2.2 Online and alternative reporting options<sup>4</sup>

Research shows that online disclosures of sexual offending, including via reporting platforms, are on the rise. The anonymity and accessibility of the internet can reduce some of the psychological barriers and other restraints that prevent victim-survivors from disclosing sexual offending in offline environments, such as fear, shame, uncertainty and proximity/availability of services (Gorissen et al., 2023, p. 829). Online options are also seen as important alternatives for some groups of victim-survivors – including people identifying as LGBTQIA+, people from Aboriginal and refugee and migrant communities, sex workers, male victim-survivors, people living in regional and remote areas and people in prison – who have low reporting rates for a range of reasons, including historical mistrust of police (Heydon et al., 2023, p. 56). However, evidence on the uptake of online reporting options by these groups is limited and further research is needed.

*FSA [Full Stop Australia] supports the expansion of alternative reporting options for sexual violence, including online options. We acknowledge the importance of increasing choice for victim-survivors about how they want to engage with the justice system.*

#### *Full Stop Australia*

Alternative reporting can be an important ‘third option’ for victim-survivors who do not feel physically or emotionally ready to report to police, or are not sure if what they experienced is an offence (Loney-Howes et al., 2022, p. 31). It has been described as a ‘soft’ entry point into the criminal justice system, allowing victim-survivors to get a sense of what a formal report would entail, while taking the process at their own pace (Heydon et al.,

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<sup>4</sup> These mechanisms are variously referred to as informal or alternative reporting and we use the terms interchangeably.

2023, p. 57). Having an alternative reporting option can restore a sense of agency for victim-survivors, who may feel as though the matter will be taken out of their hands if they make a formal report to police (Heydon et al., 2023, p. 8). Alternative reporting can also help victim-survivors to feel heard and validated by having their experience formally recorded, while allowing them to tell their story in their own terms, in their own time and in a safe and comfortable setting (Heydon et al., 2023, p. 7). This contrasts with victim-survivor expectations of a formal police reporting process, in which they expect to feel pressured to finish their statement in one sitting, in an intimidating or unfamiliar environment (Heydon et al., 2023, p. 20). Alternative reports can also assist with the preservation of evidence, allowing victim-survivors to document their experience and help to preserve their memory should they wish to pursue a formal report in the future (Loney-Howes et al., 2022, p. 32).

*In our experience, many survivors prefer an alternative reporting option to a traditional police report. There are survivors who would not make a traditional police report who will use an alternative reporting option.*

#### ***Knowmore***

Making an alternative report can also provide an important option for victim-survivors who do not wish to engage with the criminal justice process at all, but still want their justice and healing needs met (Heffron et al., 2014). For some victim-survivors validation by police and specialist support services – regardless of the outcome – gave an alternative report inherent value (Loney-Howes et al., 2022, p. 31). However, other victim-survivors may be seeking a more fulsome alternative justice response, one which holds the perpetrator accountable but that operates outside the criminal justice system (Heydon et al., 2023, p. 57). Research notes that alternative reporting mechanisms implemented in Australia to date have had a limited capacity to achieve this for victim-survivors (Heydon et al., 2023, p. 12). We discuss alternative justice options in further detail in Chapter 12.

#### **8.2.3 Safe2Say**

Safe2Say, an online reporting tool created by SAS, was launched in WA in August 2023. We did not hear about anyone's first-hand experience of reporting via Safe2Say during the consultation process, likely due to the timing (the consultation ran from August to October 2023). However, victim-survivors, service providers and other stakeholders did share their opinions about the platform, which were generally positive. We heard that Safe2Say provides a private, safe and less confronting reporting pathway, providing much-needed confidentiality to the process. The option of anonymity and the ability to connect directly with specialist officers were seen as very valuable aspects of the model. Safe2Say was also seen as a good way to provide victim-survivors with information and link them to supports.

*I am pleased to see the Telling your Story brochure and Safe2Say.*

#### ***Victim-survivor***

In the first year of operation of Safe2Say, from 4 July 2023 to 4 July 2024, there were 1,053 reports. The breakdown by report type is shown in Table 3.

Report type	Number of reports
Victim-survivor	569
Family member	67
Friend	19
Third Party	333
Duplicate records	65

**Table 3 Safe2Stay reports 2023–2024 by type**

Safe2Say was seen as a welcome addition to the reporting options in WA as it gives victim-survivors the option to provide information about an offence without having to make a formal report to police. All persons reporting on Safe2Say, whether anonymous or not, receive a report ID which allows them to go back into the platform at any time and view messages left for them by police or provide further information. People reporting anonymously can thus still engage with police. Information collected through informal reports on Safe2Say (and other alternative reporting platforms in Australia) may be stored on police databases and used for intelligence gathering. Persons who make an informal report via Safe2Say may use their report ID to progress a formal report to police in the future. Alternative or informal reporting platforms generally also include links to support services, either through direct outreach by support services or via information provided on the platform.

Elsewhere in Australia, anonymous, alternative online reporting options for sexual offending are hosted by police services in:

- NSW – Sexual Assault Reporting Option (SARO)
- Queensland – Alternative Reporting Option (ARO)
- ACT Policing Online Services for Historical Sexual Assault.

These alternative reporting platforms give people the option of being contacted by police to discuss their report further and provide information about specialist support services for victim-survivors. In Victoria, the Sexual Assault Reporting Anonymously (SARA) service was available between 2012 and 2020. SARA was hosted by a specialist sexual assault service and was used primarily to connect victim-survivors to support services.

Safe2Say includes broad, narrative-style questions that ask the reporter to describe the offending in their own words (such as ‘Tell us what you know about the abuse’). This contrasts with the more prescriptive, closed or check-box style questions used in SARO and ARO. The Safe2Say question format is consistent with best-practice cognitive interviewing principles, which prioritise the interviewee’s free description of the incident in their own words (Heydon & Powell, 2018). Not only does this style of questioning reduce the risk of contaminating evidence, it also meets the principles of trauma-informed practice by allowing the victim-survivor to tell the ‘whole story’ (Tidmarsh & Hamilton, 2020).

Research has found that this style of questioning also reduces the perception of victim-blaming that may arise from specific questions about the appearance or behaviour of the victim-survivor, as well as minimising the risk of retraumatisation through confronting and explicit terms about the incident that may be listed in check-box questions (Loney-Howes et al., 2022, pp. 25–26). The plain language and relatively short length of the Safe2Say

form is also backed by research which has found that longer and more detailed forms (such as SARO) can be overwhelming and difficult for victim-survivors to complete (Heydon et al., 2023, p. 57).

Stakeholders strongly supported the introduction of Safe2Say as an alternative, online reporting option for victim-survivors in WA. However, we also heard about ways the design and delivery of Safe2Say could be improved to enhance trauma-informed delivery and improve uptake across the community. Stakeholders commented that the platform could be promoted more widely across the community.

Some specialist sexual assault service providers told us that they were not consulted in the development of Safe2Say and were not directly advised of its launch. This was a missed opportunity to connect victim-survivors to the platform. Stakeholders also suggested that education campaigns should be developed to promote the platform, including initiatives targeted to specific communities. Workforce development initiatives on responding to sexual offending should include education and training on Safe2Say for sexual violence, community, health, mental health, education and legal services to help them support their clients with the reporting process.

While the Safe2Say format aligns with best practice, the act of making an online report still has the potential to be overwhelming and retraumatising for victim-survivors. Specialist sexual violence services we spoke to expressed concern about victim-survivors completing the form unsupported. Research suggests that the process of completing an alternative report has the potential to be distressing for victim-survivors and that specialist services are uniquely positioned to provide therapeutic support and assist victim-survivors to express their story in ways that align with justice system requirements and terminology (Loney-Howes et al., 2022, p. 31).

There is no direct mechanism for victim-survivors to be linked to specialist support services once they have made a report via Safe2Say. The contact number for SARC is included on the webpage that hosts the platform; however, this relies on victim-survivors proactively reaching out for support. Consideration should be given to creating proactive referral pathways to specialist services in the Safe2Say model. For example, research found that a key benefit of the SARA model in Victoria, which was hosted by a specialist support service (but did not include a direct report to police), was that reports were followed up by a phone call to see if they required any further support (the form included a question about whether the reporter would like to be contacted). Approximately 2,000 reports were received via SARA in the eight years of its operation and around half the people who used the platform agreed to having follow up contact from the support service (VLRC, 2021, p. 154).

*Perhaps one option not explored is the victim only having to provide and email or a mobile phone number which then provides support services an avenue to begin contact.*

#### **WA Police – Regional**

The 2023 AIC report and the VLRC in 2021 recommended that alternative reporting options be hosted by specialist sexual violence services to facilitate therapeutic support first and foremost and to mediate engagement with the justice system for victim-survivors

(Heydon et al., 2023, p. 59). Hosting the platform externally to police was seen as important to encourage reporting and facilitate support for marginalised victim-survivor cohorts, who may be reluctant to engage with police, even online (Heydon et al., 2023, p. 69).

The AIC report recommends that online platforms be ‘designed in accordance with best-practice cognitive interviewing techniques, to be trauma-informed, to have robust protections to ensure data security, and to be easily accessible to all victim-survivors’ (Heydon et al., 2023, p. x). While the format of questions on Safe2Say is considered best practice, there is limited information on the webpage or platform itself about how the reporting process works. The webpage states that reporters can communicate directly with specialist detectives, and the introductory text on the platform states that reports are hosted on the ‘Tor Network’<sup>5</sup> to protect anonymity, noting that many people in the community will not know what the Tor Network is. There is no explanation of how information from anonymous reports will be used by police on either page.

A key finding from the 2023 AIC report was that victim-survivors and service providers needed clarity on how information gathered from informal reports is used by police. Some victim-survivors interviewed for 2023 AIC report described being frustrated and confused about the ‘point’ of alternative reporting and how it would contribute to perpetrator accountability (Heydon et al., 2023, p. 61). Ultimately, the report found that victim-survivors wanted to know that their report would be meaningful in some way (Heydon et al., 2023, p. 21). Alternative reporting options can help fulfil victim-survivors’ desire to protect others from the perpetrator, as informal and anonymous reports are often used by police for profiling and intelligence gathering and to build cases against repeat offenders (KPMG & RMIT, 2023, p. 27). Including further information on how information from Safe2Say reports is used may make the Safe2Say option more meaningful for victim-survivors who do not wish to make a formal report.

The webpages hosting the SARO and ARO reporting tools include significantly more information about what the tool is designed to do and how it may be used, the types of questions it contains, reporters’ options regarding anonymity and informal reporting, and how the information may be used by police. The SARO webpage also includes a note that completing the form may be distressing for victim-survivors and urges them to seek support to complete the form and do it in a place in which they feel safe and comfortable.

*It is crucial that victim-survivors understand the nature of the form and potential outcomes that may emerge as a result, to ensure they are making an informed decision to use the form. Survivors may be experiencing significant emotional distress while filling in alternative reporting forms and having clear and concise information about what will happen with their report is crucial.*

***Heydon et al. (2023, p. 28)***

The SARO, ARO and SARA tools allow victim-survivors to save partially completed reports and return to them later. The 2023 AIC report found that this was a useful feature to

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<sup>5</sup> Tor is a free routing platform that enables anonymous online communication by routing users’ traffic via a random path through the network.

mitigate any sense of being overwhelmed for victim-survivors and allow them to complete the report at their own pace (Heydon et al., 2023, p. 20). The SARO and ARO forms also exist in paper format, which may be useful for certain cohorts of victim-survivors, including those without ready access to the internet and older people. Safe2Say does not currently include these features.

The introduction of the Safe2Say platform is an important measure that provides victim-survivors with a safe alternative to the current reporting mechanisms and provides them with a third option that may better meet their justice needs. In many ways the operation of Safe2Say aligns with best practice. To date, uptake of Safe2Say has been low, which may be due to the limited promotion and community awareness of the platform. Before increasing awareness and usage of the platform we recommend that a formal evaluation of its operation to date be undertaken. In making recommendations for future use, the evaluation should also consider:

- recommendations from the AIC 2023 report on alternative options for sexual assault
- best-practice features from platforms used in other Australian jurisdictions
- support for victim-survivors using the platform
- how the platform can be adapted and delivered to meet the needs of high-priority population groups
- any unintended impacts of alternative reports, including the potential for them to be subpoenaed by legal defence teams if a matter goes trial, and the implications if there are inconsistencies between the alternative (initial) and subsequent reports (VLRC, 2021, p. 155)
- the status of alternative reports in relation to criminal injuries compensation (Heydon et al., 2023, p. 9).

The evaluation should also consider the downstream impacts of increased use and awareness of the Safe2Say platform on services and organisations, such as the specialist sexual assault support sector, the ODPP and courts. Any mechanism that drives an increase in formal, and possibly informal, reporting rates will increase the pressure on organisations within the criminal justice system and organisations that support victim-survivors.

**Recommendation 10:**

WA Police partner with specialist sexual assault support services to improve awareness of Safe2Say and develop training materials to support its use by services that support victim-survivors.

**Recommendation 11:**

WA Police commission a formal evaluation of Safe2Say which also considers the following:

- recommendations from the Australian Institute of Criminology 2023 report
- best practice features from platforms in use in other Australian jurisdictions
- support for victim-survivors using the platform
- how the platform can be adapted and delivered to meet the needs of high-priority population groups
- how and when reports can be accessed and by whom
- any unintended impacts of alternative reports, including their use in legal proceedings
- the status of alternative reports with regard to criminal injuries compensation
- the impact of increased reporting on WA Police and other organisations.

#### 8.2.4 Multidisciplinary Reporting Centres

During consultation, stakeholders suggested that multidisciplinary reporting centres (MDRCs) could improve the reporting experience for victim-survivors and more effectively respond to their needs. The aim of MDRCs (sometimes referred to as one-stop or reporting hubs) is to make it safer and easier for victim-survivors to report. Recognising that initial disclosures and interactions with police are critical to victim-survivor wellbeing and continued engagement with the criminal justice system, MDRCs aim to maximise support for victim-survivors at this crucial point.

MDRCs provide specialist, trauma-informed and wrap-around services to victim-survivors from a single location. Some of the services that may operate out of an MDRC for sexual offending are listed below, but models vary.

- Specialist police officers.
- Victim advocates.
- Specialist sexual violence therapeutic services.
- Forensic examination services.
- FDV and other community services.

Some MDRCs do not co-locate police and forensic services but instead have formalised protocols for working together and supporting victim-survivors to access these services.

Co-location increases collaboration across services to provide a more holistic response that can be tailored to the individual needs of a victim-survivor. The physical design of MDRCs is intended to be discreet, private and non-threatening for victim-survivors who may find police stations intimidating or unwelcoming. Studies of MDRCs in the UK found that they increase access to services and support for victim-survivor cohorts who would otherwise not report to police (Robinson & Hudson, 2011, p. 523). The MDRC model has been implemented in Australia and internationally as a response to family and domestic violence and sexual offending and is increasingly recognised as best practice in these

fields (see Powell & Wright, 2012; Coates et al., 2022, p. 3; Gresson & Campbell, 2015, p. 2471).

*There needs to be more places outside of a police building where reports of sexual offending can occur.*

### ***Victim-survivor***

In Chapter 7 we noted that victim-survivors have unique experiences and needs; however, the criminal justice system and adjacent services often operate service models that are rigid and lack flexibility to tailor supports to people's needs and circumstances. Many stakeholders referenced SARC as having a more flexible approach as victim-survivors presenting to SARC for crisis services do not need to report to police straight away – they can undergo a forensic examination and then decide about reporting when they are ready.

Stakeholders viewed MDRCs as a more flexible approach to reporting, allowing victim-survivors to access essential support and information and/or make alternative reports. Co-located advocates and other support services can then walk with victim-survivors through the reporting and other processes. Research has found that coordinated responses such as MDRCs improve sexual offending victim-survivor experiences and that they are more likely to receive services that meet their needs (Coates et al., 2022, p. 15).

*[What would improve the reporting process?] One stop reporting, non-police identified/marked building where victims can provide investigative statement, victim impact statement, get access to preliminary counselling services without having to visit multiple sites or tell the same stories multiple times.*

### ***WA Police – Regional***

The specialisation of the MDRC workforce reduces the risk of victim-blaming and dismissive or retraumatising responses from non-specialist police officers and other first responders. Evaluations have shown that the co-location of services improves knowledge and increases skills across professions and makes the service responsive to the specific needs of the local community (Powell & Wright, 2012, p. 349).

*[What would improve the reporting process?] Complainants to report to agency/people outside police system as a first port of call, and given all options in relation to what has occurred, e.g. safe housing, police reporting, counselling etc.*

### ***Victim-survivor***

Research in the UK found that one of the key benefits of MDRCs was their ability to provide victim-survivors with the opportunity to speak with a specially trained police officer anonymously about reporting, before deciding how to proceed (Robinson & Hudson, 2011, p. 523). Research also shows that MDRCs for sexual offending have positive effects on criminal justice outcomes, including reduced time between offending and reporting (Coates et al., 2022, p. 15). Studies in the USA have found that cases that went through MDRCs were significantly more likely to result in arrests and charges being filed by the prosecution (Gresson & Campbell, 2012, p. 87).

There are a number of multidisciplinary Centres Against Sexual Assault (CASA) across Victoria which provide the following services:

- Victoria Police specialist investigators from the Sexual Offence and Child Abuse Investigation Team (SOCIT), and in some locations Family Violence Investigation Unit.
- Child Protection staff from Department of Families, Fairness and Housing.
- Counsellors and advocates from sexual assault.
- Family violence response services and community health nurses.
- Forensic examinations (not all sites).

Police officers in CASAs do not wear uniforms and the buildings are discreetly signed and designed to be culturally respectful, comfortable and private. There are private counselling and group therapy spaces, clinic rooms, video and audio recorded evidence rooms where children and adult victim-survivors with cognitive impairments can provide their statement to police, and forensic medical suites in some locations. The centre provides proactive referrals to other services and provides support to family members impacted by the offending. Some CASAs also undertake primary prevention work in their local community.

The VLRC noted that CASAs are achieving their aims of providing a trauma-informed and more positive experience for victim-survivors by improving privacy and access to justice, reducing the number of times they must tell their story and assisting them in navigating the complex criminal justice system. Evaluations have also found that CASAs facilitate the sharing of knowledge, information and skills among professionals (VLRC, 2021, p. 92).

*One thing I know they were introducing in Victoria that was received with positive feedback, were specialist sexual assault centres to report to. It has a medical nurse, police officer, and psychologist all in the one facility and was not marked as a station. Everyone was trained in sexual assault investigations specifically and the person could get the test, investigation, and counselling all in one location. I would report to something like this.*

#### **Victim-survivor**

The Sexual Assault Resource Team (SART) in Townsville, Queensland, includes sexual assault support workers, specialist detectives, hospital staff, clinical medical staff and the ODPP. The team is coordinated through the Townsville Women's Centre, but not all SART staff are co-located there. Rather, victim-survivors can attend the Women's Centre or hospital to receive wrap-around support according to their needs and wishes, which may or may not include reporting to police. All victim-survivors have access to information on their options, advocacy and support during and following the police report and forensic examination and ongoing access to free specialist sexual assault counselling. The Women's Centre received a further \$1.8 million to expand the SART model in response to recommendations from the Queensland WSJT (2022, Recommendation 11).

In WA, there are two models of MDRCs that currently operate for people experiencing, or who have experienced, child sexual abuse or family and domestic violence.

The Multi-agency Investigation and Support Team (MIST) is a multidisciplinary model that responds to child sexual abuse. It involves the co-location of a Child Abuse Squad team from police, Child Protection and Family Support (CPFS) specialist child interviewers, a CPFS worker and Child and Family Advocates, and therapeutic support services who work as an integrated team. The team operates out of the purpose-built Child, Youth and Family Centres in Armadale and Midland. Cases may be referred to MIST in several ways. Children and their families can attend to undertake the reporting and other police processes in a safe and supported environment.

*MIST delivers integrated services to survivors, combining acute, trauma-informed, response recovery support, with a long-term therapeutic care program. MISTs provide a response where the child and family are central, and their needs are supported through different stages of treatment and recovery.*

***Parkerville Children and Youth Care (n.d.)***

The MIST model was referenced by several stakeholders as a good example of providing a holistic response to support victim-survivors. A 2017 evaluation of the MIST pilot found that the model significantly increased the responsiveness of police and child protection services to cases (Herbert & Bromfield, 2017, p. 12). The evaluation also found that the model improved collaboration between professionals, the take-up of support services was high, professionals involved felt that the service was more victim-centric and caregivers expressed a high level of satisfaction with the MIST response (p. 12).

*Generally, we have received very positive feedback from victim-survivors about their experiences in reporting child sexual abuse at MCD [multidisciplinary centres].*

***Knowmore***

In 2020, two specialist FDV hubs opened in WA – the Naala Djookan Healing Centre in Mirrabooka and the Mara Pirni Healing Place in Kalgoorlie. These hubs provide specialist FDV services and mental health, legal, housing and financial counselling services in one location. The goal of the hubs is to reduce the harm of FDV by linking victim-survivors with a range of services. These hubs have less of a focus on reporting and police are not co-located but are linked with the hubs under the service model. Around 85% of clients at Marna Pirni are Aboriginal people. Naala Djookan has a highly culturally diverse client base, including many people born outside of Australia who speak a range of languages (Hodgson et al., 2022, p. 10).

The hubs also include community activities such as yoga classes, arts and crafts and yarning circles that anyone can attend. These activities build trust and knowledge in the community and reinforce the hubs' position as a safe space in the community. Mara Pirni includes a Community Advisory Group and Naala Djookan has a Lived Experience Advisory Group, which are intended to ensure the hubs respond to the needs of their community. Hubs are also being established in Armadale and Broome.

A 2022 evaluation of the hubs found that the hubs are effective in:

- increasing the safety of people experiencing FDV
- reducing the need for victim-survivors to retell their stories

- meeting the support needs of victim-survivors and their children
- providing personalised and trusted care
- increasing perpetrator visibility
- increasing the capacity of local services to respond to FDV (Hodgson et al., 2022, p. 10).

We recommend that MDRCs be introduced as a reporting option in WA. Further policy work is required to determine which model/s would work best, including which services should be co-located. MDRCs must be flexibly designed to provide the right services to meet the specific needs of the community they are serving, including any culturally appropriate services, such as Aboriginal healing services.

Consideration should be given to short- and long-term options, including the potential to leverage existing FDV hubs to include specialist sexual violence services, as well as the development of purpose-built MDRCs. Options for implementing MDRCs in regional areas should also be explored. This could include partial co-location and partnering with local organisations, including Aboriginal Community Controlled Organisations, to design and deliver services.

*Multi-agency FV/Sexual assault team similar to...MIST team for engagement in remote communities with counselling support [would improve the reporting process].*

*WA Police – Regional*

**Recommendation 12:**

The WA Government introduce a multidisciplinary centre or reporting hub model for adult victim-survivors of sexual offending. The model should be:

- flexible and adaptable to the specific regions and communities it will service
- informed by best practice, national policy and research
- delivered as a pilot in two different locations (one metro and one regional)
- delivered in partnership with specialist and other support organisations.

## 9 Investigating sexual offences

For the purposes of this report, the process of police investigating sexual offences runs from the point a victim-survivor reports the offence to the time a decision is made to charge the accused and the matter progresses to prosecution. Once a victim-survivor makes a report to police they are often referred to as the complainant. In this chapter we may refer to the person who has experienced sexual offending as a victim-survivor or as the complainant. We refer to the person who caused the harm as the accused.

In Discussion Paper 3 we asked the following questions of victim-survivors, stakeholders and the community:

- How well is the investigation process working for victim-survivors? How could it be improved?
- Should victim-survivors receive independent advice and support about what evidence they provide to police?
- How well is the police interviewing process working? How could it be improved?
- How well is the charging process working for victim-survivors of sexual violence?

In this chapter we look at the consultation findings in relation to how well the investigation process is working and how it can be improved. We also consider the evidence base and make recommendations about specific parts of the investigation process, including access to forensic medical care, the formal statement and collecting additional evidence.

### 9.1 The investigation process

Police represent the entry point to the criminal justice system (Taylor & Gassnet, 2009, p. 240). As discussed in Chapter 7, due to attrition rates a very low percentage of sexual offence reports result in criminal charges and progress to prosecution (WSJT, 2023, p. 147). This means that for most people who report a sexual offence, their experience of the criminal justice system will be based on their experience of police responses and the investigative process (VLRC, 2021, p. 348).

The WA Police booklet *Telling Your Story and Getting Help; Reporting Sexual Offences; Information for Persons Who Are 16 Years and Older*, sets out the major steps in the investigation process, namely:

- taking the victim-survivor's statement
- forensic and medical examination
- collecting other evidence, which includes digital information and interviewing the accused and other witnesses
- police decision-making on whether to charge the accused.

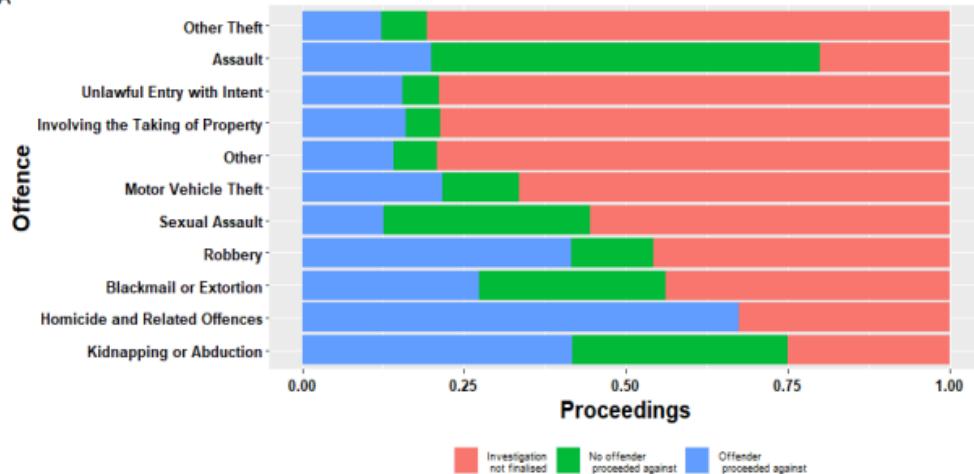
The steps in the investigative process may take place in any order and victim-survivors may not experience every step in the process. How police investigate the reported offence significantly impacts on the likelihood of the case reaching prosecution, progressing to trial and securing a conviction. As we heard in consultation, the quality of the investigative process varies. An investigation that does not meet a victim-survivor's justice needs may be deeply traumatic and long-lasting.

## 9.2 Attrition during the investigation process

While attrition can occur at any stage of the criminal justice process, it is highest at the police investigation stage (WSJT, 2023, p. 147). As part of Project 113, the LRCWA (2023) commissioned an analysis of sexual offences in WA to complement its Background Paper. The results are contained in the appendix of that paper (Tarrant et al., 2022). Reproduced from the Background Paper, the ABS Recorded Crime – Victims, Australia data (Figure 5) shows that, compared to other offences, in sexual offences a lower proportion of offenders are proceeded against (p. 45).

Comparison of Proceedings per Type in WA 2021

Fig. 9A



Sexual Assault Proceedings per Type in WA 2021

Fig. 9B

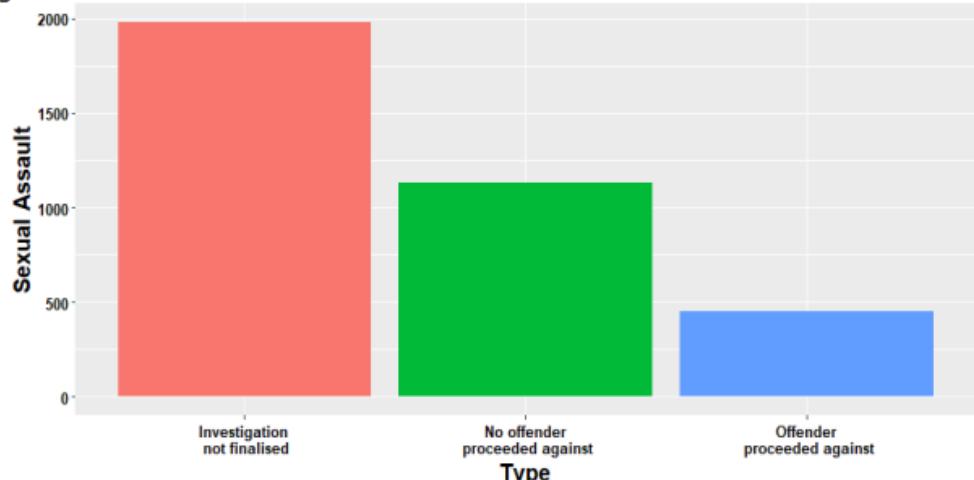


Figure 4 Recorded crime – victims, Australia data

A 2024 report on attrition and sexual assault reports in the NSW criminal justice system in 2018 showed similar results. Of the 5,869 incidents of sexual assault reported to police in 2018, only 872 (14.9%) resulted in a legal action, with 3,369 charges being laid against 969 defendants (Gilbert, 2024).

The reasons for the lower proportion of proceedings against offenders in sexual offences are complex. A recent study commissioned by the ACT Government (ACT Attrition Study) investigated reasons for the high attrition rate in the ACT (Burgin & Tassone, 2024). A total

of 389 sexual offences cases were analysed as part of a Police Process Review and captured a range of sexual offending (p. 8). The review found that 42% of these cases were closed by way of ‘victim withdrawal’ but this did not equate to the victim-survivor withdrawing their complaint – instead, they were disengaging from the police process, which they described as triggering (p. 8).

In the remainder of this chapter we talk about victim-survivors’ experiences of the investigative process. What we heard in consultation provides some explanation as to why victim-survivors disengage from the criminal justice process. In Chapter 6, we also outlined many of the factors which contribute to under-reporting of sexual offences. These factors continue to influence victim-survivor decision-making at each stage of the criminal justice process and act as barriers to engagement. However, we need to acknowledge that we do not know enough about why victim-survivors withdraw from the investigative process. We discuss this more in Chapter 10 and make a recommendation for further research specific to WA.

### 9.3 Police decision-making

In deciding whether to lay charges for a sexual offence, WA Police refers to the *DPP Statement of Prosecution Policy and Guidelines 2022*. The main things the police must decide before filing charges against an accused are:

- can they identify the person accused of the sexual offence?
- do they have enough evidence to support the charges against the accused?
- is there a reasonable prospect of conviction?

Police may choose to discontinue the investigation without filing charges if:

- they cannot identify the person accused of the sexual offence
- they do not have enough evidence to support the charge
- there is not a reasonable prospect of conviction.

Police may also discontinue their investigation without filing charges for other reasons, such as where the accused has died or the victim-survivor withdrew their complaint.<sup>6</sup> Police may ask a victim-survivor to provide a brief statement confirming that they would like to withdraw their complaint, but this is voluntary. It is also important to note that a victim-survivor’s wish to withdraw their complaint is not binding and police may still proceed with the investigation. Police will advise victim-survivors that an investigation can be restarted at any time if they choose to continue with their complaint. Police must talk to the victim-survivor and explain the reason for their decision both when they file charges and when they discontinue an investigation.

While it is important that police investigators maintain impartiality and objectivity in their decision to investigate and charge an accused, this can be affected if police have attitudes and beliefs about the credibility and believability of sexual violence victims generally (WSJT, 2023, p. 147; Taylor & Gassner, 2009, p. 245). In Chapter 5, we discussed myths, misconceptions and community attitudes. In its submission, ANROWS highlighted that myths, misconceptions and mistrust can undermine police, legal and

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<sup>6</sup> An investigation may continue if the person making/withdrawing the complaint is a child because a person under the age of 16 cannot consent to sexual activity.

juror perceptions about the credibility of sexual violence allegations. The ACT Attrition Study similarly found that police decision-making was impacted by an acceptance of rape myths. Police also focused on their perception of what might happen at later stages of the criminal justice system, and how factors such as the victim-survivor's demeanour or their lack of physical resistance would be perceived by the jury (Burgin & Tassone, 2024, p. 9).

Police practices and attitudes that employ inaccurate narratives and misconceptions about sexual violence can themselves cause injuries to complainants in criminal justice processes (Tarrant et al., 2022, p. 28). Stakeholders told us that many victim-survivors feel like they are not believed, not taken seriously and being judged.

#### 9.4 Victim-survivors' experience of the investigation process

The investigation process may appear straightforward, but we heard that it is often confusing for victim-survivors, and subject to long delays. WA Police acknowledge that the investigative process can be overwhelming and time consuming (2022, pp.12-13). The LRCWA Project 113 Final Report highlighted that one area of particular concern is police responses to sexual offending. Victim-survivors say they are not believed, are closely interrogated or have their experience trivialised (LRCWA, 2023, p. 8). In this section we discuss the positive and negative experiences that were raised in consultation.

In consultation, some victim-survivors and service providers outlined positive experiences with police during investigative processes. Such experiences were characterised by the victim-survivor as feeling safe, heard and supported. In particular, stakeholders reported positive experiences when the investigative process:

- was supportive, flexible and timely
- provided the victim-survivor with opportunities to be involved in the process
- was based on a trusted relationship.

The positive experiences reflect practice that is trauma-informed and meets victim justice needs. Examples highlighted by stakeholders include police travelling to a victim-survivor's home to take a statement, the victim-survivor being offered the choice of speaking to a female officer or a specialist officer from a different regional centre, the victim-survivor having the same police officer as their primary contact point through the investigative process, and receiving regular communication.

*They made it very accessible for me. I had requested a female officer, and they sent both a male and a female officer. They called when they arrived, and throughout the process, they were very respectful. The police came to my house, took my statement, and I found the hardest part was the statement itself. However, the police were lovely throughout.*

##### **Victim-survivor**

*I had to tell him [the police detective] some very personal stuff, gross stuff that I would never tell anybody. He listened; he did not make me feel like it was creepy. He did not make me feel uncomfortable, I felt listened to, I felt safe.*

##### **Victim-survivor**

Sexual offence cases can fall through the cracks at the front desk of the local police station (Ting & Palmer, 2020). Where stakeholders reported negative experiences with police, it was often associated with victim-survivors feeling unsafe, blamed for the offending and unsupported. Stakeholders told us that police at the local level dissuaded victim-survivors from continuing their complaint, often because their case was not considered very strong.

*I reported to my local police station two years ago as I had decided to come forward about my childhood abuse 12 years [ago]. I was not questioned, there was underreporting and a horrible lack of investigation. The local police refuse to help me with this matter.*

#### **Victim-survivor**

*When we present to a police station to support a client to make a report and the people at the front desk turn them away, this is really disheartening and presents someone from pursuing a report. There appears to be a little understanding of empathy around sexual coercion or abuse at the police station especially those that are general officers and there appears to be a lack of will to liaise further with special units for advice.*

#### **Service provider**

Service providers also told us that due to prevailing myths and misconceptions victim-survivors who do not fit the expectations of the ‘ideal victim’ were sometimes discredited or not taken seriously, and this impacted on specific cohorts more directly. We heard that conscious or unconscious bias against Aboriginal women led to police dismissing reports of sexual offending. People who undertake sex work were perceived as less credible witnesses or as having somehow consented to the offence due to their occupation. Women who were in contact with the criminal justice system for other reasons were viewed as less trustworthy or credible, and women with alcohol and other drug issues, or who were intoxicated at the time of the offence, were viewed as contributing to the offence through their behaviour and choices.

We heard that victim-survivors faced long delays in communication from police or that the person managing their case changed regularly, which required them to tell their story repeatedly. Both scenarios caused victim-survivors frustration and distress. Victim-survivors told us they often had to call for updates and were not advised of progress on their case. They did not understand the process and were not provided with clear information. Service providers said that due to inconsistent responses from police they were not able to give their clients clear guidance on the process either.

*A key issue is ongoing communication. My experience was that police seemed to change roles regularly and there wasn't the continuity.*

#### **Victim-survivor**

*I then asked about my other report. He said ‘What other report?’ I explained the [child sexual abuse], which he then found on their system and said ‘That*

*was closed, you would have been advised.' I said 'No, I was never advised of that or contacted about it' – he said 'Oh well I'm advising you now.'*

#### **Victim-survivor**

Victim-survivors often need access to support services during the investigation process. Their lives are significantly disrupted; they may require time off work and the investigation may impact relationships and existing support networks, especially if the accused is a family member or friend. However, we heard during consultation that not all victim-survivors receive referrals to the support services they need, such as counselling, housing or legal advice.

People living in regional and remote areas often face additional barriers linked to the availability of services and lack of specialised expertise. Stakeholders shared that victim-survivors may not be able to access forensic examinations, crisis support and counselling.

*There are no doctors or support services for victim-survivors in our town and they would have to travel for face-to-face support or have telehealth appointments arranged. There is reduced access to VSS due to victims having to travel to access the service.*

#### **WA Police – regional**

##### **Louisa's story**

Louisa was sexually assaulted at a party early one morning. She attended the emergency room of a hospital on the same morning and SARC that night for a forensic examination. She decided to report to the police. Even though she was worried about being believed, she thought it was clear that an offence had occurred.

Louisa attended her local police station two days later. After being made to wait and then speak to officers in an open plan area, she was told that she had a very weak case that was a 'he said/she said' and would be unlikely to proceed. The police did not wait for the forensic results before providing Louisa with this advice. The local police did not interview the person Louisa identified as the perpetrator.

Five years later Louisa received a call from a detective in the Sex Crimes division stating that they now had a DNA match from the forensic testing kit. The detective told Louisa that she had a good strong case and that she would make an excellent witness. After not hearing anything more for weeks, Louisa called the police and was told her case had been reassigned to a different area and given a low priority.

Ten months later, Louisa received another call from police to say a new detective had picked up the case and was preparing to interview the perpetrator. Louisa heard nothing for another two months and then received a call from the police to say they were closing the case because there were too many gaps in the original investigation five years ago. Louisa continues to live with the impact, not just of the original offence, but of the investigation by police, which brought up the trauma all over again for no result.

## 9.5 Measures to improve victim-survivors' experience of the investigative process

In Chapter 7 we discussed the overarching reforms required in the criminal justice system, including improved communication, information and support measures. Such measures are critical for victim-survivors as they navigate the investigation into a deeply personal and traumatic crime. In this section we look at the specific measures that might support victim-survivors during the investigation process, including specialist detectives and interviewers, witness intermediaries, recording the formal statement for use as evidence in chief and protocols for collecting additional evidence.

*Making a statement is a gruelling process. It is important to get the evidence collection right or there will be no conviction. But this is a difficult thing for a victim to understand – we are not suddenly legal experts. Having an independent advocate to talk it all through could help people get right through to the end of making a statement. When you understand what may happen it can be easier to manage how you feel about the experience. If you understand for example that there are requirements to evidence gathering it may not feel so personal when questions are asked over and over.*

### **Victim-survivor**

*Having the same set of people investigating files to decrease the amount of retelling would be great if and whenever possible.*

### **Victim-survivor**

#### **9.5.1 Improved access to specialist police**

We heard that victim-survivors were more likely to experience positive interactions with police in the specialist units. The research also suggests the experiences of victim-survivors who engage with specialist units were more positive (or at least not worse) when they dealt with specialist units compared to traditional (or local) responses (Westera et al., 2016, p. 16). Stakeholders told us that the specialist units are often better equipped and trained to offer best-practice responses, facilitate referrals to additional services and collaborate effectively with other service providers.

*We need to recognise the importance of specialist roles within police. I have seen amazing outcomes for women when police have journeyed alongside them and worked closely with our services.*

### **Service provider**

*It needs to be done by those officers that are within the specialist role of WA Police, not by members without specialist training and knowledge of victims and trauma.*

### **Victim-survivor**

The Sex Crime Division of WA Police consists of the following teams:

- Child Abuse Squad.
- Child Assessment and Interview Team.

- Child Exploitation Squad.
- Sex Assault Squad (SAS).
- Sex Offender Management Team.

The SAS is responsible for the investigation of sexual offence allegations involving victims 16 years and older. Depending on the complexity of the investigation, some adult sexual offences (such as indecent assault or intimate image abuse), with the exception of child sexual offences reported by an adult victim-survivor, are retained by the metropolitan police districts. Investigations of sexual offences in regional WA are managed by the Regional WA Detective Offices with assistance provided by SAS as required. Where appropriate, SAS will deploy to regional WA and take carriage of investigations depending on the circumstances and complexity of the allegation. All sexual offence allegations where the suspect is unknown will be managed by SAS, regardless of where they have occurred in WA.

In regional and remote areas, when victim-survivors report to a local police station they often interact with district detectives who may not have expertise or experience in responding to complex sexual offending. District detectives generally handle a wide range of matters and do not have specialist skills or capacity. WA Police told us that deploying specialised staff to regional areas presents substantial challenges and that these challenges are multifaceted – for example, there is limited available housing for specialist police in some regions.

*The biggest issue is the different responses that people will receive from our [specialist sexual assault] services, depending on whether they are in metropolitan or regional areas. In regional areas, the response comes from local district detectives who handle all types of crimes. This inevitably leads to a shortage of expertise in regional and remote WA.*

#### **WA Police**

The lack of specialist investigators in regional and remote WA may exacerbate victim-survivors disengaging from the investigation. Police officers are often socially embedded in small regional towns, which means victim-survivors who require privacy and anonymity may be reluctant to report to a local police station and engage with district detectives. Where mistrust of local police exists, victim-survivors may be less likely to report if there is no alternative or specialist service to investigate.

*Most victims in rural WA may well know the officers at the stations and may not feel comfortable disclosing offences as a result of possible shame or embarrassment.*

#### **WA Police**

##### **9.5.2 Improved access to medical care and forensic examinations**

All victims of sexual assault should be able to access care focused on their medical wellbeing and health, and forensic medical examinations which are collected forensic medical evidence to support an investigation and potential prosecution (Queensland Audit Office, 2024. p. 1). These services should be timely and responsive to victim-

survivor needs. In this section we provide an overview of the services delivered in WA and present what we heard in consultation. We acknowledge, however, that delivering medical care and forensic medical examinations is a complex subject that requires further in-depth consideration.

When a person presents at SARC or a hospital disclosing a recent sexual assault, they must be offered medical care, forensic examination and specimen collection, and psychosocial support (WA Department of Health, 2017, p. 4). SARC provides crisis medical services in Perth and Peel. A SARC doctor can help with physical injuries, screening for STIs and emergency contraception to stop unwanted pregnancy (North Metropolitan Health Service, 2025a). SARC also provides a 24-hour crisis line for counselling support. Victim-survivors with serious injuries or who are unable to travel to the SARC clinic may be advised to attend their local emergency department or visit their GP. In regional areas, victim-survivors can call the SARC crisis line for counselling support but may need to attend their local emergency department or nursing post (North Metropolitan Health Service, 2025a). Most health services will be able to provide victim-survivors with a level of medical care, but there are no specialist sexual assault organisations providing crisis medical services to victim-survivors in WA other than SARC.

Research has identified a lack of ongoing training for health professionals and services for counselling support in relation to responding to sexual assault, particularly in regional and remote WA (Senate Community Affairs References Committee, 2023, pp. 95–96; ALRC, 2025, p. 137). In regional and remote communities, some doctors and nurses may be trained in responding to the physical impacts of sexual offending but they form part of a primary or women’s health service. While there is a clear need for specialist sexual assault services, some victim-survivors may also prefer to seek help from primary healthcare providers or organisations – such as Sexual Health Quarters, Magenta, M Clinic and Aboriginal Community Controlled Health Organisations – that provide culturally safe and accessible support for particular cohorts. It is important that healthcare providers in non-specialist sexual assault organisations receive training and support to respond to sexual offending.

A forensic medical examination is a way of collecting evidence from the body of the person harmed (VLRC, 2020a, p. 5). In cases of recent sexual assault there may be evidence from the body or clothing of the victim-survivor, such as bodily fluids, fibres and physical injuries (VLRC, 2021, citing Quadara et al., 2013, pp. 3–4). Most brochures and other communication tools for victim-survivors emphasise that forensic evidence collection is important and should take place as soon as possible following the offence. However, it is an intrusive process that can be confronting and distressing. Forensic medical examinations need to be performed professionally and sensitively to reduce the impact on victim-survivors (Queensland Audit Office, 2024, p. 4). High-quality forensic care requires knowledge of forensic techniques and injury documentation as well as police procedures and legal proceedings. Under the *Criminal Investigation Act 2006* (WA), Part 9, only a qualified person as prescribed in regulation 7 of the *Criminal Investigation Regulations 2007* (WA) may perform forensic examinations. A qualified person may be a doctor, nurse or midwife who has undergone relevant training.

Victim-survivors may attend SARC or a hospital to provide forensic samples before reporting to the police, but forensic samples will not be provided to police for analysis

until a police report is made. A person who attends a forensic examination does not have to make a report to the police (North Metropolitan Health Service, 2025b). Forensic evidence is stored for 12 months, after which the victim-survivor is contacted about their wishes. Victim-survivors may also access an Early Evidence Kit (EEK) at every hospital in WA (Centre for Women's Safety and Wellbeing, 2024, p. 16). EEKs, which can be administered by most healthcare workers, are used to collect time-sensitive forensic samples which may be lost before a full forensic examination can be completed.

When a victim-survivor reports an offence at the police station, police may ask them to attend a forensic examination. Victim-survivors have a choice and must give their consent for a forensic examination to occur (*Criminal Investigation Act 2006 (WA) s 86(1)*). Police may also ask a victim-survivor to use a preliminary forensic evidence kit (PFK). This is a self-administered, voluntary test, which has the same purpose as an EEK. It can provide valuable forensic evidence in the first 48 hours after the sexual offence.

In Perth and Peel, forensic services are coordinated through SARC. The service is available 24 hours a day, 7 days a week. Health professionals in metropolitan public hospitals are encouraged to consult with SARC regarding all sexual assault presentations where management and care are required (WA Department of Health, 2017, p. 4). In regional WA, the forensic services are generally coordinated through the local hospital. WA Country Health Service's (WACHS) Responding to Sexual Assault Policy requires that health professionals responding to sexual assault presentations at WACHS hospitals must consult with SARC over the phone (Centre for Women's Safety and Wellbeing, 2024, p. 16). Through consultation, we also heard that consultation over the phone takes place in remote locations such as the Ngaanyatjarra Lands. There are just under 300 WACHS staff (qualified persons under the *Criminal Procedure Regulations 2007 (WA)*) who can perform forensic examinations (Centre for Women's Safety and Wellbeing, 2024, p. 16), but qualified persons are not always available at locations in regional and remote WA. When no qualified person is available, any doctor may undertake the full forensic examination and can seek phone consultation and guidance from SARC.

In consultation, we heard positive feedback about the services delivered by SARC in the Perth metropolitan area. However, we also heard about the challenges faced by victim-survivors in regional and remote WA accessing forensic and medical care. For instance, we heard that in Kalgoorlie it is not unusual for victim-survivors to wait 6–12 hours for a forensic examination due to a lack of available forensic-trained and qualified medical officers. An EEK can be offered immediately to collect some forensic evidence but there will often be a delay before a full forensic examination can be performed. Generally, it is advised that victim-survivors do not shower, eat or drink until the forensic examination is complete (WA Police, 2022, p.14). Some victim-survivors will leave the health facility before the forensic examination is done because they are distressed or have caring responsibilities.

Outside regional centres victim-survivors face even greater challenges. The lack of trained and qualified staff mean victim-survivors may have to travel great distances. Stakeholders told us that victim-survivors in agricultural and remote regions face barriers to accessing medical care and forensic medical examinations, even over the phone, and that their isolation from support is a significant concern.

*In the most recent sexual offence the victim had to travel for four hours to get to a suitable hospital for a forensic procedure to be completed.*

#### **WA Police – regional**

There are initiatives underway to improve access to medical care and forensic medical examinations for victim-survivors in regional and remote WA. SARC delivers a 3-day forensic training program that qualifies a nurse or midwife to collect forensic specimens under the *Criminal Investigation Act 2006* (WA). The course enables regional, rural and remote health professionals to provide forensic medical care with the guidance of experienced SARC forensic physicians. SARC has conducted more than 35 courses since 2011, training more than 400 clinicians with approximately 80% being nurses and midwives and 20% doctors. SARC is also working with WA Police on including Australian Health Practitioner Regulation Agency-registered Aboriginal health practitioners within the scope of qualified persons able to collect forensic specimens.

A 2-year review of the EEK program is also underway and nearing completion. The EEK program allows victim-survivors in regional areas to participate in the collection of early forensic evidence without the need for an immediate decision regarding involvement of the police. Early evidence kits are available from hospitals and police stations and are now also available at specific mine sites. It is also anticipated that new SARC-developed EEKs that are more trauma-informed, sustainable and forensically secure will be launched across WA in 2025.

Other suggestions to improve access to forensic care include increased forensic training for nurses and Aboriginal health workers, making EEKs available from more and varied locations such as health or community services, and financial support measures for accommodation, meals and change of clothes for victim-survivors who have to travel to access medical care and forensic services. However, measures to improve access to medical care and forensic examinations for people in regional and remote areas must be considered in the context of the current and future capacity of services that support victim-survivors, in particular the availability of counselling support. It must also be considered in the context of health professionals being provided with the professional support and supervision they require to conduct forensic examinations (WSJT, 2023, p. 177).

Over time there is significant attrition of forensically trained nurses willing to continue conducting forensic medical examinations. Reasons for this attrition include the impact of out-of-hours work, lack of support in the workplace and ongoing training, the pressure associated with engaging with the criminal justice system (including attending court), vicarious trauma and lack of forensic practice.

The VLRC noted that more investment and effort are needed to enable victim-survivors to have access to timely and safe forensic medical examinations. It was also suggested this is an issue that requires multi-agency leadership and is best pursued through Victoria's sexual assault strategy (2021, p. 244). We agree with the VLRC and note that given the complexity of delivering timely and safe medical care and forensic examinations, it is an issue that is best addressed through the Strategy and through further consultation with key partners, including WA Police, Department of Health, SARC, WACHS and community health or therapeutic services. We have kept the recommendation deliberately broad to

acknowledge that extensive further consideration by multiple agencies is needed to determine how access to consistent, timely and high-quality medical and forensic medical care can be delivered.

**Recommendation 13:**

The WA Government progress access to consistent, timely and high-quality forensic medical care for adult victim-survivors of sexual offences as a priority action under the Sexual Violence Prevention and Response Strategy.

## 9.6 Taking the formal statement and the interview process

A statement is the record of everything the victim-survivor can remember about what happened (WA Police, 2022, p. 13). WA Police acknowledge the process for taking a statement can be difficult as it involves the police asking many potentially repetitive questions, which may feel intrusive and can take a significant amount of time. In its submission the ODPP explained that victims will usually be asked to give their account to police multiple times, for different purposes, and with different interviewers. Police may take the statement over a period of hours or over multiple appointments. Usually a victim-survivor attends a police station to provide their statement, but arrangements can be made for the victim-survivor to make their statement elsewhere (WA Police, 2022, p. 13).

In the London Rape Review of cases from 2016, participation in a formal interview emerged as a significant barrier to a sexual assault matter progressing, with victim-survivors frequently expressing concern about the process (Mayor of London Office for Policing and Crime, 2019, p. 32). This point was also raised during WSJT's inquiry. Its report explained that the way police interact with victim-survivors during the interview process can affect the likelihood of future reporting and whether victims continue with the complaint (WSJT, 2023, p. 102).

*Police need to improve interviewing skills, and be trained on the appropriateness of statements they make and the questions they ask.*

*Bluntly telling a victim that it seems consensual, as occurred in my case, twice, is mind-boggling.*

### *Victim-survivor*

We heard in consultation that 'making the statement is a gruelling process'. The physical environment of many police stations, including interview rooms that are cold and intimidating, can make victim-survivors feel like they are being interrogated, exacerbate their feelings of trauma and impact the quality of the evidence they can provide. Our consultation findings were reflected in the NSW Interview Study, in which victim-survivor participants highlighted that the glass shields, lack of privacy and uncomfortable chairs impacted their feeling of safety (KPMG & RMIT, 2023, p. 40).

*Similar problems presented when I had to spend hours at the police station during the witness statement process. For whatever reason, the detective who took my statement initially did so in handwriting which took a few*

*hours, and then made me sit there for hours and move around rooms while he typed it up. I was again asked repetitive questions in slightly differing ways as if I was being interrogated or disbelieved about certain aspects. At no point did I receive reassurance that I was doing the right thing - I felt like I was a burden and inconveniencing them by creating additional work for them. There was no regard for my psychological wellbeing during this process.*

#### ***Victim-survivor***

Victim-survivors with communication needs faced additional challenges in providing their statements. Service providers highlighted that the ability of victim-survivors who speak English as a second or even third language to provide a statement is influenced by the interpreter services available. We heard that the availability of interpreters can be mixed. Sometimes the police believe the victim-survivor may not need one, or the interpreter may not have appropriate training regarding sexual violence and introduce their own biases when interpreting. They may also have limited understanding of the legal system and processes, impacting the accuracy and sensitivity of communication.

*Providing more language-based support during the investigation process will also improve the experience immensely for second language English speakers as they can worry less about their English communication and focus on managing the other mental and physical problems they may be facing. This support could look like providing explanations that are offered in a range of different languages, or even readily proving translators and interpreters.*

#### ***CALD community member***

Stakeholders also told us that people living with mental illness can face significant barriers providing evidence to police. In their study of the attrition of sexual assault cases in England and Wales, Hohl and Stanko (2015, p. 336) found that victim-survivors' mental health issues led to higher levels of attrition through police decisions to take no further action or victim-survivors choosing to withdraw from the process due to difficulties in providing their evidence.

A statistical analysis prepared for LRCWA Project 113 showed that 13% of sexual offence charges tried before juries in the District Court in 2019 involved a complainant who had a disability (LRCWA, 2023, p. 265). The Disability Royal Commission noted that police interviews can be demanding for anyone and can be particularly challenging for a person with disability (2023a, citing Dowse et al., 2021). Interviews can be distressing and traumatic for victims of crime, and a person with a cognitive disability can find it very challenging to attend a police interview without the presence of a support person (2023a, citing Dowse et al., 2021). We heard that there is a lack of safe spaces and of expertise around how to engage with people with impaired decision-making abilities (including older people with dementia) to enable reporting and investigation.

*We heard about a lady that was assaulted in an aged care facility, and the police interviewed her without her legal guardian. The facility did not believe her; there was no one speaking on her behalf.*

### *Older person support organisation*

#### **9.6.1 The impact of trauma on making statements**

As discussed in more detail in earlier chapters, a sexual offence is recognised as a traumatic experience that can have neurobiological impacts, affecting victim-survivors' stress-responses and neurocognitive processes. A Canadian report highlighted that impacts of trauma on victim-survivors' memory vary; they may cause fragmented and impaired recollection or, conversely, an intensified memory (Haskell & Randall, 2019, p. 20). In the aftermath of trauma victim-survivors may make statements that appear to be inconsistent or incomplete. They may also seek to hide or minimise behaviours they used to survive the offence out of fear they will not be believed or that they will be blamed for their assault (p. 10).

As a consequence of sexual violence trauma, memories can be impaired by gaps or amnesia, leading to inconsistencies in victim-survivor accounts (Tarrant et al., 2022, p. 32, citing Tidmarsh & Hamilton, 2020). Research on memory suggests that such inconsistencies are a normal feature and not an indicator of the truthfulness of an allegation. However, one of the most influential factors in deciding to proceed with a sexual offence case is victim-survivor credibility (Hohl & Stanko, 2015, p. 337). Salter et al. noted that women reporting sexual offences, and professionals who provided support, consistently stated that women who exhibit signs of trauma are often viewed as lacking credibility by police (2020, p. 102).

There is broad agreement in the research literature that the criminal justice system is not designed to accommodate people who have been affected by trauma. One of the challenges for police in taking statements from victim-survivors is to support them in providing their best evidence while being cognisant of the impact of trauma when obtaining that evidence. In its submission, Full Stop Australia noted that an understanding of trauma is 'critical to ensure that policing is tailored to victim-survivor needs. This would not only reduce retraumatisation but also support victim-survivors to give better statements – with positive flow-on effects for the administration of justice and rule of law.'

*Statements of complainants to be taken in accordance with therapeutic principles and in a process that doesn't necessarily adhere to the traditional 'chronological' statement, which many survivors and complainants struggle with due to PTSD [post-traumatic stress disorder] and other issues.*

### *Victim-survivor*

#### **9.6.2 Specialist interviewers**

While all investigating officers in WA Police receive interview training, there is no specialist training for police officers who interview adult victims of sexual offending. In its submission, Knowmore recommended that the 'Western Australian Police should ensure that all police who come into contact with victims and survivors (including adults reporting historical offences) of child sexual abuse have at least a basic understanding of

the issues (consistent with recommendations 3 and 9 of the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Report').

In research commissioned for the RCIRCSA, Powell et al. reported that criminal justice stakeholders' overwhelming concern about current practices was the quality of police questioning in the investigative interviews that constitute child complainants' evidence in chief (Powell et al., 2016, p. 31). In the same study, prosecutors, defence counsel and judges expressed a strong and unanimous view that poor conduct of police interviews often reduced the likelihood of a successful prosecution (p. 23). In sexual offence cases the expectations or demands placed on complainants and witnesses are high compared to other crime types, such as physical assault and burglary (Tidmarsh et al., 2012, p. 33).

Research suggests that specialised interviewers improve the quality of evidence gathering, investigative options and aspects of victim care and engagement (ODPP submission citing Dalton et al., 2022). Specialist interview training can improve police use of best-practice interview technique (such as increased use of open-ended questions), promote a trauma-informed manner and help prevent revictimisation (Dalton et al., 2022, p. 246). The Victoria Police Sexual Offences and Child Abuse Investigation Teams (SOCITs) use the Whole Story Investigative approach, which is a framework for the investigation of rape, sexual assault and child sexual abuse (WSJT, 2023, p. 150). This was developed from research that identified the need for contextual evidence gathered about the offending, such as any relationship dynamics between those experiencing and those committing sexual violence (VLRC, 2021, p. 369). The Whole Story approach supplements existing interview approaches by prioritising a thorough representation of the victim–offender relationship in the evidence, which in turn assists in clarifying victim behaviour and addresses myths and misconceptions police may hold in relation to sexual offending (Tidmarsh et al., 2012, p. 37).

To ensure effective implementation of the Whole Story Investigative approach, all members of Victorian Police SOCITs undergo a program that includes a 4-week interactive training model and involves a range of different components: presentations, question-and-answer sessions with adult victim-survivors of sexual abuse, analysis of court and interview transcripts, and practice interviews and role-plays (Tidmarsh & Hamilton, 2020, p. 6). Tidmarsh et al. (2020) report that such intensive training program can alter police attitudes in sexual offence cases and help maintain such attitudes after a 9–12 month period in the field.

The Sex Crime Division in WA Police has a Child Assessment and Interview Team (CAIT) comprising specialist interviewers for children and vulnerable adults disclosing child abuse or child sexual abuse. All members of CAIT receive extensive training which was originally developed by Deakin University but is now delivered through the WA Police Academy. There may be scope to expand the training to encompass adult sexual offences and increase the number of trained specialist interviewers for adult victim-survivors reporting sexual offending.

The ODPP recommends that specialist interviewers be used for adult victim-survivors of adult sexual offences and we agree with that recommendation. We have highlighted that the process of the formal interview is retraumatising for victim-survivors of any age and that trauma can have a significant impact on a victim-survivor's statement. Specialist interviewers should have the training and experience to help victim-survivors to provide their best evidence in a way that supports their needs while also providing interviews of a consistent evidentiary quality to support successful prosecutions.

**Recommendation 14:**

WA Police use, where possible, specialist interviewers for all sexual offence cases, regardless of the age of the victim-survivor when the offence was committed or reported.

WA Police undertake further policy work to determine a model of training and ongoing professional support for specialist interviewers of adult victim-survivors that aligns with recommendation 9 of the Royal Commission into Institutional Responses to Child Sexual Abuse.

#### 9.6.3 Video-recording of interviews to be used as evidence in chief

The principles contained in Recommendation 9 of the RCIRCSA are designed to support the use of investigative interviews as the evidence in chief in trial in relation to reports of child sexual abuse. Currently in WA, the *Evidence Act 1906* (WA) allows video-recordings of police interviews with children or people with mental impairment to be used as their evidence in chief in any criminal proceeding (s 106HB(1)).

In its submission, the ODPP listed amending legislation to admit victim-survivors' recorded interviews as their evidence in chief as one of the three most impactful opportunities to improve the criminal justice system's response to sexual offences. As noted above, currently victims may be asked to give their account to police multiple times, for different purposes and with different interviewers. Pre-recorded evidence in chief is useful for reducing the number of times a victim-survivor has to retell their story, which has been described as a key point of retraumatisation (George et al., 2023, p. 227). Recording the police interview also means that evidence is obtained at an early stage while details are fresh in the victim-survivor's mind and thus potentially offers better quality evidence (A-J George et al., 2023, p. 227; VLRC, 2021, p. 468). The interview is also undertaken in a distraction-free and potentially less stressful environment that is more conducive to a free-flowing narrative account (VLRC, 2021, p. 468, citing Powell et al., 2016).

Similar to WA, in other jurisdictions the ability to present a video-recording of a police interview as the complainant's evidence in chief is available for children and adults with mental impairment. Advocates such as Full Stop Australia, Victims of Crime Commissioners and sexual assault service providers have called for this to be expanded to all victim-survivors in all sexual offence cases. In submissions to the WSJT, legal stakeholders noted that legislative amendment to allow a video-recorded police interview to be used as evidence in chief in all sexual offence cases would need to be governed by a

best-practice framework, as well as the allocation of significant resources to support police training in obtaining high-quality interviews (WSJT, 2023, p. 264).

Respondents in the VLRC Inquiry raised concerns about using video-recorded interviews including:

*Interviews sometimes included irrelevant or inadmissible matters, which could result in all or part of the video-recorded interview not being admitted as evidence.*

*Interviews taken earlier in the process may not address everything needed for the trial.*

**VLRC (2021, p. 469)**

In consultation we heard that victim-survivors often have to retell their story multiple times and relive events that are traumatising and distressing. Stakeholders told us that the system can feel transactional, with victim-survivors asked to provide something at each stage – for example, provide a statement, prepare for the trial or provide evidence in court. While we acknowledge concerns about using video-recorded police interview as evidence in chief, these concerns can be addressed by a comprehensive framework, police interview training and the allocation of specialist police interviewers to all sexual offence cases. The ODPP noted that the ‘reported concerns with video-recorded interviews are the same concerns that arise now: victim interviews, if poorly conducted, can be overly long, difficult to follow, not chronological, repetitive and rambling’.

Section 252 of the *Evidence Act 2025 (WA)* – yet to come into force – allows for video recording of interviews to be used as evidence in chief and applies not only to people who are children when the interview occurs or persons with a mental impairment, but also any sexual offence complainant who was a child when the offence took place (regardless of their age at the time of interview). It may be feasible to amend section 252 to include sexual offence complainants regardless of their age at the time of the offence.

We consider that any concerns regarding evidence in chief are outweighed by the potential benefits to victim-survivors and that this change could empower victim-survivors with choice in how they give evidence (George et al., 2023, p. 228), allowing them more effective participation in the justice system and an element of control over their experience.

**Recommendation 15:**

The WA Government amend the *Evidence Act 2025 (WA)* to extend the use of video-recorded police interviews as evidence in chief to all sexual offence matters.

#### 9.6.4 Witness intermediaries used for police interviews

During consultation, peak bodies and service providers outlined that their clients experience additional challenges as they engage with the criminal justice system,

including challenges providing their best evidence during police interviews. Stakeholders commented on the use and effectiveness of witness intermediaries as a means to support their clients. An intermediary is a communication specialist who can assist a vulnerable witness (generally a child or a person with communication needs) in communicating during elements of the criminal justice process.

Intermediaries in police interviews are currently being used in other jurisdictions. The RCIRCSA recommended that intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses in cases of child sexual abuse (RCIRCSA, 2017b, Recommendation 9.j), and in its response, the WA Government accepted this recommendation in principle. We discuss the RCIRCSA's findings in relation to the use of witness intermediaries in court proceedings in more detail in Chapter 11.

An intermediary is usually a professional with expertise in communication difficulties with a tertiary qualification in a field such as speech pathology, occupational therapy, social work, teaching or psychology. Intermediaries help vulnerable witnesses give their best evidence. The intermediary is always impartial; they are not an advocate or expert witness. In other jurisdictions, an intermediary's role in criminal court proceedings is authorised by a legislative framework, but intermediaries' involvement in police interviews is usually set out in administrative arrangements that are guided by practice or procedure manuals (see, for example, ACT Human Rights Commission, 2025, p. 5).

Although the exact arrangements vary across the jurisdictions, the steps for the intermediaries' involvement during a police investigation can be simplified as:

- conduct a witness assessment
- provide recommendations to the police officer on how best to communicate with the witness during the police interview
- attend the police interview to ensure the witness understands the questions and their answers are understood (Queensland Courts, 2023).

In an evaluation of the witness intermediary scheme in NSW, Cashmore and Shackel (2018) found that 'overall, police participants in the evaluation view the use of witness intermediaries as a positive initiative, and as fair to both the child and the alleged offender' (p. 51).

A recurring comment was that witness intermediaries 'level the playing field' because they help children understand the questions, thereby obtaining the most accurate evidence possible in 'fairness' to both parties (p. 51). In a process evaluation of the witness intermediary scheme in Tasmania, most evaluation participants recognised that witness intermediaries bring insights and strategies to police processes (Vandenberg, 2022, p. 20). Both evaluations highlighted that participants must be clear of their role and expectations (Cashmore & Shackel, 2018, p. 51). All schemes in Australia require training and accreditation for intermediaries operating at the police interview stage.

In Australia, most witness intermediary schemes are currently restricted to child sexual offence matters in line with the recommendation from the RCIRCSA.<sup>7</sup> Recent advocacy has centred on widening the eligibility requirements to include all sexual offence matters (see, for example, Full Stop Australia, 2023). The WSJT considered and supported the Queensland witness intermediary pilot program (which includes intermediaries used at the police interview stage) being expanded to adult sexual offence matters (WSJT, 2023, p. 271 and Recommendation 62), noting that its support was subject to an evaluation of by Australian Catholic University, completed in 2023 (Hodgkin et al. (2023)).

As explained above, in most jurisdictions witness intermediary programs for police interviews are governed by administrative arrangements. We recommend that the same approach be adopted in WA, but that the administrative arrangements should complement the legislative provisions set out in the *Evidence Act 2025*, enabling the use of witness intermediaries in court proceedings. The eligibility criteria for the assistance of a witness intermediary as set out in the *Evidence Act 2025* is more expansive than most other jurisdictions. Cohorts for whom a witness assessment is required or those who are otherwise eligible for an assessment service under section 290(1) and section 290(4) include:

*in a criminal proceeding — a witness who is a child under 10 years of age when the proceeding commences (other than the accused); or*

*in a proceeding for a sexual offence — and the witness is a child who is the complainant; or*

*in a child protection proceeding — and the witness is the affected child; or*

*a special witness (other than the accused); or*

*a witness who appears to have specific communication needs and requires the assistance of a witness intermediary to give evidence that is as complete accurate and coherent as possible (other than the accused); or*

*if the court considers it otherwise appropriate.*

Further work is needed to determine the eligibility criteria for the use of witness intermediaries at police interview stage. We acknowledge the resourcing implications required to determine demand for the service and address difficulties in providing the service in regional and remote WA. We also acknowledge that due to attrition through the criminal justice process, the demand for an intermediary is likely to be much higher at the police interview stage than during court proceedings. In line with other jurisdictions, and work previously undertaken by the Department of Justice, we recommend that the service be developed as a pilot at specific sites and evaluated before a full roll-out across the state.

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<sup>7</sup> An exception is the Witness Intermediary Scheme in Victoria. The pilot was established in 2018 in line with a recommendation from the 2016 VLRC Inquiry into the Role of Victims of Crime in the Criminal Trial Process. Intermediaries are available to all witnesses in criminal proceedings who are under the age of 18 or have a cognitive impairment.

Questions also remain as to how police will identify the need for an intermediary to be present at police interviews. Here we see a critical role for victim advocates or other specialist services who may be supporting victim-survivors through the reporting and investigation stage to identify and raise with police the need for an intermediary. Finally, while it is important that an intermediary is a person with expertise in communication, respect for diversity is also a primary concern. Again, we see an important role for victim advocates and other support services to provide expertise in determining an appropriate and safe intermediary. This is an example of many parts of the system, not just the criminal justice system, needing to work in a coordinated and holistic way.

**Recommendation 16:**

The Department of Justice expand the proposed witness intermediary program to include the use of witness intermediaries at the police interview stage for vulnerable persons. The program should:

- be governed by a procedure developed with WA Police that complements the provisions contained in the *Evidence Act 2025 (WA)*, any subsidiary regulations and best practice guidance from other jurisdictions
- commence as a pilot at specific sites and be subject to evaluation before a statewide roll-out.

## 9.7 Collecting additional evidence

Police collect all evidence relating to the crime they are investigating. This may include property that belongs to the victim-survivor, including clothing, bedding and, increasingly, technological devices such as laptops and phones. Police may also interview witnesses and other people who can assist the investigation. As in all stages of the investigation, it is critical that victim-survivors are treated with courtesy and their wishes are respected. WA Police noted that if victim-survivors are reluctant or scared about police speaking to their friends and family, police will respect victim-survivors' privacy and will not reveal any unnecessary information when speaking to them (WA Police, 2022 p. 15).

In consultation, stakeholders told us that victim-survivors can find the process of providing additional evidence distressing. There are some changes that can be implemented quickly to improve police practice in this area. We have previously discussed embedding a trauma-informed approach, and this extends to the process for collecting additional evidence, including reviewing communications and procedures in relation to returning evidence to uphold victim-survivors' dignity and privacy. Schedule 1 of the Victims of Crime Act states that inconvenience to a victim should be minimised and that a victim's property held by the Crown or the police for the purposes of investigation or evidence should be returned as soon as possible.

*A practice that needs to stop entirely (or at least be changed) is how the police handled the returning of property once the investigation and court proceedings concluded. I recall receiving four or five letters in the post, one letter per item of my clothing that they had taken from the night of the assault, including one particularly crass letter making a point of articulating*

*my ‘black lacey g-string’, that despite being covered in blood, they were still offering to return to me. It was incredibly triggering and unnecessary to receive itemised ‘offers’ to have those articles of clothing returned to me in the first place, let alone in such a strange manner.*

### **Victim-survivor**

We discuss the protection of confidential communications (counselling records) further in Chapter 11. WA Police generally collect information regarding counselling to support early disclosure evidence. However, this usually takes the form of a witness statement from the counselling professional confirming that counselling took place, and it is the witness statement that forms part of the brief of evidence that is disclosed to prosecutors and defence. It is very rare that police will obtain counselling records as part of their investigation. There are issues in relation to collection and disclosure of confidential communications in other areas of law, especially in relation to family law proceedings, and it is an area that requires further consideration.

#### **9.7.1 Digital evidence**

In consultation, we also heard that victim-survivors do not understand their rights in relation to, or the consequences of, providing evidence to police. This is especially problematic when victim-survivors are asked to provide digital evidence from their devices. In its submission, Full Stop Australia outlined that some victim-survivors have reported negative experiences of sharing private information, particularly when giving their phones to police for data to be downloaded. Police did not explain the consequences of the data download, which is that the data may form part of a police brief of evidence and be provided to the accused or their legal representative. Police did not inform victim-survivors that they had a choice about providing their phone or advise how long it would remain in police custody.

Digital evidence – that is, evidence collected from devices such as smartphones and laptops (text messages, social media interactions, geolocation data and multimedia content) – is playing an increasing role in sexual offence cases. Digital evidence can provide corroborating evidence, establish timelines and show communication patterns between the complainant and the accused. WA Police ask that victim-survivors do not delete information from their digital devices before it is provided to police. The information is provided to the investigating officer, who ensures that access to text and images is strictly controlled.

For some victim-survivors access to their phone is critical for their safety and essential to their contact with support networks. We also heard from an organisation supporting young people that this issue was a significant concern for young people, particularly in cases involving child exploitation material or technology-facilitated sexual violence or exploitation.

Similar concerns were raised in the NSW Interview Study, *This is my story. It’s your case, but it’s my story* (KPMG & RMIT, 2023). Participants noted that they wished they had better understood what information was likely to be relevant and the extraneous detail that was later used against them by the defence at trial. Interview participants explained that they were asked to hand over their mobile phones without realising that personal or intimate

images and messages, including those not material to the case, would be looked at by police and additionally provided to the defence. Participants revealed that they were later cross-examined about unrelated information as a means to discredit them in trial (KPMG & RMIT, 2023, p. 58). In a 2019 study, Dodge et al. found that digital evidence was seen by police officers as a double-edged sword. It provided more convincing evidence in some sexual offence cases but also made cases lengthier and invasive for complainants (Dodge et al., 2019, p. 509). In the same study, police officers highlighted that, because most perpetrators of sexual offences are known to the victim-survivor, digital communication between the parties exists in almost all cases. The traces left by the digital communication (text messages, social media messages, email online dating profiles) become pieces of evidence that must be accessed and interpreted (p. 505).

Digital evidence may impact cohorts who are greater users of digital technology or who use digital technology in different ways. The Office of the Public Advocate explained that young people with disability may feel more isolated and/or have limited social networks and will use online platforms such as Facebook and dating applications to find romantic partners, which increases their vulnerability to grooming and exploitation. Young people with disability are also more vulnerable to sexual offending, whether it is perpetrated online or in person. The ODPP has prosecuted matters in which complainants with intellectual disabilities who enjoyed participating in basic chats or sharing emojis with people they had not met were essentially groomed via these interactions to agree to a physical meeting, during which they were sexually assaulted (LRCWA, 2023, p. 282, citing ODPP submission).

Research demonstrates that LGBTQIA+ communities are more likely than heterosexual persons to experience sexual violence (Lawler & Boxall, 2023, p. 6) and that use of dating applications may be more common among people who identify as at LGBTQIA+ (Pooley & Boxall, 2020, p. 4). Dating applications aimed at LGBTQIA+ users can create safe and anonymous spaces within which users can meet, but they can also be used to identify, target, exploit and harm users (Pooley & Boxall, 2020, p. 7). Police may need to be more cognisant of the digital communications of specific cohorts and how they may be interpreted. As with all evidence, digital evidence is open to misinterpretation. Early research shows that police officers need to be careful to interpret digital evidence in the context of online and digital forms of expression (Dodge et al., 2019, p. 509). Complainants' digital communication with the accused and others can be misused against the complainant due to misconceptions about how a victim should act before or following a sexual offence based on stereotypes of sexual offence victim-survivors and victimisation (p. 510).

Prosecutors have an ongoing duty to disclose all relevant evidence to the defence, even if it favours the defence and is not used in trial (s 42 of the *Criminal Procedure Act 2004* (WA)). Prosecutors consulted for the WSJT report raised concerns about having to disclose complainants' social media posts and the entire contents of their phone even if it was not relevant to the case (WSJT, 2023, p. 235). Prosecutors felt they needed to disclose all the information they had from a download once they were in possession of it. If they were to disclose only what they considered relevant, that could be challenged by the defence on the grounds that relevant material was being omitted.

The high-profile sexual offence trial of Mr Lehrman in the ACT highlighted some of the rare but potentially devastating consequences for complainants who provide their phones or other digital devices to police. The complainant, Ms Higgins, provided her phone to the Australian Federal Police for the purpose of its investigation. The contents from her phone were provided to the prosecution and defence as part of the brief of evidence. The contents from Ms Higgins' phone were not used in the trial but some of the information was leaked and published in multiple media outlets, which caused her significant distress and humiliation (Bucci, 2023; Visentin, 2023).

In WA, there is currently no policy or procedure in place governing WA Police collection of digital evidence in sexual offence cases or what digital evidence WA Police provide to the ODPP. In contrast, there are protocols in place for dealing with child exploitation material in both the examination process and the evidence WA Police provide to ODPP. Decisions on collecting digital evidence should be made on a case-by-case basis but there is scope to introduce guidelines such as those in place in the UK (Crown Prosecution Service (UK), 2018 and 2022). The UK Crown Prosecution Service's Prosecution Guidance (Rape and Sexual Offences) (2023, ch 3) acknowledges that devices contain all kinds of data, including highly sensitive material, and that the decision to obtain and review data should not be taken lightly.

The WSJT highlighted that the download of a person's entire phone contents will contain a large amount of information that may not be relevant to the investigation of the offence and noted that blunt use of current technology to obtain contents from devices should not result in a disproportionate and unnecessary breach of a victim-survivor's right to privacy (2023, p. 238). It recommended setting out guidelines to inform collection of digital evidence, pointing to examples from the UK and NSW as useful starting points (p. 239).

Schedule 1 of WA's Victims of Crime Act states that the privacy of the victim should be protected and that a victim's property held by the Crown or by police for purposes of investigation or evidence should be returned as soon as possible.

In her submission to the VLRC Inquiry, Dr Iliadis recommended that separate legal representation should be introduced in defined contexts to protect complainants' sensitive third-party evidence, including digital communications (VLRC, 2021, p. 265). In the UK, the government has pledged to explore how a complainant may be able to access legal expertise and advice about access to their data and third-party material (Ministry of Justice and Home Office, 2021, p. 31). A review of a legal assistance pilot project in Northumberland, UK, found that complainants without legal advocacy were not giving informed consent for access to their private data because they did not understand the request for the data or the consequences (Smith & Daly, 2020, p. 19).

Victim-survivors should receive information on their rights and obligations in relation to providing their devices and any other digital evidence. Victim-survivors would benefit from receiving this advice from an independent person, whether that is a victim advocate or a legal representative. We have discussed both forms of support in more detail in Chapter 7.

**Recommendation 17:**

WA Police develop a protocol in conjunction with the Office of the Director of Public Prosecutions to govern collection of digital evidence in sexual offending cases. The protocol should:

- contain clear procedures for the forensic examination and download of victim-survivors' digital devices
- include a referral process for victim-survivors to access independent legal advice if police are contemplating collection of substantial digital evidence.

### 9.7.2 Pretext phone calls

One way in which evidence may be gathered during the police investigation is through a pretext phone call. A pretext phone call is typically a phone call between the complainant and the accused that is recorded by the police without the accused's knowledge. The phone call is intended to provide evidence that supports the complainant's case and usually takes place before the accused is aware of the sexual offence report. In some cases, especially historical sexual offence investigations, it may be the only corroborating evidence available to prosecute a perpetrator. WA Police have guidelines for pretext phone calls and participation in such calls is voluntary for the complainant. In this report we do not comment on their use or otherwise in an investigation, but we argue that victim-survivors must be provided with information on what a pretext phone call entails and be provided with support before, during and after the pretext call.

*I also recall being made to make a phone call (I think they called it a 'context call') where I was instructed to attend the police station and confront the abuser while the police recorded everything, in an attempt to coerce a confession from the abuser. The phone call went on for over 20 minutes which was not only incredibly traumatising, but it also didn't work. There was no aftercare provided by the police either, I just got sent home in tears. In hindsight, everything about this process seems highly unethical and not at all trauma-informed. If this practice is to continue, there needs to be more care provided before, during and after to ensure psychosocial safety.*

#### *Victim-survivor*

The NSW Interview Study highlighted the views of victim-survivors who had gone through the experience of making a pretext call and found it highly distressing and retraumatising (KPMG & RMIT, 2023, p. 60). Submissions to the WSJT also raised issues with the use of pretext phone calls. The North Queensland Combined Women's Services recommended key considerations for the use of pretext calls, including the safety of women and the likely escalation of violence and abuse as a result of the call; understanding among investigators that pretext calls can increase the distress for women and trigger post-traumatic stress; and the need for women to have a specialist sexual assault support worker available if they participated in a pretext phone call (WSJT, 2023, p. 157).

## 10 Prosecuting sexual offences

A prosecution begins when the accused is charged with an offence (ODPP (WA), 2022b, p. 6). All prosecutions commence in a Magistrates Court when WA Police file the prosecution notice containing the charges. Some sexual offences, classified as summary offences in the Criminal Code, are heard in Magistrates Court. These offences are prosecuted by the WA Police Prosecuting Division. Other sexual offences, classified as indictable offences in the Criminal Code, are committed for hearing in the District Court. The ODPP is responsible for prosecuting sexual offences heard in the District Court, which constitutes most sexual offences in WA.

In Discussion Paper 3 we asked the following questions of victim-survivors, stakeholders and the community:

- How well is the prosecution process working for sexual offence victim-survivors?
- How can it be improved?

During consultation we heard that victim-survivors often feel disempowered by the prosecution process and that it does not meet their justice needs. We also heard that decisions in hearings before trial, such as granting bail to an accused, can act as substantial barriers to victim-survivors continuing to engage with the process. Many of the concerns expressed in consultation, such as access to support, effective communication and taking a trauma-informed, culturally secure approach, have been discussed in Chapter 7 but in this chapter we look specifically at the impact of the prosecutorial process and make some additional recommendations.

### 10.1 Attrition during the prosecution process

Determining whether to commence or continue prosecution of sexual offence charges is a significant decision point and is also one of the key points of attrition. Prosecutors exercise considerable discretion in deciding whether to prosecute accused persons and how the prosecution should proceed. As a result, they are subject to criticism about their decision-making and the exercise of their prosecutorial discretion (ALRC, 2010e, 26.43–44).

Data published by the ABS on outcomes of sexual assault and related offences in the higher courts (District and Supreme Courts) over the previous 10 years shows fluctuations from year to year but a slightly declining trendline of discontinued sexual offence prosecutions (Figure 6) (ABS, 2025b, Table 38).

As part of its submission, the ODPP undertook an internal and informal study of sexual offence prosecution discontinuances for the period 1 January 2022 to 31 December 2022. The ODPP noted the limitations of its study; however, the insights were valuable, qualified findings which informed this review. The study was limited to cases where all charges comprising the prosecution were discontinued.

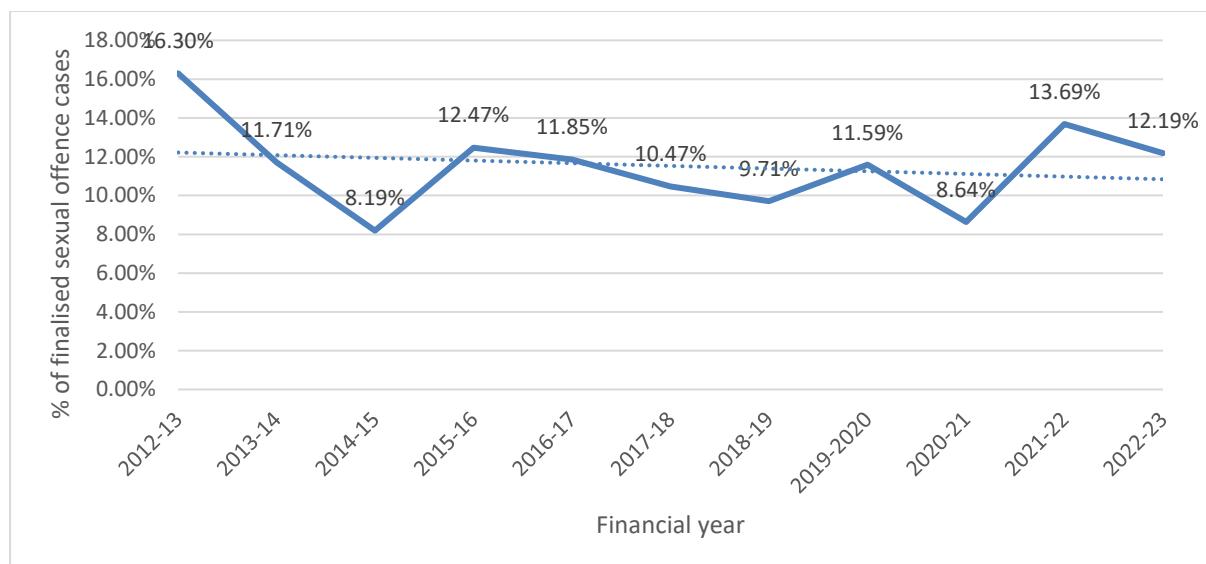


Figure 5 Discontinued sexual offence prosecutions in WA higher courts (ABS)

There are a wide and complex range of procedural, legal and non-legal factors that contribute to attrition at this stage (Community Development and Justice Standing Committee, 2008, p. 62). While in this chapter we focus on prosecutorial decision-making, we note that many of the factors outlined in Chapter 6 contribute to under-reporting and continue to impact victim-survivors throughout their engagement with the criminal justice system and influence their decision to remain engaged or disengage from the process at the prosecutorial stage. The impact of the criminal justice system on victim-survivors, which we discuss in detail in Chapter 7, is also a critical factor.

The ODPP found that in 58% of the cases in its study, the complainant disengaged or did not want the prosecution to proceed. In 32% of cases the complainant was from a regional or remote area of WA. The ODPP also identified key factors in complainants' decision to disengage from the prosecution as including:

- stress, mental health concerns, revictimisation at trial
- fear of family violence or other reprisals
- impact on family relationships or caring responsibilities
- lack of support and logistics.

A 2004 study by Lievore analysed 141 case files from five jurisdictions, including WA, in which the primary charge was rape or the equivalent. Of the 53 of these cases that were discontinued by prosecutors, 24 (almost half) were withdrawn because the victim-survivor did not wish to proceed (ALRC, 2010e, 26.50 citing Lievore, 2004). This figure is similar to that presented by the ODPP in its internal review.

The 2004 study suggests complainants may exhibit more willingness to proceed in the presence of evidentiary factors that increase the prospects of conviction (Lievore, 2005, p. 6 citing Kerstetter & van Winkle, 1990). This includes cases which typify the public's perception of sexual offending, such as the offence being committed by a stranger, in a public location or involving physical injury. However, the 2004 study acknowledges that the factors that influence victim-survivor's preferences are not well understood ((Lievore,

2005, p. 5). The VLRC also noted that while attrition rates are high for sexual offences, the reasons remain unclear (VLRC, 2021, p. 381).

We have spoken in earlier chapters about the need for improved data. In Chapter 4 we reference the LRCWA's Project 113 Final Report recommendation on collecting data about participants' experiences of each stage of the justice system, which can be used to guide future legal reform. We consider that before undertaking extensive reform in relation to police and prosecutorial decision-making it is critical to have a better understanding of why cases do not proceed and the procedural, legal and non-legal factors that contribute to attrition rates at the investigative and prosecutorial stage.

While we can identify general trends and factors, we did not receive enough information on this topic during consultation to make confident findings. We therefore recommend further, independent research or an audit that may be able to identify systemic issues and focus on specific population groups. We acknowledge that this scope is wide, but WA has unique geographic and demographic characteristics that require findings specific to the state. The research should consider data and files from WA Police and the ODPP and should also consider the views of victim-survivors and the organisations that support them, with a focus on vulnerable population groups.

We note a recommendation from the 2008 WA Parliamentary Inquiry into the Prosecution of Assaults and Sexual Offences to establish an independent taskforce to analyse the incidence of withdrawal of complaints and make recommendations aimed at reducing such withdrawals (Community Development and Justice Standing Committee, 2008, Recommendation 17). In the brief Government response, the former Attorney General, the Hon Christian Porter MLA, committed to asking the interagency Sexual Assault Services Advisory Group to investigate a number of issues raised in the report, including reasons for withdrawal of complaints (Western Australia, 2009). It is not clear if the taskforce was established or completed its report.

#### **Recommendation 18:**

The Department of Justice commission independent research to understand the factors that contribute to attrition at the investigative and prosecution stage in Western Australia. The research should:

- focus on the factors which influence police and prosecution decision-making, and the factors that influence victim-survivors' decisions not to proceed
- identify systemic issues and make recommendations for reform
- provide a framework for an ongoing audit of attrition rates to evaluate the impact of reforms.

## **10.2 Prosecutorial decision-making**

Prosecution decisions affect which charges against the accused go to trial, the conduct of the criminal trial and the future interests of victim-survivors (VLRC, 2016, p. 134).

The ODPP is Western Australia's independent prosecuting authority and acts independently of government in making decisions about criminal prosecutions (WA

Government, 2024c). The bases for the ODPP's decisions about prosecutions, including any decision to prosecute or to discontinue a prosecution, are contained in the *DPP Statement of Prosecution Policy and Guidelines 2022* (DPP Prosecution Guidelines). The DPP Prosecution Guidelines are supported by internal rules that specify the level of State Prosecutor authorised to make decisions about prosecutions.

When the ODPP takes over the prosecution of a sexual offence, it assesses the evidence collected during the investigation to decide whether the prosecution should continue. The ODPP first assesses whether the evidence establishes a '*prima facie* case' to prosecute the offence and if there is a reasonable prospect of conviction. A *prima facie* case is established if the available evidence appears on initial assessment, or on the face of it, to substantiate the offence which has been charged. The ODPP's internal authorisations instruct that only Senior State Prosecutors (or higher) may sign notices discontinuing prosecutions on the basis that there is no *prima facie* case or no reasonable prospect of conviction. The ODPP told us that Senior State Prosecutors have more than 10 years' experience and many have more than 15–20 years' experience.

The ODPP must also consider whether it is in the public interest to prosecute the offence (ODPP, 2022b). When deciding if it is in the public interest to prosecute, the ODPP will consider whether the case has a reasonable prospect of conviction, the interests and views of victim-survivors and other factors set out in the policy (ODPP, 2022b, pp. 8–9). The ODPP acknowledge that the decision to proceed with some prosecutions is a difficult one, and the decision may not always match the interests and views of victim-survivors (p. 5). If it is proposed that a prosecution be discontinued on public interest grounds and the victim-survivor does not agree or has not been consulted, then that decision can only be made at the level of Consultant State Prosecutor or higher.

Whether victim-survivors feel consulted and retain a sense of agency may greatly affect how they feel about the fairness of the process and the ultimate outcome (VLRC, 2016, p. 134, citing O'Hear, 2008). Consultation does not mean the victim-survivors' views determine the prosecutorial decision, but it is more than simply the provision of information. The *DPP Policy and Guidelines for Victims of Crime 2022* (DPP Victims of Crime Policy, 2022), which sets out how the ODPP interacts with victim-survivors during the prosecution process, states that consultation with victims is essential to the provision of quality prosecution service to the WA public and that the ODPP will consult the victim before amending or discontinuing a charge which significantly alters the prosecution case or will discontinue the prosecution in its entirety (ODPP, 2022a, pp. 6–7).

In consultation, we heard that if victim-survivors do not feel consulted or that their wishes are not respected it can contribute significantly to retraumatisation and feeling silenced. We have seen these views echoed in other studies, including the VLRC Report on improving justice system responses to sexual offences (2021, pp. 379–380) and the VLRC Report on the role of the victims of crime in the criminal trial process (VLRC, 2016, p. 135). The WSJT heard that victim-survivors feel disempowered during the prosecution process (WSJT, 2023, p. 244).

*The DPP dropped my case due to lack of reasonable prospect of conviction.  
To hear the lawyer say 'I think he probably did do it to you but I can't make it*

*stand up in court' was crushing. I felt like I couldn't breathe, like the law/state didn't really care that I had been raped.*

#### **Victim-survivor**

Prosecuting sexual offence cases is complex. Prosecutorial independence requires the prosecution to act in the public interest (VLRC, 2016, p. 133, citing *Whitehorn v R*; DPP Victoria, 2014) [3]; Corns, 2014, pp. 153–180), to prosecute cases impartially and with restraint and to act fairly towards the accused (VLRC, 2016, p. 133). The trial process is lengthy, consumes significant resources and exposes the victim-survivor to a process that may cause significant additional distress and trauma. In NSW, multiple judges have recently criticised that state's ODPP for bringing prosecutions that had no reasonable prospect of a conviction, with the result that complainants were being put through anxiety, stress, humiliation and distress to no purpose (Dole, 2024). It is important to find a balance that promotes victims' justice needs and protects the public interest. It should be noted that these two concepts are not mutually exclusive: effective victim-survivor consultation and participation in the prosecutorial phase is likely to improve the criminal justice system as a whole.

### **10.3 Victim-survivor experiences of prosecuting sexual offences**

During consultation stakeholders reported there can be inadequate engagement between victim-survivors and the ODPP leading up to trial, which leads to feelings of powerlessness. Stakeholders outlined that the ODPP often engages with victim-survivors relatively late in the process, quite close to the trial date. This leaves limited time and opportunity to support any relationship between the prosecutor and the victim-survivor. Victim-survivors also reported that there were last-minute changes in the prosecutors assigned to their case and they did not have time to build trust in the relationship.

*We often feel helpless, powerless, worthless. The DPP have full control of our situation and seem ruthless in their handling of it. They have little care or consideration for the victim's feelings. As a victim of sexual crime you have already lost so much control. The DPP made out that I had a say in the process/outcome yet this couldn't be further from the truth. I told them I would prefer a small chance at justice with a weak case in court rather than be given no chance at all. I felt silenced by them.*

#### **Victim-survivor**

Many victim-survivors expressed frustration with the ODPP's lack of communication and explanations regarding case decisions and progress. One stakeholder highlighted the need to provide victim-survivors with the right information and explain outcomes. For example, the accused might plead guilty to some charges to discontinue others as part of an agreement between the state and the accused. Such an outcome is likely to be confusing for victim-survivors and needs to be clearly communicated. Some victim-survivors reported they and other key witnesses were inadequately prepared for giving evidence by the ODPP, leading to them feeling overwhelmed and potentially impacting the strength of their testimony. One victim-survivor shared her experience of being prepared over the phone while she was taking care of small children.

Issues are exacerbated in regional and remote WA. All prosecutors are based in Perth and will travel to regional locations for circuit trials, and sometimes prior to trial for meetings. Victim-survivors are more likely to engage with the ODPP over the phone or by email and may not meet the prosecutor until the day of or day before trial. The attrition numbers appear to be higher in regional and remote locations, and this may be attributable in part to a lack of support and engagement.

*There was a change and I met the prosecutor on the day of the trial, I had no trust in them.*

#### **Victim-survivor**

*I did not get any acknowledgement from the ODPP, I was just a number, there was no connection. No recognition regarding what happened to me. They could not see my pain, my trauma, I don't want anyone to feel like that.*

#### **Victim-survivor**

### **10.4 Measures to improve victim-survivors' experience of the prosecuting process**

In this section we discuss some possible reforms specific to prosecutors' interaction with victim-survivors in the pre-trial phase. In previous chapters we discussed overarching reforms such as improved collaboration between services, the introduction of victim advocates and referrals to support. Such measures retain their importance during the pre-trial phase but we do not repeat the recommendations here.

#### **10.4.1 Communication**

Effective consultation relies on communication and victim-survivors receiving clear, easily accessible information. Specifically, victim-survivors require high-quality communication regarding anticipated timeframes and court proceedings (George et al., 2023, p. 29). In terms of general information, the ODPP provides a pamphlet, 'Information for victims' (ODPP, n.d.) and its website provides information for victims of crime and witnesses, including frequently asked questions (WA Government, 2025). However, the prosecutor managing the case or a supporting paralegal will also maintain contact with the victim-survivor directly. The DPP Victims of Crime Policy outlines communication processes with victim-survivors and states that the ODPP will:

- primarily communicate with victims by telephone and in writing, but if those means are not appropriate, alternative arrangements can be made (ODPP, 2022a, p. 6)
- provide initial information to the victim and continue to update them with relevant information (if they wish) about the status of the case and the outcomes of court hearing, including sentencing (ODPP, 2022a, pp. 6–7).

The DPP Victims of Crime Policy states that 'while it is always desirable that a victim deal with the same State Prosecutor and paralegal, this may not always be possible. The ODPP attempts to minimise the number of different people with whom the victim has communication over the course of a prosecution' (ODPP, 2022a, p. 6). In its submission, the ODPP commented that it uses

*template letters, which aim to ensure every victim is kept informed at various stages, but we recognise that the use of template letters can result in individual communication needs not being met or can seem impersonal ('like a number'). Where victims prefer, or circumstances require it, the ODPP will communicate with victims using alternative means. We need a range of templates which cater for different accessibility needs and which encourage customisation so that a victim feels they are being dealt with on an individual basis.*

We acknowledge and welcome the ODPP's commitment, in its submission, to undertake a project to develop new letter templates for victims at different stages of the prosecution. The templates will use multiple formats and simplified language, refer victims to the videos for witnesses and address accessibility and language requirements. We talked about training and the need for a trauma-informed approach across the criminal justice system in Chapter 6. Communications with victim-survivors must take a trauma-informed approach and facilitate culturally appropriate engagement.

We suggest that the ODPP consider a co-design process or receive input from persons with lived experience, organisations that support specific population groups and specialist sexual assault service providers when updating its communication materials. SALSWA is establishing a lived experience advisory group to guide its operations and there may be scope to seek its advice on and input into template communication materials.

#### **10.4.2 Victim liaisons**

In its submission, the ODPP explained that 'without continuous support throughout the whole process, our experience is that a victim's frustrations with not being kept informed, not having questions answered, not having an opportunity to express their wishes, can tend to concentrate those systemic deficiencies on the pre-trial period, and the interaction with the ODPP at that time'. The pre-trial phase can be a time of heightened anxiety for many victim-survivors and their supports.

We discussed the need for continuous support for victim-survivors throughout the criminal justice process in Chapter 7 and highlighted the value of victim advocates. We see this service having a valuable role in supporting victim-survivors through the pre-trial phase. Coordinated and holistic support to victim-survivors can reduce the distress and trauma associated with sexual offence trials.

There is also value in the ODPP having dedicated victim liaison officers. A victim liaison role takes different forms but, generally speaking, will manage communication between the organisation and the victim-survivor. Many prosecuting services in Australia have a form of victim liaison role, albeit under different names and performing slightly different functions.

The Victorian ODPP provides the Victims and Witness Assistance Service (VWAS). VWAS social workers and prosecutors work together to provide information and support to adult victims and witnesses during the court process. VWAS social workers provide victim-survivors with:

- information about the prosecution process
- information about rights and entitlements
- information about the progress of the case

- support during meetings with prosecutors
- support to go to court
- referrals to other specialist supports (Office of Public Prosecutions Victoria, n.d.).

The ODPP in Queensland provides Victim Liaison Officers (VLO). Their role is administrative and they are not lawyers. VLOs are assigned to particular cases and make the initial contact with victim-survivors. VLOs provide victim-survivors with information about their case and referrals to other specialist support services as needed (WSJT, 2023, p. 230). Unlike the VWAS social workers, they do not provide support during meetings with prosecutors or in court (WSJT, 2023, p. 118). However, the WSJT identified issues with the program of VLOs, with its consultations suggesting they had a high caseload and did not provide responsive communication (2023, p. 234). The WSJT also noted deficiencies in providing effective VLO support to victim-survivors in locations across the state and providing culturally safe and accessible service to high-priority populations.

The ODPP noted in its submission that file managers and paralegals currently perform many of the functions of victim liaisons, including providing information about the prosecution process, making logistical arrangements such as travel, and preparing witnesses for trials. It is not suggested that victim liaisons in the ODPP should replace all functions of the file manager or paralegal; rather, they should complement those roles and support them in engaging with victim-survivors. It would be important that the role of a victim liaison is clearly defined and works closely with VSS and victim advocates (if established) to avoid creating too many voices or touchpoints.

The benefits of victim liaisons include the creation of a dedicated service which can develop best practice in communication and train other officers on engaging with victim-survivors. A dedicated service also relieves the pressure on legal officers, many of whom have a high caseload and may not have the time needed for high-quality communication with victim-survivors. The Victim Liaison Unit in the UK Crown Prosecution Service provides a ‘one-stop shop’ for communications with victim-survivors. Its role is to ensure that victims are provided with high-quality, timely, effective and empathetic communications (Crown Prosecution Service, 2020). The role includes phone and written communications, quality assurance on all communications, safety checks and triage on all communications.

The ODPP commented that ‘an urgent problem in the criminal justice system response to sexual offending is the lack of support for victims in remote communities in WA and in particular the barriers to Aboriginal people pursuing justice’. The WSJT heard from the Aboriginal and Torres Strait Islander communities of the importance of culturally appropriate services, and the important cultural considerations for prosecutors on circuit and working with women and girls (2023, p. 247). The Wiyi Yani U Thangani Women’s Safety Policy Forum Outcomes Report found Aboriginal and Torres Strait Islander women and girls want culturally appropriate, trauma-informed and strengths-based services and that services for Aboriginal people should be designed and delivered by community-led organisations (AHRC, 2022, p. 28).

However, the same report also noted a role and responsibility for mainstream services. Non-First Nations organisations need to be better at providing safe spaces for First Nations people (AHRC, 2022, p. 31). We talk elsewhere in this report about the need to work with Aboriginal communities to design and deliver services for Aboriginal people, and

about non-punitive responses for sexual offending (Chapter 12), but there is also scope for victim liaisons to provide culturally safe means of engaging with the ODPP. The ODPP noted the need for early liaison with Aboriginal people who are victims of sexual offending, and this engagement should be in person. At present, the ODPP is reliant on existing relationships with police or VSS, which are also mainstream services. There is real value in the ODPP working with Aboriginal communities and Aboriginal Community Controlled Organisations such as Aboriginal Family Legal Services to design and deliver victim liaison services, potentially based in regional and remote locations.

**Recommendation 19:**

The Office of the Director of Public Prosecutions design and deliver ongoing victim liaison services within its operations. In designing victim liaison services, the Office of the Director of Public Prosecutions should:

- work with high-priority population groups or lived experience advisory groups to design the victim liaison service
- consider a focus on supporting victim-survivors in regional locations and Aboriginal people who experience sexual offending.

#### 10.4.3 Reviewing prosecuting decisions

Where victim-survivors cannot apply for a review of a prosecutor's decision to withdraw their case, it can leave them feeling powerless, as though their credibility is in question. Victim-survivors want input into decisions about whether their case goes to trial as well as accountability for decisions not to progress to trial (George et al., 2023, pp. 28-29). In consultation, we heard from victim-survivors who were devastated by the decision not to progress their case.

The Victims of Crime Act contains guidelines as to how victims should be treated but these guidelines do not include any arrangements to ensure victim's views and concerns are considered when a decision is being made either to charge a person with an offence or to continue with a prosecution of the accused. While we acknowledge that consultation with victim-survivors is entrenched in practice and procedure within the ODPP and WA Police, we consider that it would be helpful to entrench this elsewhere and independently. We talked in Chapter 6 about measures to strengthen the Victims of Crime Act and we suggest including, at minimum, a guideline that victim's views and concerns be considered when police or prosecutors are making a decision on their case.

Other jurisdictions have considered whether taking victim-survivors' views and concerns into account should give rise to a right to review of prosecution decision-making and whether such review should be undertaken by an independent body. The right to review is distinct from a complaints process in relation to misconduct or failure to comply with victim guidelines. In its submission, the ODPP outlined its review process, which is also published and available online in its Policy and Guidelines for Victims of Crime. The sections, 'Review of ODPP Decisions' and 'Review Sought by Victim' (pp. 7-9) set out the victim-survivor's entitlement to request that a decision be reviewed. The review involves a

complete reassessment of the evidence by a prosecutor who is entirely independent of the prosecution. Features of the process include that:

- the ODPP must inform the victim of their right to review
- a victim can request a review by any means (e.g. orally or by email)
- the ODPP will review both decisions that discontinue an entire prosecution and decisions to amend or discontinue individual charges where that results in a significant alteration to the prosecution case.

The ODPP explained that although a victim-survivor-requested review usually affirms the original decision, that is not always the case. The ODPP's internal calculation (not statistically validated) was that approximately 15% of such reviews in sexual offence prosecutions, since the process was established, resulted in a changed outcome – either the decision to discontinue the case or charges was reversed, or an aspect of the original decision was changed.

The WSJT explored the right to review and noted that academics have previously raised concerns about the potential loss of prosecutorial discretion that could flow from independently reviewing prosecutorial decisions (2023, p. 243). The WSJT also noted the criticism and concerns raised in relation to judicial review of prosecutorial decisions (p. 246). It also found that a right to review for victim-survivors in relation to prosecutorial decisions would provide a mechanism for them to raise concerns and have a voice. The process should include support for victim-survivors to exercise the right to make a complaint, as many victim-survivors do not feel empowered to initiate the process (p. 248).

The RCIRCSA recommended that each 'Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions' (recommendation 41). The ODPP's current arrangement appears to be a robust and effective formalised review mechanism. We did not receive any feedback in consultation on the operation of the review process.

The VLRC considered the formation of an independent panel to review prosecution decisions and ultimately made the following recommendation (recommendation 66):

*The Victorian Government should establish an independent and high-level panel that includes multi-disciplinary expertise to review police and prosecution decisions.*

*A complainant or a person acting on the complainant's behalf should have the right to request a review by this panel of decisions to discontinue or not file charges or indictments in sexual offence cases after any internal review.*

*This panel should have the power to make recommendations, based on its review of these decisions, to:*

- a) the police and prosecution about if and how they should continue individual cases, after any internal review process has been completed*
- b) the police and prosecution about how to improve the quality of their decision-making*
- c) the Victorian Government to address barriers to progressing sexual offence cases.*

The panel would not have any power to change decisions but could make recommendations to police and prosecutors. The panel would have audit functions and be able to report on trends in sexual offence cases. The VLRC also highlighted the Philadelphia model for rape investigations, in which a coalition of community organisations is invited to review police files on discontinued sexual offence cases and raise their concerns. This process is conducted annually and has been adopted in New York and parts of Canada (VLRC, 2021, p. 384).

In this Report we are not recommending the creation of an independent review process for prosecutorial decisions. We did not receive any substantive submissions on the operation of the ODPP's current process and consider that other recommendations that focus on direct support to victim-survivors have a higher priority. We also consider that implementing reforms to address communication and effective consultation may better address victim justice needs at this time. Once such measures are well established it may be appropriate to look at further reform.

However, we do agree with the WSJT that victim-survivors should receive support to instigate a request for review. Here there may be a critical role for victim advocates, who will be able to build relationships of trust with victim-survivors and assist them in raising their concerns with the ODPP. There may also be a place for audits of police and prosecutorial decision-making conducted by an independent body. Earlier in the chapter we recommended commissioning research that could potentially form the framework of an ongoing audit process. Establishing a body that could conduct such audits may be a focus for a governance committee overseeing the implementation of recommendations contained in this report.

## 11 Going to court

Sexual offence proceedings will usually commence in Magistrates Court.

If the person accused of the sexual offence(s) pleads guilty, the case goes to a sentencing hearing. If the accused pleads not guilty the case goes to a trial and there may also be other hearings to prepare the case for trial.

Most sexual offence trials and sentencing hearings take place in the District Court before a judge and jury. The District Court is based in Perth but conducts circuit court hearings in regional locations.

In Discussion Paper 3, we noted that many victim-survivors find going to court and the trial process distressing. This point was borne out during consultation and is reflected in much of the research literature. Many of the concerns expressed in consultation – such as access to support, effective communication and taking a trauma-informed, culturally secure approach – were discussed in Chapter 7. In this chapter, we look specifically at the impact of the court process and make some additional recommendations. We also consider the support victim-survivors receive during the court process and their involvement in the sentencing and post-sentencing process.

### 11.1 Features of a sexual offence trial

The trial is a key feature of WA's criminal justice system. In WA's adversarial system, the trial is the forum in which the prosecution and the defence test the evidence before the court. The victim-survivor (the complainant) is not a party to the proceeding but rather is a witness (the complainant witness). The prosecution and defence decide how to conduct their cases and define the issues for the jury to consider. The trial is presided over by a judge who ensures that rules of evidence are followed and instructs the jury about the law to be applied in the case. The jury decides if the prosecution has proved the charges against the accused beyond reasonable doubt.

The management of criminal trials involving sexual offences must consider that the complainant often suffers unique disadvantages (Sleight, 2011, p. 4). Unlike other criminal trials, sexual offence trials are characterised by particular features including the vulnerability of the chief prosecution witness (the victim-survivor), lack of corroborating evidence (in the form of eyewitness testimony and forensic evidence) and myths and misconceptions about people who allege sexual offences (Cossins, 2020, p. 47).

One of the key features of the trial is the giving of oral evidence by witnesses and the testing of that evidence through cross-examination (WSJT, 2023, p. 255). Sexual offence trials often involve word-against-word allegations with a lack of corroborating evidence, which leaves the defence being one of simple denial (Sleight, 2011, p. 4). In such cases, defence lawyers will suggest to the complainant witness that they are lying, or propose alternative versions of events that are consistent with the accused's innocence (WSJT, 2023, p. 255). While this is considered a necessary part of a fair criminal trial, in most cases it is highly distressing for victim-survivors and contributes to secondary victimisation.

The accused has a right to a fair trial, and the concept of a fair trial has often focused on the accused's rights (Victims of Crime Commissioner (Victoria), 2023, p. 65). However,

the concept of a fair trial is evolving to reflect changing social standards and expectations. The elements that make a fair trial are not absolute and cannot be listed exhaustively or comprehensively (LRCWA, 2022, p. 156).<sup>8</sup> Australian courts have acknowledged that the right to a fair trial extends beyond the rights of the accused and includes the interests of the community and the protection of witnesses (Bowden et al. 2014, pp. 558, 539–584).<sup>9</sup>

The VLRC has said that ‘the legitimate rights of victims, properly understood, do not undermine those of the accused or of the community. The true interrelationship of the three is complementary’ (VLRC, 2016, p. xiv).

It has been recognised that vulnerable witnesses, including victim-survivors in sexual offence trials, may need protections or special measures to provide their best evidence and reduce traumatisation, and that providing such measures is not inconsistent with a fair trial (WSJT, 2023, p. 255). In Discussion Paper 3 we explored how some of these measures were working, asking the following questions:

- How well are the special witness measures working? How can they be improved for victim-survivors or sexual offending?
- How well are the *Evidence Act 1906 (WA)* provisions working to protect victim-survivor privacy and wellbeing? How can they be improved?
- Should victim-survivors have access to independent legal advice in relation to protected communications? What model of support may work?
- Does the cross-examination process maintain victim-survivors’ right to be treated with dignity and respect? How can it be improved?
- Should WA introduce ground rules hearings? What model may work?
- Should WA introduce specialist sexual offence courts? What model may work?

In this report we do not propose reform to the fundamental features of the trial such as changing the burden and standard of proof or moving away from an adversarial system. We agree with the VLRC’s comment that such changes would have wide-ranging effects, including on the accused’s right to a fair trial (2021, p. 413). Any change to the fundamental features of a trial is highly complex and requires consideration beyond the terms of reference of our review by an organisation with specialist legal knowledge and expertise.

Like the VLRC, however, we acknowledge that while reforms recommended in this chapter may improve the experience of victim-survivors attending trial, they will not address the fundamentals of a system that pits one person’s word against another’s (VLRC, 2021, p. 414). There are limitations in the trial process, and the criminal justice system more broadly, in meeting victim-survivors justice needs. For this reason, we focus much of our attention in this report on reforms that provide direct support and assistance to victim-survivors and emphasise collaboration with support organisations that can

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<sup>8</sup> Citing *Dietrich v The Queen* (1992) 177 CLR 292, 353 (Toohey J); *Jago v District Court (NSW)* (1989) 168 CLR 23, 57.

<sup>9</sup> Bowden et al. (2014, p. 558) citing the judgments in *Barton v The Queen* (1980) 147 CLR 75, 101 (Gibbs ACJ and Mason J), quoted in *Dietrich v The Queen* (1992) 177 CLR 292, 335 (Deane J); *Jago v District Court of New South Wales* (1989) 168 CLR 23, 33 (Mason CJ), 49–50, 54 (Brennan J); *R v Lodhi* (2006) 199 FLR 250, 263–4 [54]–[57] (Whealy J); *Ragg v Magistrates Court of Victoria* (2008) 18 VR 300, 319 [77] (Bell J); and *R v Wilkie* (2005) 193 FLR 291, 305 [54] (Howie J).

contribute to victim-survivors' long-term healing and recovery. In the next chapter, we also discuss alternative justice options.

## 11.2 Attrition and delay during the trial process

During consultation, we did not receive as much input on victim-survivor experiences during the court process as we did other parts of the criminal justice system. One of the reasons for this outcome is simply that not many sexual offences reach the trial stage. In 2022, 252 sexual offence trials proceeded in the District Court, 248 with a jury.<sup>10</sup> Data from the ABS details defendants charged with sexual offences whose matters were finalised in the District Court in 2022–23.

Method of finalisation	Acquitted	Guilty plea	Guilty finding by court	Transfer to other court	Withdrawn by Prosecution	Total
	111	245	96	3	63	517

**Figure 6 Finalisation of sexual offence cases 2022–23**

Source: 45120DO008\_202223 *Criminal Courts, Australia 2022–23*

A large number of defendants with charges finalised in a higher court pleaded guilty. This generally removes the need for a trial. Instead, the case proceeds to a sentencing hearing.

However, the ABS data also shows that once a case proceeds to trial, the defendant is more likely to be acquitted than found guilty by the court. The ABS data also shows many cases are resolved because the charges are withdrawn by prosecution. The LRCWA commissioned a statistical analysis report (Clare, 2023) as part of its work on Project 113, the LRCWA Statistical Analysis Report, which considered sexual offence trials that took place in 2019. It showed that for adult complainants 56.2% of charges resulted in a not guilty outcome compared to 35.5% resulting in a guilty outcome.<sup>11</sup>

In previous chapters we have discussed the reasons for attrition at different stages of the criminal justice process and highlighted that victim-survivor disengagement is a key factor. Many of the reasons victim-survivors disengage at the trial stage are the same as those which contribute to under-reporting of sexual offences in the first place and which impact victim-survivors throughout the criminal justice process. However, in consultation we heard that one of the biggest factors in victim-survivors deciding to disengage from the process at the trial stage is delay.

Cases that progress to the trial stage can take years to finalise. In its 2023 annual report, the Department of Justice noted that the median time to criminal trial in the District Court was 69 weeks, 37 weeks above the target of 32 weeks (WA Department of Justice, 2023, p. 55). Time to trial is measured from the time a case is committed to the District Court to when it is finalised with an outcome. The 69 weeks does not include the time it takes for police to investigate a report, lay charges or progress the matter in the Magistrates Court. A decade ago, the ABS reported the WA District and Supreme Courts finalised 216 sexual assault and related offence prosecutions in a year (ABS, 2013). In the 2020–21 ABS data,

<sup>10</sup> This figure is source from unpublished court data. The figure includes jury trials, trial of issues and trial by judge alone.

<sup>11</sup> The remaining charges resulted either in a hung jury (5.8%) or a mistrial (10%). There may also be some overlap in charge outcomes as the total percentage does not equal 100%. See Clare (2023, p. 5).

548 prosecutions were finalised (ABS, 2023b). The increase in sexual offence prosecutions has created pressure on the entire criminal justice system.

The long wait between the offender being charged and trial proceedings commencing can be extremely hard for victim-survivors. They can lose confidence in the court process and its legitimacy, feel as though they are being denied access to justice and suffer increased anxiety, stress and trauma (George et al., 2023, p. 30). In its inquiry, the VLRC heard that the time taken to proceed to trial:

- prolongs complainants' trauma and makes it difficult for them and their families to move on with their lives
- leads to complainants choosing not to report or to withdraw from their case
- affects the quality of complainants' evidence
- leads to the breakdown in relationships between the complainant and the prosecution (2021, p. 417).

Stakeholders contributing to the WSJT indicated delay was one of the most problematic aspects of the trial process causing attrition and may in some cases be used as a deliberate defence tactic (WSJT, 2023, p. 309; A-J George et al., 2023, p. 226). Beyond being a deliberate defence tactic, stakeholders in our consultation shared that delay occurs for a variety of reasons: the complexity of cases has increased over time; cases may require a number of preliminary hearings; police may take longer to discharge their evidentiary obligations with the prosecution; and courtroom, judge, prosecution, defence counsel and witness availability may all be limited. The reasons are systemic, multifaceted and cannot be fixed with one solution.

*Not allow perpetrator to adjourn for more legal advice as this added months of unnecessary time for me and I'm sure many other victims and was a piss take.*

#### **Victim-survivor**

The Australian Institute of Judicial Administration (AIJA) Integrative Review identified measures supported in the literature as addressing delays in the finalisation of court proceedings, including:

- prompt case scheduling
- effective case management and ground rules hearings
- a case coordinator role to actively manage cases and liaise with parties and judges (George et al., 2023, p. 226).

In WA, the District Court schedules cases according to judicial, courtroom, counsel and witness availability. Judges may undertake case management prior to trial and the District Court has a dedicated criminal listings team to liaise with parties and judges. While the District Court hears a large number of sexual offence cases and they constitute a large proportion of its criminal caseload, it is not a specialist sexual offence court. Measures to reduce delay must be considered in the context of managing the entirety of the District Court's caseload, which also includes a substantial civil jurisdiction.

While we support measures to reduce delay and suggest that implementing measures to reduce delay should be a priority, we acknowledge the complexity of the task and that there is no short-term solution. Management of sexual offence cases requires adequate funding and resourcing to ensure that all stages of the process are dealt with efficiently and expeditiously (Sleight, 2011, p. 24). It is critical, however, that victim-survivors can progress with healing and recovery throughout their engagement with the criminal justice process regardless of the time taken to resolve the case. They require counselling and other supports before, during and after their interaction with the criminal justice system.

### 11.3 Victim-survivors' experiences during trial

In its submission, Full Stop Australia told us that its counsellors working with victim-survivors reported the system retraumatises clients terribly, with one counsellor stating, 'every client I have worked with has been retraumatised by the Court process'. We heard this view throughout consultation with stakeholders and with victim-survivors. While we talked about secondary victimisation in Chapter 7, it can be at its most pronounced during the criminal trial.

*It is a very long, arduous, retraumatising process. It needs to be quicker and much more informative to the victim.*

#### *Victim-survivor*

The wishes and needs of victim-survivors are often diametrically opposed to the requirements of legal proceedings (Herman, 2005, p. 574). The VLRC noted that for some victim-survivors the experience can be harrowing. Their private lives may be exposed to public scrutiny, they may be traumatised by seeing the accused in court and they may find the courtroom environment intimidating and stressful (VLRC, 2016, p. 196). Cross-examination in particular can cause victim-survivors distress and further emotional harm. Research has consistently found that the interrogative, complex questioning of cross-examination is one of the most stressful aspects of the trial process (Tarrant et al., 2022, p. 30).

We heard this view expressed consistently in our consultation process. In its submission, the ODPP explained that the stress of giving evidence at trial, and cross-examination is a main contributor to attrition at the prosecution stage. In its informal discontinuance study, the ODPP found this to be a major factor in almost 60% of cases where a victim-survivor disengaged or did not want the prosecution to proceed.

*During the trial, the barrister interrogated me, victim-blamed me, accused me of lying, and gas-lit me about why I was getting angry during the interrogation. I was painted as being a vindictive liar 'out to get' her client, because I didn't present like a 'perfect' victim.*

#### *Victim-survivor*

*It was humiliating, after two days of cross-examination I burst into tears.*

#### *Victim-survivor*

Cross-examination can be even more difficult for certain population groups. For people who speak English as a second language or who have additional communication needs, there may be difficulties with understanding and answering the questions. In addition to rape myths, some victim-survivors may face additional discrimination based on their culture, their sexuality, whether they have a disability, have engaged in sex work, or have received a prison sentence.

*It is very difficult for people to give evidence in court. It is already difficult for people with legal knowledge and education. But for Aboriginal people that might speak English as a second language and have other vulnerabilities it is even harder. The system needs to think about how to make it more secure, appropriate and sensitive for Aboriginal people. You need to do that to increase the number of complainants that come forward.*

#### ***Aboriginal legal assistance provider***

In its submission, ANROWS discussed recent research from NSW, which found that myths and misconceptions featured prominently in transcripts from sexual offence trials. The research emphasised that these rape myths and stereotypes contribute to the traumatic nature of sexual offence trials for victim-survivors (Quilter & McNamara, 2023). In Chapter 4, we outlined how myths and misconceptions impact on the decision-making of the jury in sexual offence trials. Myths and misconceptions are also raised frequently in cross-examination as a means of testing credibility. These can be drawn on to imply that consent was likely, based on the victim-survivor's behaviours and sexual history (George et al., 2023, p. 32).

*In the court stage of sexual offending cases, the current biggest problem is in regard to prejudice held by jury members. Particularly within CALD communities. Stigmas surrounding victims of sexual offending such as sexual promiscuity and clothing choices can impact CALD jury members during these trials.*

#### ***CALD community member***

We heard that measures to protect victim-survivors are not working as well as they could and that victim-survivors do not feel adequately consulted regarding what measures should be used and when. Victim-survivors expressed deep concerns that their needs are not recognised, they do not receive adequate information about the trial process, they do not always feel safe and their privacy is not protected. The NSW Interview Study highlighted a range of factors that can contribute to a negative experience and retraumatisation:

- Attending the courthouse can require significant travel and can result in the complainant being in close proximity to the defendant and the defendant's support networks.
- The trial process is unclear for complainants and there is a lack of available and consolidated information on what the process entails.
- Cross-examination can be a confronting and humiliating process for complainants
- The trial process is not designed to be trauma-informed (KPMG & RMIT, 2023, p. 64).

*Further, before the trial, they were meant to ensure that I didn't come into contact with the abuser while we needed to be at the District Court at the same time. We ended up walking in at a similar time, and I had a full-blown panic attack in the middle of Hay Street (I suffered a long period of PTSD and anxiety following the assault), which was extremely humiliating.*

### **Victim-survivor**

For victim-survivors in regional and remote locations, attending court can present even greater challenges. They may have to travel long distances and stay in unfamiliar surroundings. They may not have previously met with the prosecutor and victim support services may not be available. Facilities such as separate and private waiting rooms or even remote witness rooms from which to give evidence are not available at all regional courthouses. We also heard during consultation that victim-survivors and the accused (released on bail) have been booked on the same transport (bus or plane) and into the same accommodation either because there is little coordination between agencies managing the arrangements or because there are simply no other options.

Many victim-survivors will not have friends and family in attendance to support them at trial. We heard that some victim-survivors do not want their loved ones to hear the details of the offence because they wish to protect them, or because they cannot carry the burden of their family's response (KPMG & RMIT, 2023, p. 65). The shame and stigma in relation to sexual offending serves to isolate victim-survivors when they need support the most.

### **Daphne's story**

Daphne reported child sexual abuse as an adult. The accused pled not guilty to the offence and the case went to trial. Two days before the trial started, Daphne was told there would be a new prosecutor, whom she had not met. The trial was held in a smaller courthouse and there was no witness waiting room available for her so she had to sit in a public waiting area before giving her evidence. Daphne has a mild hearing impairment and she struggled to hear the questions when giving evidence. Her mother also has a hearing impairment and while she attended court as Daphne's support, she too could not hear what was going on very well. Daphne and her mother were not told that hearing loops were available.

The prosecutor applied for special witness status for Daphne and she gave her evidence from a remote witness room. Daphne would have preferred to give her evidence in court so she could be seen and heard and she was angry that she was not given a choice. Daphne did not feel that the volunteer from VSS was able to advocate for her being able to give evidence in the courtroom. Daphne wanted to go into the court after giving her evidence but the prosecutor told her it would not be a good look as she had given evidence remotely. After the trial, Daphne requested the transcript from the Court because she wanted to see what was said in the remainder of the trial, and because her mother had struggled to hear her evidence. Her request was refused and she felt the letter from the Court was rude and abrupt.

## 11.4 Measures to improve victim-survivors' experience of the trial process

Trial processes that respond to the justice needs of victims are likely to improve the process for victim-survivors (Tarrant et al., 2022, p. 30). In this section we consider some of the specific measures available to support victim-survivors during trial, including special witness measures, protections during cross-examination, ground rules hearings, court facilities and the role of VSS. We also discuss some measures to improve victim-survivors' privacy when attending court and giving evidence.

Court Services Queensland (2024) has developed a *Domestic and Family Violence and Sexual Violence Safety Framework – Delivering Safer Courts 2024–2034* (Safer Courts Framework). Developed in response to WSJT's *Hear Her Voice* (Reports 1 and 2), the Safer Courts Framework is a vehicle for implementing the recommendations made that impact Queensland Courts. The Safer Courts Framework sets out five principles, which can be summarised as:

- Accessible and safe.
- FDV and sexual violence aware.
- Trauma and culturally informed.
- Person-centred.
- Protects and promotes human rights.

The Safer Courts Framework also sets out priorities, commitments and actions that reflect the recommendations of the WSJT and other associated inquiries. It provides a useful mechanism for drawing together the requirements needed to improve the safety of victim-survivors and embed practice that addresses their justice needs.

### 11.4.1 Trial support

In this report we have talked about the serious impacts sexual offending can have on the lives of victim-survivors, as well as the fact that moving through the criminal justice system can be a distressing, overwhelming and even retraumatising experience. Support can help reduce the impacts of sexual offending, and getting this support during the trial can improve justice outcomes, reduce attrition and improve victim-survivors' overall experience (WSJT, 2022).

The Victim Support Service (VSS) is available at any court in WA, including the Magistrates Court, District Court and Supreme Court. VSS is staffed by qualified psychologists and social workers who are experienced in responding to sexual offending. When a victim-survivor reports a sexual offence, WA Police will often refer the matter to VSS, which will write a letter to the victim-survivor outlining the support available. VSS is a free and voluntary service and it is always the victim-survivor's choice whether to engage with the service. VSS will engage with the victim-survivor very early in the process, sometimes two or more years before the trial occurs. In the initial stages of the criminal justice process, VSS is able to provide counselling and support, information on other services such as counselling, legal or medical services and information on the status of police investigations (WA Government, 2023). In consultation we heard that, in practice, VSS refers most victim-survivors to SARC for counselling and therapeutic services as opposed to offering the service in-house.

VSS provides information on ongoing court matters and preparing for court and will meet with victim-survivors to ensure their choices and needs are well understood. VSS also provide a ‘frequently asked questions’ sheet and two videos on attending court and giving evidence on its website (WA Government, 2024a). It regularly works with the ODPP and advocates for victim-survivors in relation to special witness protections as part of their service. VSS will also arrange in-court support. The support person may a VSS employee but is sometimes a volunteer who will meet the victim-survivor on the day they attend court to give their evidence. In-court supporters provide emotional and practical support but are not able to participate in the trial process in any way. Volunteers are used in most states and territories to support victim-survivors attending court (see, for example, Victorian Government, 2023).

In consultation, we heard from victim-survivors who, while uniformly thanking the volunteers for their empathy and kindness, sometimes felt it was not the support they needed during the trial process. We have talked repeatedly throughout this report about the shame that accompanies a person’s experience of sexual offending. Victim-survivors told us they did not feel comfortable giving their evidence in front of a person they did not know and they were mindful of causing harm to the volunteer. One victim-survivor told us they needed to comfort the volunteer who cried after hearing their evidence. The nature of sexual offending can be horrific and it is a normal human reaction to be upset at hearing the evidence presented.

We have noted that often victim-survivors will not bring their family or friends as supports due to shame and embarrassment. However, we heard from some victim-survivors that they would prefer to know the person who is supporting them on the day of trial and would also take comfort in being supported by a person with expertise and experience in responding to sexual offending, such as a counsellor or social worker. While we acknowledge there are strict parameters on the role of an in-court support person, victim-survivors told us they wanted a support person who was able to advocate for their needs, such as their request to give evidence in a different location, or to advise the judge or prosecutor they needed a break.

We also heard there is a discrepancy between what is available in Perth and in regional locations. In some regional locations there are no VSS officers due to staffing shortages, and there are no or inadequate facilities for victim-survivors in regional courthouses. The difference in support available for victim-survivors in metropolitan areas as opposed to regional and remote areas is a continuous theme throughout this report. In Chapter 7, we discussed the need for collaboration, integration and information sharing. In regional locations there are support services, victim support services and post-sentence victim support services operating in siloes. One option to consider is an integrated victim service that provides support from pre-reporting to post-sentence, building relationships of trust with victim-survivors. The service could also include victim advocates and victim liaisons if introduced. There may also be scope to partner with local services who have expertise and experience in supporting their communities and to co-locate victim support workers in facilities separate to court buildings.

In this report, we do not recommend a specific model of in-court support as it may look different depending on circumstances and may also depend on the location, but we do recommend that further work be undertaken to improve in-court support for victim-

survivors and to provide them with more choice and agency. In the case study below, we explain a model of support used in a recent sexual offence trial and suggest that, with refinement, there may be scope to expand the service to support victim-survivors in future sexual offence trials.

#### ***Case-study – sexual offence trial support***

The trial was complex and involved multiple victim-survivors, and video-recordings of the offences against them. Given the nature of the trial, the Sexual Assault Legal Service WA (SALSWA) was asked to develop a model of support for the victim-survivors that included funded counselling sessions, a 24-hour crisis line available at key points and dedicated in-court support. Working closely with the ODPP and taking advice from VSS, SALSWA created a pool of experienced counsellors, social workers and lawyers from a number of services. A training day was arranged for the support people that included presentations from the ODPP, a lived experience advocate and a VSS guided tour of the District Court. All the support persons were provided a thorough briefing on their role and its limits.

The victim-survivors were provided support in the lead-up to and during the trial. Anecdotal feedback from the people involved is that some victim-survivors remained engaged when they may have otherwise withdrawn if not for the additional support provided. The accused was convicted on the vast majority of charges.

#### **Recommendation 20:**

The Department of Justice undertake further policy work on providing in-court support to adult victim-survivors of sexual offending. The policy work should consider:

- the use of social workers or other professionals with experience in responding to sexual violence
- how support workers may be able to advocate for victim-survivor needs and choices
- physical facilities for victim-survivors before, during and after court proceedings in Perth and regional locations
- integrated service models or partnerships in regional locations
- caring and other responsibilities for victim-survivors.

#### **11.4.2 Special witness measures**

Reforms over the years have introduced special witness measures to reduce the distress victim-survivors may experience when presenting their evidence in the courtroom. The *Evidence Act 1906* contains provisions for the evidence of children and special witnesses

(ss 106A–106T and sch 7). In any hearing for a serious sexual offence<sup>12</sup> a judge may make an order (s 106R) declaring that a person who is the victim of the serious sexual offence and is giving evidence is a special witness, unless that person does not wish to be declared a special witness (s 106R(3a)). An order can also be made for a person to be declared a special witness if, when giving evidence, they are likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence (s 106R(3(b)ii)).

Some of the current arrangements that can be made for a special witness giving evidence include:

- a support person (ss 106E and 106R(4)(e))
- a communicator (s 106H)
- the ability to give evidence by video-link from outside the courtroom (ss 106N(3A), 106T(1) and 106T(2))
- the ability to pre-record a witness’ evidence within a special hearing (ss 106I and 106RA)
- a screen so that the person cannot see the accused (106N(4), 106N(5), 106T(1) and 106T(2)).

The *Evidence Act 2025* received Royal Assent on 25 September 2025, with operative provisions to commence on proclamation. Once in force, the 2025 Act will repeal the *Evidence Act 1906* and replace it with a modern Evidence Act that introduces a version of uniform evidence law, bringing WA in line with most other Australian jurisdictions. In his second reading speech (Western Australia, 30 April 2025, p. 435), the Attorney General, the Hon Dr Tony Buti, stated:

*[T]he Bill introduces several important reforms and protections that will improve the process of giving evidence for children, family violence victims and other witnesses. These reforms are aimed at ensuring that the experience of giving evidence is less traumatic and that a witness’s evidence is as complete, accurate and coherent as possible.*

The *Evidence Act 2025* also retains provisions from the 1906 Act, including the most significant special witness assistance measures. Part 7 of the *Evidence Act 2025* contains the witness assistance measures, which have been retained from the 1906 Act but reorganised into a more logical and coherent structure, as well as containing new provisions. Section 229 of the *Evidence Act 2025* maintains that complainants in a sexual offence proceeding in a superior court (District or Supreme Court) must be treated as a special witness. Part 7, Division 2 of the *Evidence Act 2025* sets out the support and communication assistance available to special witnesses including:

- use of a support person (s 231)
- use of a support animal (s 232, a new provision)
- use of a communicator (s 233).

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<sup>12</sup> ‘Serious sexual offence’ is defined to include offences listed in Part B of Schedule 7 of the *Evidence Act 1906* (WA).

The *Evidence Act 2025* also updates and modernises the provisions in place to allow complainant witnesses in sexual offence matters to give their evidence by video-link outside the courtroom (pt 7, div 7) or the ability to pre-record their evidence in a special hearing (pt 7, div 6). The LRCWA Statistical Analysis Report looked at the relationship between the method of giving evidence and trial outcomes for charges against adults. Noting that it only considered trials from 2019 and there are many other factors at play, the analysis indicated that video-link testimony is correlated with more not guilty verdicts (79% vs 60% guilty) and the pre-recording method of giving evidence is correlated with more guilty verdicts (33% vs 10% not guilty) (Clare, 2023, p. 30). Currently, pre-recording is almost exclusively used for the evidence of child witnesses and the same LRCWA Statistical Analysis Report demonstrated that conviction rates are higher for charges involving children (p. 5).

In consultation, we heard positive feedback on the measures to assist special witnesses, but we also heard that many victim-survivors did not understand the measures or the implications. We received feedback that victim-survivors were declared special witnesses and were required to give their evidence using a video-link when they would have preferred to give their evidence in court. To meet victim justice needs it is critical that victim-survivors retain control and, where possible, choice on how they give evidence. This requires agencies such as the ODPP and VSS to provide victim-survivors with sufficient information and support to make informed decisions. Victim advocates may also play an important role in assisting victim-survivors to understand the special witness measures and their choices and agency.

*I think simpler, clearer communication and explanation of court processes/terms used is needed. Some people are completely unfamiliar with court legal/legal processes. I had to phone up just to find out what a 'mention' hearing was.*

#### *Parent of victim-survivor*

The VLRC considered views on an alternative arrangement under which the accused is removed from the courtroom while the victim-survivor gives evidence before the jury. This could address the concern that victim-survivors can feel disconnected from the trial process when they give evidence using an alternative arrangement such as a remote witness facility. While the VLRC ultimately considered that removing the accused could result in an unfair trial to the accused (2021, p. 471), it is perhaps worth considering as another option in relation to providing victim-survivors with greater choice and control over the manner in which they give evidence. The video link separation provisions in the 1906 Act and the *Evidence Act 2025* provide the court with flexibility to allow witnesses to give their evidence in the courtroom with the accused in a remote room, viewing the courtroom using closed circuit television.

*Not have the victim in court with the person who did it and have them and witnesses in another court room.*

#### *Victim-survivor*

We also heard in consultation that not all measures are available at every courthouse. There are challenges in some regional locations which may not have the facilities to

provide, for example, the ability to give evidence by video-link, separate entrances or witness waiting rooms. We do not have the statistics on the number of pre-recording orders made, but the LRCWA Statistical Analysis Report suggests that it is less than the number of video-link separation orders.

It may be beneficial to consider the increased use of pre-recording evidence for adult complainants, noting that the court's ability to order a pre-recording under the *Evidence Act 2025* is broader than it is under the 1906 Act. Increased use of pre-recording may reduce the impact of delay on victim-survivors because the pre-recording can take place ahead of the trial. The measure may also have particular benefits for victim-survivors in regional areas. They may be able to travel to Perth for special hearings, which may afford them more privacy and access to additional formal support and may reduce the risk of them interacting with the accused. It may also allow victim-survivors from regional locations to provide their evidence in courts equipped with witness facilities, such as waiting rooms and separate entrances.

#### **11.4.3 Privacy**

Unless there are special circumstances, trials are administered in open court, which means they are open to the public to attend (*Criminal Procedure Act 2004 (WA)*, s 171(2)). Victim-survivors are thus required to give their evidence before a public audience, and the prosecution or the defence may seek access to information the victim-survivor would prefer remains private. It is a process that can leave victim-survivors feeling vulnerable and can contribute to retraumatisation. We discussed in previous chapters the impact of shame on victim-survivors, so privacy and confidentiality are key concerns. In consultation, we heard that victim-survivors do not have their privacy protected and this led to their identity being shared with colleagues, acquaintances and legal professionals against their wishes.

*The police did not apply for a suppression order in Magistrates Court despite me working in the legal profession. This was very humiliating. Police said they sought legal advice about whether a suppression order could be made and their advice was that an order could not be granted.*

##### **Victim-survivor**

The 1906 Act provided that the names of complainants or details which may identify the complainant in sexual offence matters cannot be published or broadcast (s 36C) and this provision is expanded in the *Evidence Act 2025* to apply to civil proceedings if it is alleged that a witness may be the victim of sexual abuse or sexual harassment (s 381). All jurisdictions in Australia have legislation in place that protects adult victim-survivor's identities from being published without their consent (WSJT, 2022, p. 60). During consultation we heard that, despite victim-survivors names or identifying details not being published, details of the offence (sometimes in quite graphic terms) are published or broadcast and this causes victim-survivors distress.

As we have noted, many victim-survivors choose not to share the details of the offence with family and friends to the extent they will not have a support network in court with them. However, for friends and family who are aware of the trial taking place it is straightforward to identify the victim-survivor and the details of the offence from media

reports. Some victim-survivors told us they did not trust the media to report fairly or accurately on their case. This view was echoed by the WSJT, which heard from stakeholders in Queensland that media organisations did not act according to ethical considerations when using information, with some seeking to ‘profit from trauma’ (WSJT, 2022, p. 361).

Section 171(4) of the *Criminal Procedure Act 2004* (WA) provides that courts may issue closed court orders or restricted publication orders. Courts are also able to issue non-publication (suppression) orders. A closed court means that only certain people are allowed to enter the courtroom or take part in a case, and this generally means that media are not allowed to enter. The court is closed to the public. In other jurisdictions, closed court orders are used for sexual offence matters. In NSW, for example, when a complainant’s evidence in prescribed sexual offence cases is being given or heard before a court (whether in person or through video-link) proceedings are to be held in a closed court unless otherwise ordered (s 291(1)). Media access to proceedings held in a closed court is governed by a practice note (Blanch, 2005).

The WSJT explained that open justice is a fundamental principle of the justice system. It helps to provide the public with confidence in the judicial system and a level of scrutiny about court proceedings, contributing to accountability. However, WSJT noted (2022, p. 359) that

*the principle of open justice often needs to be balanced against considerations such as the protection of confidential information, a person’s right to privacy and a person’s right to physical and emotional safety. It is important that open justice does not become a barrier to vulnerable people seeking justice or protection.*

In this report, we do not recommend any changes to the current legislative framework which protects victim-survivor’s privacy, but instead urge greater consideration or use of existing provisions at victim-survivors’ request or when it is important for their physical and emotional safety. It may be useful to develop practice notes on access to or media reporting of sexual offence trials in WA.

The *Evidence Act 1906* contains provisions to protect the records of victim-survivors’ counselling sessions whether they relate to the sexual offence or not (ss 19A–19M). A victim-survivors’ counselling records (known as protected communications) cannot be disclosed without leave of the court. This means that the defence cannot obtain a victim-survivor’s counselling records from either the police or the counsellor without the court giving permission. It also means the counselling records cannot be presented or used in any way during the trial unless the defence has received permission from the court. For example, a defence lawyer would need the court’s permission to cross-examine the complainant about comments the complainant made to the counsellor (s 19K).

If a defence lawyer applies to obtain a copy of the counselling records, they must provide legitimate forensic reasons that amount to more than a ‘digging expedition’ (ss 19B, 19E). These reasons must first be set out in a written application and affidavit filed at the court (s 19C(3)). If the court considers that the application and affidavit raise arguable legitimate forensic reasons then the court will notify the prosecutor, the complainant and the counsellor that the application has been made and invite them to attend a court

hearing to decide whether the defence should be allowed to obtain a copy of the counselling records (s 19C(4)). The complainant and the counsellor may be represented by a lawyer at the court hearing (s 19D). At the court hearing the court will decide whether it is in the public interest to allow the defence to obtain a copy of the counselling records (s 19G). The complainant is able to consent to the defence receiving a copy of their counselling records (s 19H).

The 1906 Act's provisions in relation to protected communications are retained but modernised in language and format in the *Evidence Act 2025* (pt 4, div 3).

Section 19J of the *Evidence Act 1906* also provides that the Court may make orders:

- that all or part of the evidence in relation to protected communications can be heard in camera (closed court)
- relating to the production inspection, copying or reproduction of the document
- relating to the suppression of publication of all or part of the evidence
- relating to the disclosure of identity information that would tend to identify any protected person.

Legal Aid NSW provides a Sexual Assault Communications Privilege Service to provide legal advice and representation to victim-survivors of sexual assault who want to prevent disclosure of protected communications or to release their protected communications in an informed way (Legal Aid New South Wales, n.d.). Until recently, victim-survivors in WA did not have recourse to legal advice or assistance if they wanted to object to the defence application unless they could pay for a private lawyer. SALSWA is now able to provide victim-survivors with assistance if required.

Discussions with counselling providers raised some confusion about evidence provisions and how they operate. Different legislation applies for criminal, civil and family law proceedings and counselling providers are expected to understand how to respond in each circumstance. Work is underway to explore how to support counselling providers and provide them with the information they need to respond to applications for protected communications and talk to victim-survivors about confidentiality and potential risks. It is important that victim-survivors understand up-front how their counselling records may be used (or protected) in legal proceedings so they can make informed decisions about disclosures.

#### **11.4.4 Cross-examination**

Cross-examination is a process considered fundamental to ensuring that the accused receives a fair trial (Cossins, 2020, p. 339), however reforms have regulated or modified the cross-examination process to better protect the interests of victim-survivors. One example is that an unrepresented accused is not permitted to directly cross-examine a complainant in sexual offence trials; rather, they must put any questions they wish to ask the complainant to the judge who repeats the question to the complainant (*Evidence Act 1906*, s 106G(1)). There are also protections contained in the 1906 Act that prevent evidence about the victim-survivor's sexual reputation or disposition (natural tendency to act a certain way) being raised by the defence (ss 36B, 36BA). Evidence of the victim-

survivor's sexual experience can only be raised by the defence when the judge gives permission (s 36BC). These protections are retained in the *Evidence Act 2025*.

Research has consistently found that victim-survivors in sexual offence trials report that the interrogative, complex questioning of cross-examination is one of the most stressful aspects of the trial (Powell et al., 2022, p. 118; Tarrant et al., 2022, p. 30; LRCWA, 2022). Cross-examination aims to test the accuracy of victim-survivors' version of events and their credibility, but there are limits to what the defence can ask the victim-survivor. Under the *Evidence Act 2025*, the court may disallow a question if it is an 'improper question' and is:

- misleading
- unduly annoying
- harassing
- intimidating
- offensive
- oppressive or repetitive (s 50).

Unlike evidence laws in other states and territories, the *Evidence Act 2025* does not provide any examples of improper questions. The 2025 Act retains elements of the *Evidence Act 1906* provision but also draws on Uniform Evidence Law section 41 (which adopted section 275A(6) of the *Criminal Procedure Act 1986* (NSW)). Section 50 subsection (1) of the *Evidence Act 2025* provides that a court must disallow a question and inform the witness that it need not be answered if the court believes it is misleading or confusing, unduly annoying, harassing, intimidating, offensive or repetitive, put in a belittling, insulting or inappropriate manner, or if the only basis of the question is a stereotype. Subsection (2) expands the circumstances the court takes into account when making a decision to disallow a question.

Section 50 of the *Evidence Act 2025* confers a duty on the court to disallow improper questions. The conferral of such a duty was endorsed by the ALRC and NSWLRC when they recommended that section 41 of the Uniform Evidence Law be amended to adopt the terms of section 275A of the *Criminal Procedure Act 1986* (NSW) (ALRC, 2010b, Recommendation 5-2). However, the judge must enforce the provision for it to have any protective value for the victim-survivor. In their study of NSW sexual offence proceedings transcripts, Quilter and McNamara found that there was no single model of trial judge oversight of the substance of complainant cross-examination, and considerable variation between trials/judges in terms of how defence counsel was managed. With some exceptions, they observed only limited use of section 41 (the equivalent of section 50) despite the fact it imposes a positive duty on the trial judge to disallow improper questions (Quilter & McNamara, 2023, p. 29).

In its submission, the ODPP noted that 'there has been a cultural shift, over some years, away from "old school" confusing or belittling cross-examination. However, it is not entirely a thing of the past'. The VLRC suggested that issues remain with the style of cross-examination used by defence barristers (VLRC, 2021, p. 458). Research has also found that complainants in sexual offence trials can be more prone to making mistakes or providing inaccurate responses in response to cross-examination questions that are closed, leading, repeated and/or complex (Tarrant et al., 2022, p. 30, citing Powell et al.,

2022; LRCWA, 2022). Defence lawyers may also use cross-examination to raise myths and misconceptions about sexual offending (Cossins, 2020, p. 374).

The ODPP suggested that specialisation measures, such as training for all participants in trauma-informed practice and competency-based accreditation, will accelerate the entrenchment of proper questioning. It also suggested that the use of communicators and intermediaries would have a significant impact, since the most problematic instances of questioning are usually those involving victim-survivors with communication needs. The District Court of WA (2024) has published guidelines for cross-examination of children and persons with mental disability, but these guidelines do not address the many types of question formats, nor do they restrict counsel in their approach to cross-examination.

We do not have research specifically on the content and style of cross-examination in sexual offence matters in WA. It would be beneficial to commission a trial analysis of WA sexual offence trials, similar to that undertaken in NSW, to provide a base level of understanding on which to build and evaluate reform. We suggest that a trial transcript analysis be undertaken of a recent year, such as 2023, and a further analysis be undertaken in five years, by which time it may be possible to assess the impact of reform measures such as the introduction of witness intermediaries, the commencement of section 50 of the *Evidence Act 2025*, and training for legal professionals and the judiciary.

**Recommendation 21:**

The WA Government commission a trial transcript analysis of the experience of complainants giving evidence in adult sexual offence trials, including the style and content of cross-examination.

#### 11.4.5 Witness intermediaries and ground rules hearings

Many stakeholders stressed the need for witness intermediaries to support victim-survivors who have additional communication needs. The witness intermediary can also assist the court in setting the ground rules for the victim-survivor giving evidence in court. In its submission, Knowmore recommended that the WA Government could improve victim-survivor experiences by fully implementing the recommendations of the RCIRCSA.

The RCIRCSA released its *Criminal Justice Report* on 14 August 2017. Recommendation 59 proposed that state and territory governments establish witness intermediary schemes similar to the Registered Intermediary Scheme in England and Wales, with such schemes to be available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution. In its 2018 response, the WA Government formally accepted recommendation 59 in principle.

The *Evidence Act 2025* contains provisions for the creation of a witness intermediary service for use in court proceedings in WA. In his second reading speech to the WA Parliament (Western Australia, 30 April 2025, p. 436), the Attorney General, the Hon Dr Tony Buti MLA, explained:

*Witness intermediaries are experts, such as psychologists, speech therapists and occupational therapists, who assist the court to understand and accommodate a witness's communication needs. Their principal function is to facilitate communication with the witness to ensure that the witness's evidence is as complete, accurate and coherent as possible.*

Section 290 of the Evidence Act 2025 stipulates categories for whom a witness assessment is required, or those who are otherwise eligible for an assessment. The witness assessment is the first step in determining if a witness intermediary is required. The court may request a witness assessment for a special witness, which includes complainants in sexual offence matters heard in superior courts (District or Supreme Court), for any witness who appears to have specific communication needs or if the court otherwise considers it appropriate). The scheme, as it will operate in WA, opens eligibility to victim-survivors of adult sexual offences, which goes further than schemes operating in some other Australian jurisdictions.

Support services will play a critical role in assisting victim-survivors who have communication requirements. Services that have engaged with victim-survivors from early in the criminal justice process and established relationships of trust will be well-placed to understand victim-survivor needs and assist in relaying them to the ODPP. In Chapter 9 we discussed introducing witness intermediaries at the police interview stage. This may have flow-on benefits in that reports prepared by witness intermediaries to support police interviews could inform reports required by the court. In other intermediary schemes in Australia, the intermediary used at the police stage may be used for court proceedings, but this is not appropriate in all cases.

We acknowledge that witness intermediaries may not be suitable for all victim-survivors. It may be that a victim-survivor's communication needs are grounded in culture or are best met by a person within their support network, community or family who is familiar with their communication style. Provisions in the *Evidence Act 1906* (ss106F, 106R(4)(b)), which are retained in the *Evidence Act 2025* (s 233), allow for the use of a communicator. A communicator's function is to communicate and explain to the witness questions put to them, and to explain to the court evidence given by the witness. The person acting as the communicator must be approved by the court.

In its submission, the ODPP expressed concern that the provisions in the *Evidence Act 1906* that allow for a communicator are rarely used. Reasons for this include a lack of clear understanding of how communicators can be properly used, or that a suitable person cannot be identified. As the witness intermediary scheme is established there is potential to clearly define the role and use of a communicator who may not meet the requirements of a witness intermediary as set out in legislation, but who has a unique capacity to understand the speech of a person who due to age, mental or physical impairment is unable to be clearly understood by others. This may allow for their increased use, but it is a program that will require funding. This should be factored into the development of any witness intermediary scheme.

Most stakeholders advocating for witness intermediary schemes consider ground rules hearings essential. From the experience of other jurisdictions, including in evidence presented to the RCIRCSA, ground rules hearings must be legislatively sanctioned to

ensure they are held. The RCIRCSA recommended that state and territory governments, in conjunction with court administrations, ensure that ground rules hearings are conducted in child sexual abuse prosecutions to consider the questioning of prosecution witnesses with specific communication needs, whether such questioning takes place in a pre-recorded hearing or at trial. This should be essential where a witness intermediary scheme is in place and should allow, at minimum, a report from an intermediary to be considered (RCIRCSA, 2017b, Recommendation 60).

The *Evidence Act 2025* introduces communications directions to ensure that witnesses' communication, support or other needs are met in a fair and effective way (s 294). The court may give communication directions without holding a ground rules hearing if the court is satisfied that appropriate directions have been agreed between the parties without a hearing. Communication directions may relate to:

- the manner in which the witness is questioned
- the length of any questioning and breaks to be taken
- the questions that may or may not be put to the witness (including under s 50 (disallowable questions))
- if there are more than two parties, which topics the witness may be questioned on by which party
- the use of aids such as models to question the witness
- the cross-examination of a witness
- if a party intends to lead evidence that contradicts or challenges a witness or otherwise discredits them, that the party is not obliged to put the entirety of that evidence to the witness in cross-examination.

The *Evidence Act 2025* also contains provisions for ground rules hearings. Section 295 provides that a court may hold a ground rules hearing to consider the communication, support or other needs of the witness and to decide whether any directions should be made to meet those needs fairly and effectively. If a witness intermediary has been appointed the court must hold a ground rules hearing unless it is satisfied that appropriate communication directions have been agreed between the parties and the witness intermediary (s 295(3)). Of note, the new provisions are not restricted to child sexual abuse prosecutions. Such measures will be available for adult sexual offence prosecutions if needed.

The VLRC recommended ground rules hearings for all sexual offence trials and that such hearings include consideration of the style and content of questioning beyond additional communication needs. The VLRC (2021, Recommendation 84) recommended that:

*in the absence of the jury and before the complainant is called to give evidence, that the judicial officer, prosecution and defence counsel discuss and agree to*

- a. the style and parameters of questioning so that questioning is not improper or irrelevant*
- b. the scope of questioning including questioning on sensitive topics and evidence to reduce re-traumatisation*
- c. the preferences and needs of complainants.*

The ODPP did not support making ground rules hearings mandatory in every sexual offence prosecution. We agree with this position for now, given the provisions contained in the *Evidence Act 2025* on communications directions, ground rules hearings and the expansion of the provision on improper questions in section 50. It may be a better option to examine the results of the trial transcript analyses, the subject of Recommendation 21, before considering the introduction of mandatory ground rules hearings in all sexual offence matters.

However, under the provisions of the *Evidence Act 2025* the court retains the discretion to issue communication directions or conduct ground rules hearings. We agree with the ODPP that providing resources on ground rules hearings and communication directions, similar to those produced by the Judicial College of Victoria in its *Victims of Crime in the Courtroom: A Guide for Judicial Officers*, could be extremely useful and help encourage uptake. A resource could also include guidance on enforcing section 50 of the new Act.

#### **11.4.6 Addressing myths and misconceptions**

Submissions and testimony to the Senate Inquiry into current and proposed consent laws discussed the prevalence of rape myths in sexual offence trials. Drs Duncanson and Henderson submitted that their research revealed ‘a persistent impediment to achieving justice for adult sexual offence complainants is the implicit belief in rape myths held by both defence and prosecuting barristers’ (Senate Legal and Constitutional Affairs References Committee, 2023, p. 56). In Chapter 5 we highlighted the impact of rape myths on jury decision-making, but rape myths also pervade questioning during cross-examination and, at times, evidence in chief.

In Chapter 7 we discuss training for all criminal justice actors to address myths and misconceptions during the criminal justice process. Two additional ways to address myths and misconceptions during trial are through jury directions and expert evidence. Both were raised by stakeholders during consultation. We do not propose to discuss either topic further in this report because they were addressed extensively by the LRCWA in Chapter 10 of Project 113 Final Report, with the LRCWA making recommendations on both subjects.

The LRCWA also asked whether the District Court Bench Book should be made publicly available to assist judges in drafting their directions. The District Court’s judges’ bench book is an internal document and is not publicly available, which stands in contrast to NSW, Victoria and Queensland. It was contended in consultation and submissions for Project 113 that the District Court Bench Book be made available as soon as possible (LRCWA, 2023, p. 360). The Senate Inquiry into current and proposed consent laws formed the view that there should be a national sexual violence bench book or, at a minimum, a dedicated section in the *National Domestic and Family Violence Bench Book* to recognise the gravity of sexual offences, assist judicial officers in the courtroom and facilitate a consistent approach across state and territory jurisdictions (Senate Legal and Constitutional Affairs References Committee, 2023, p. 108).

The Senate Inquiry Report recommended that the Commonwealth Attorney-General’s Department, in collaboration with the Australasian Institute of Judicial Administration and other relevant stakeholders, develop and deliver a national sexual violence bench book to assist judicial officers in recognising and responding to sexual violence in a culturally

appropriate and trauma-informed manner. The bench book should specifically address rape myths and misconceptions (Recommendation 11).

#### 11.4.7 Specialist sexual offence courts

The ACT Parliamentary Inquiry recommended the implementation of a specialist sexual offence Court in the ACT which, among other reforms, would fast-track and prioritise sexual offence matters to reduce delays (Sexual Assault Prevention and Response Reform Program Steering Committee, 2021, p. 59). The rise of specialist court approaches in the last 40–50 years has been strongly associated with the need for efficiency gains and prompt case management (George et al., 2023, p. 46). More recently, however, advocates have called for a specialist approach to managing sexual offence trials that adheres more closely to the principles of therapeutic jurisprudence and minimises the risk of secondary victimisation. Developed by Professors David Wexler and Bruce Winick in the 1980s, therapeutic jurisprudence says that the process used by courts, judicial officers, lawyers and other justice system personnel can impede, promote or be neutral in relation to outcomes connected with participants' wellbeing (Australasian Institute of Judicial Administration, n.d.).

*There should be a multidisciplinary team like there is for Drug Court or the Start Court in WA. A Domestic Violence Court.*

#### **Victim-survivor**

There is no uniform definition of a specialist court. Instead, what is commonly called a specialist court may be implemented in a number of different ways (George et al., 2023, p. 46). In this instance, by specialist court we mean one that deals only with sexual offences and has its own rules and procedures (VLRC, 2021, p. 390). This may include a standalone court or a specialised list within a generalist court. A specialist court can be staffed by trained judges, legal practitioners and others providing support. The principal benefits of this model are greater certainty for continuation of the specialist approach and the potential for enhanced governance frameworks for any related service providers (George et al., 2023, p. 47). In Discussion Paper 3, we highlighted the example of the New Zealand Sexual Violence Court Pilot.

#### **New Zealand Sexual Violence Court Pilot**

New Zealand has developed a sexual violence court pilot in the Auckland and Whangarei District Courts. The pilot aims to minimise the risk of secondary victimisation for victims by reducing delays and improving the courtroom experience for victims. It works as a list of serious sexual violence cases that are being heard within the District Court by a jury. A set of Best Practice Guidelines is used to guide judges, who are also given specialised training in sexual violence offending. An evaluation of the sexual violence court pilot found that stakeholders considered the pilot to be successful in improving timeliness and trial management practices and reducing the risk of secondary victimisation.

During consultation, stakeholders suggested using specialist courts or lists for sexual offences. Women's Legal Centre WA recommended specialist police, prosecution and courts that have a robust understanding of the impacts of complex trauma on criminal proceedings and work to preserve the emotional and psychological safety for victim-survivors. Some victim-survivors drew our attention to the sexual violence courts in South Africa, which Jess Hill profiled in the documentary *Asking For It* (Hill, 2023). Development of sexual offence courts in South Africa has a long history, starting with a pilot in 1993. More recently, section 55A of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007* (South Africa) introduced new statutory sexual offence courts to be resourced in line with *Regulations relating to Sexual Offences Courts* (George et al., 2023, p. 71). The *Regulations* make detailed provisions for:

- facilities such as waiting areas, testifying rooms, court preparation room and consultation rooms
- required devices and equipment
- services such as court preparation, staff and judicial trauma debriefing, interpreter services, intermediary services
- special measures such as witness complaint mechanisms, transporting participants to court and the manner for interacting with complainants and witnesses (George et al., 2023, p. 72).

South Africa does not operate jury trials for sexual offences. Instead, a panel system is implemented, with cases heard by a judge and two lay assessors with experience in justice administration or a special skill relevant to the case. The lay panel members assess the facts and the judge determines and applies the law and confers with the assessors in reaching a verdict (George et al., 2023, p. 72).

WA introduced a specialist Family Violence Court in 1999. Following evaluation in 2014, its caseload was reincorporated into the generalist Magistrates Courts and a Family Violence List was introduced. While the specialist Family Violence Court was criticised for being offender-focused, the qualitative evidence in the evaluation showed that victim-survivors were very well supported in the model (Community Development and Justice Standing Committee, 2020, p. 117). Overwhelmingly, a victim satisfaction survey reported positive feedback. Most of the comments were positive, noting that the service was 'outstanding' and the staff 'helpful, competent and friendly', as well as 'supportive, understanding and sympathetic'. Respondents described the assistance they received as 'encouraging and respectful' and said that it made them feel 'safe, reassured' and they were 'very grateful'. Survey respondents relayed that they felt they were provided with good advice, and that staff were informative and knowledgeable. Services were regarded as good, prompt and appropriate to their situation (p. 117).

The VLRC has explained some of the risks of specialised sexual offence courts, including the risk of burnout or vicarious trauma for legal professionals and other staff within the courts. Judges from the New Zealand Court Pilot told the VLRC 'it's important that any judicial officer have a variety of different types of work. There would be burn out if judges were required to do sexual assault cases day after day' (VLRC, 2021, p. 394). In its submission, the ODPP noted that District Court judges are already specialising to a certain extent in sexual offence cases due to the volume of prosecutions in the jurisdiction

and that judicial burnout would be a real concern. The ODPP also noted the risk of vicarious trauma and burnout for prosecutors if required to specialise in sexual offence matters to a greater extent than they already are.

The WSJT also rejected the option of a standalone specialist sexual assault court in Queensland. The WSJT was concerned that limiting a specialist court to only a few locations could result in inequity in terms of access to justice, particularly for people in regional and remote locations (2023, p. 309). The WSJT also acknowledged the danger of specialised courts becoming too insular over time, with judges and legal practitioners operating in a circumscribed environment which may not always deliver best practice in the interests of both victims and accused persons. Concerns were also expressed about the risks of vicarious trauma to legal actors (p. 310).

We agree with the VLRC (2021, p. 394) that many of the benefits of a specialist sexual assault court can be achieved without the disruption and costs that would be caused by creating a standalone court. We also agree with the ODPP that, at this stage, a specialist sexual assault court is not feasible, particularly at current resourcing levels. There may be more scope to introduce a specialised list for sexual offence matters, and this option was recommended by the WSJT (2023, Recommendation 69). However, this may carry many of the same risks as introducing a specialist standalone court, especially without additional resourcing.

Instead, we recommend focusing on strengthening measures to protect victim-survivors from secondary traumatisation and improving specialisation through training and possibly accreditation. Many of the benefits for victim-survivors highlighted in the evaluation of the Family Violence Court model and in the South African model may be achieved by better integration with supports, improved communication, improved court facilities and the introduction of supports such as victim advocates, victim liaisons and witness intermediaries.

## 11.5 Sentencing

While we heard feedback in consultation about the penalties imposed on offenders when convicted of sexual offences, we do not cover this topic in the report. The LRCWA discussed sentencing and penalties in detail in Chapter 12 of Project 113 Final Report. The terms of reference asked the LRCWA to consider:

- what the maximum penalty should be for the sexual offences under review
- any specific sentencing requirements for sexual offences in Chapter XXXI of the code such as mandatory minimum sentences or period of imprisonment (LRCWA, 2023, p. 368).

Instead, in this section we concentrate on victim-survivors' experience of the sentencing hearing, with attention to victim impact statements.

Some victim-survivors are surprised and distressed to discover that the sentencing process largely focuses on the offender. The VLRC identified that victim-survivors need the following information to prepare themselves for the sentencing process:

- the purposes of sentencing and how these relate to the offenders' circumstances
- the duties of the prosecutor at a sentencing hearing
- the purpose and use of maximum sentences and sentence types

- the role of victim impact statements
- the option of applying for compensation or restitution as an additional order against the offender (VLRC, 2021, p. 111).

The ODPP noted that in accordance with the DPP Victims of Crime Policy, it will:

- send a letter to the victim before the sentencing hearing
- meet with the victim-survivor if requested and reasonably possible
- facilitate the victim-survivor making a victim impact statement
- seek victim-survivors' views on the imposition of a mandatory lifetime restraining order or whether they would like the ODPP to request the court make a restraining order as part of the sentencing proceedings.<sup>13</sup>

We have previously discussed the importance of information and collaboration. VSS already play an important role in explaining the sentencing process and ensuring victim-survivors are receiving the information they need to make informed choices about how they may want to participate and, in particular, make a victim impact statement. There may be scope for victim advocates or victim liaisons, if introduced, to perform this role if they have built up relationships of trust with victim-survivors over time.

#### **11.5.1 Victim impact statements**

A victim impact statement or VIS is usually a written document that details the harm suffered by a victim-survivor as a direct result of the offence. It is a chance for the victim-survivor to speak in their own voice about the impact of the offending, but it is not compulsory for a victim-survivor to provide a victim impact statement. Victim-survivors may have the option of reading their statement out in court. The VSS can help a victim-survivor to write their victim impact statement. It should not be written until the accused has either pled guilty or been found guilty by a jury (ODPP, 2022b, p. 9). A copy of the victim impact statement is provided to the defence lawyer before the sentencing hearing but there are conditions that protect the victim-survivor's privacy.

Victim impact statements were introduced into the WA criminal justice system under the *Victims of Crime Act 1994* (WA), but the provisions were replaced in substantially the same terms by sections 13 and 24–26 of the *Sentencing Act 1995* (WA) (the Sentencing Act). The second reading speech for the 1994 Victims of Crime Bill stated:

*Other than being called upon to give evidence in respect of the criminal acts alleged to have been committed against them ... the victim has had little role to play in the system. The Victims of Crime Bill is directed towards addressing the needs of victims and their perceived alienation from the criminal justice process.*

Victim impact statement means a statement containing particulars of:

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<sup>13</sup> Under s 63A of the *Restraining Orders Act 1997* (WA), if the accused is found guilty of certain sexual offences, the Court must make a lifetime restraining order against the accused unless the victim-survivor does not want the restraining order made.

- (a) in the case of a primary victim, any personal harm suffered by the victim as a direct result of the offence; or
- (b) in the case of a family victim, the impact of the primary victim's personal harm on the members of the primary victim's family (*Sentencing Act 1995 (WA)*, s 23A).

Stakeholders, including victim-survivors, supported the use of victim impact statements and suggested that courts could develop guiding principles and procedures to enhance their impact. For example, one service provider noted that there could be more guidance on when victim impact statements are presented, including opportunities for them to be shared early in the sentencing process. Another stakeholder suggested that victim-survivors should be entitled to read their statement out in court. There is also an opportunity to enhance the role of judges in acknowledging victim impact statements in their sentencing remarks and ensuring there is consistency in the approach that judges take.

*I believe that ALL victims should have the opportunity to read their victim impact statement out loud in court in front of the perpetrator if they want too. Victims need to take back their power.*

#### **Victim-survivor**

The *Sentencing Legislation Amendment Act 2016 (WA)* introduced new definitions of 'victim' and 'personal harm' into s 23A of the *Sentencing Act* with the intention of significantly expanding entitlement to make a victim impact statement. While the amendments may have broadened eligibility in some respects, an unintended consequence of defining 'personal harm' to mean bodily harm or psychological or psychiatric harm was to exclude other types of harm, such as economic or financial harm, which were previously captured through loss or damage as defined in section 13. In Chapter 5 we explained that victim-survivors may suffer substantial economic impacts from sexual offending.

Prior to October 2017, s 25(1) of the *Sentencing Act* provided that 'a victim impact statement was a written or oral statement that a) gives particulars of any injury, loss, or damage suffered by the victim as a direct result of the offence and b) describes the effects on the victim of the commission of the offence' (emphasis added). The *Sentencing Legislation Amendment Act 2016* deleted section 25(1) and inserted in its place a new definition of VIS (as above) which did not include reference to an oral statement. It is not known whether this deletion was intentional, or, if it was, on what policy basis the decision to delete was made.<sup>14</sup>

While it is understood that there existed differing interpretations as to whether the former section 25(1) provided the victim a right to provide their statement orally or whether the discretion was retained by the court, anecdotal accounts indicate that the removal of an explicit reference to an oral submission has resulted in a marked decrease in the number of victims reading their statement aloud to the court.

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<sup>14</sup> The Explanatory Memorandum, Second Reading Speech and Hansard shed no light on the repeal of oral statements. There is no indication within the parliamentary record that the Parliament was aware that this provision was being removed.

The impact and probative value of oral victim impact statements in the sentencing process has been the subject of debate for many years (Aloi, 2015; Booth, 2005, 2006; Bandes, 2008; Schuster & Propen, 2010). Tracey Booth (2016, p. 3) summarised the value of presenting an oral victim impact statement as follows:

*Through VISs, victims acquire a ‘voice’ and an opportunity to be heard in the sentencing hearing, an opportunity that is enhanced if the VIS is read aloud to the court. The expressive function of a VIS enables victims to describe the harm they have sustained as a result of the crime, express their feelings about their experiences and become involved in the sentencing hearing rather than remaining a silenced bystander.*

The consolidated Supreme Court Practice Directions (WA Supreme Court, 2009) state that a VIS ‘may be delivered in writing, or, subject to any direction of the Presiding Judge, orally by the victim, or by a person authorised under the Sentencing Act 1995 (WA)...to give a victim impact statement on the victim’s behalf (an authorised person, reading a victim impact statement’ (General Division – Criminal, 5.11). If the prosecution proposes that a victim or their representative deliver an oral VIS, then the prosecution provides it in advance to the offender and the Court. The Practice Directions set out the rules for how the copy of the VIS given to the offender is handled.

Unlike other jurisdictions, victim-survivors are not able to be cross-examined on the contents of their victim impact statement; however, under the current legislation and practice directions defence counsel may be able to argue against the victim-survivor providing their victim impact statement orally. When reviewing the Sentencing Act, we suggest consideration be given to amending section 25(1) so that a victim-survivor is able to provide their victim impact statement orally if they choose.

## 11.6 Post-sentencing

The impact of sexual offending does not end following a trial or sentencing. For many victim-survivors it can be a time of crisis. While it is often recognised that victim-survivors require support leading up to trial and during, stakeholders, including victim-survivors, also highlighted the importance of providing appropriate supports after trial. Once the process is over and the matter is finalised, victim-survivors often need support to return to ‘normal’ life and to begin to heal. This may be even more important in instances where victim-survivors feel their justice needs have not been met through the trial process and the outcomes. Victim-survivors need to be connected to supports after the trial and sentence proceedings have finished.

Victim-survivors may experience a wide range of emotions depending on the outcome of the case. They may feel disappointment, frustration and anger, particularly if they do not view the outcomes as delivering justice. The emotional impact can be overwhelming, and the complainant can feel that there is a lack of closure or resolution regarding the traumatic event. We heard that while victim-survivors often need support during this time, the options are limited or non-existent. One victim-survivor noted that this support is also important if cases are appealed.

*After the court process I felt I needed help and support. I am not suicidal, but every day I think about dying. I cannot get it out of my mind.*

**Victim-survivor**

*Once the criminal justice system is complete there needs to be ‘a live victims’ group who will then be able to assist the victims going forward. A court result is not ‘closure’ for a victim, there is still a grief process to go through and the offending never goes away for ever.*

**Victim-survivor**

Similar views to those expressed in consultation were echoed in the NSW Interview Study. Participants in that study indicated that there is a lack of post-trial support for complainants. Informants discussed the importance of this type of support as complainants are dealing with the outcomes of the trial and trying to understand what happened, as well as working through their own experiences of retraumatisation (KPMG & RMIT, 2023, p. 90).

Recovery from sexual offending can be a difficult and long-term process. Victim-survivors show tremendous strength and resilience to engage with the criminal justice system and continue their daily lives. The National Plan explains that we must look beyond crisis responses to ensure that victim-survivors can access support for their recovery and healing and, in so doing, achieve long-term improvements in their health and wellbeing. Recovery and healing takes time and victim-survivors will, in many cases, require lifelong support through dedicated and tailored services and interventions (Department of Social Services, 2022, p. 88). Service providers told us that once the trial and sentencing ends, their work with the victim-survivor that focuses on long-term healing can begin.

It is critical that support services have the capacity and resourcing to support victim-survivors through what may be a lifelong process. We must also recognise that for each victim-survivor, recovery and healing will look different, and will require a tailored approach. The National Plan also tells us that an intersectional approach is required to support recovery efforts that cater to the diverse needs of victim-survivors who face multiple and intersecting forms of discrimination. We explain in earlier chapters the barriers faced by many victim-survivors engaging with the criminal justice system and support services. Many of these barriers persist post-sentence, and when victim-survivors are not supported to recover, they are at higher risk of being subjected to continued harm, experiencing poorer health and wellbeing, and being targeted by another perpetrator (Department of Social Services, 2022, p. 88).

It will be the role of the Strategy to determine recovery and healing objectives, which is a much broader issue than simply considering post-sentence criminal justice responses. The objectives of the Strategy concern services and supports and ensuring that effective recovery and healing links to prevention over the longer-term. However, in the next section we detail some of the current measures in place to ensure victim-survivor participation in the criminal justice process, post-sentence.

### 11.6.1 The role of victim-survivors in the corrections system

Most offenders who either plead guilty or are found guilty by a jury for a sexual offence that is heard in the District Court are sentenced to imprisonment. When offenders are sentenced and enter the corrections system, whether through a custodial or non-custodial sentence, there is a limited role for victim-survivors, yet participation is also important for victim-survivors' sense of safety, voice and procedural fairness (Victims of Crime Commissioner (Victoria), 2023, p. 276).

One of the first steps in ensuring victim-survivor participation is to provide them with information. Schedule 1 of the Victims of Crime Act sets out that a victim who has so requested should be informed about the impending release of the offender from custody and, where appropriate, about their proposed residential address. To receive information, victim-survivors can sign up for the Victim Notification Register (VNR), which sits in the Office of the Commissioner for Victims of Crime. The VNR is a free and voluntary opt-in service that can provide a victim-survivor with the following information:

- Details of the sentence imposed on the offender, including their eligibility dates for inclusion in early release programs like home leave or parole.
- Changes to sentencing of the offender, including any arising from an appeal heard in the courts.
- Dates for the release of the offender from custody whether on bail, under a community supervision order or to freedom.
- Advice about when the victim-survivor should write to the releasing authorities about any concerns they have regarding the offender's potential early release.
- The completion date of the sentence, or any subsequent return of the offender to custody following a breach of a release order.
- Notice if the offender escapes from custody and about their recapture (WA Department of Justice , n.d.)

A victim-survivor can sign up at any time as long as the offender is still under the supervision of the Department of Justice. A victim-survivor can also withdraw from the VNR at any time. At 30 June 2025, there were 2,740 victims registered with the VNR in relation to 2,297 offenders. We are not able to break down how many of these victims relate to sexual offences. However, the overall number as a proportion of total victims and offenders in WA is expected to be low. A reason for this could be a lack of awareness of the VNR. In Victoria, the Victims of Crime Commissioner's Victims Professionals Survey suggested most professionals felt there was a low awareness among victims of the existence of that state's Victims Register (2023, p. 279).

As noted by the Victorian Victims of Crime Commissioner (2023, p. 279), the South Australian Commissioner for Victims' Rights has suggested that opt-in systems place the onus of responsibility on the victim, not the system, and that it is better for victim-survivors to be provided with information so they can choose to opt out. In her November 2024 report, the Northern Territory (NT) Coroner recommended that the NT Victim Register be changed to an opt-out system but noted the change would need to be accompanied by an increase in resourcing. Moving to an opt-in system for WA is one

option but any change to the VNR will need considerable development in the context of coordinating victim services and information provision.

At some point during their sentence the offender may be eligible for release from a correctional facility on varying types of release orders for prescribed periods of time or to serve the remainder of their sentence in the community. Under Schedule 1 of the Victims of Crime Act, arrangements should be made so that a victim-survivor's views and concerns can be considered when a decision is being made about whether or not to release the offender from custody (unless the offender has completed their sentence). It is very common for victim-survivors to feel worried about what happens when the offender is released.

The offender is usually supervised while on parole and must comply with the terms of their order. Decisions about whether to release an offender on parole are made by releasing authorities, usually the Prisoners Review Board of Western Australia (the PRB).<sup>15</sup> The *Sentence Administration Act 2003* (WA) prescribes that release considerations include issues for any victim-survivor of the prisoner who is being considered for release, including any matter raised in a victim's submission (s 5A(d)). Victim-survivors can make submissions to the PRB. A submission must be in writing. It must talk about:

- the victim-survivor's opinion of the effect the release of the prisoner will have on them
- suggestions about the conditions that should apply if the prisoner is released (WA Prisoners Review Board, 2025).

It is voluntary for the victim-survivor to make a submission. Alternatively, they can choose to have their victim impact statement from the sentencing hearing provided to the PRB.

To support the preparation of a victim submission, victim-survivors will be referred to the Victim Engagement Unit (VEU). The VEU is located in Perth but has officers in regional centres throughout WA. In 2024-25, VEU provided advice to relevant authorities (including sentencing, releasing and supervising authorities) regarding protective conditions for victim-survivors in 4,824 cases, where an offender has been eligible for, or subject to, supervision in the community.

In the majority of VEU referrals there will be an initial letter followed by phone contact. When the offender is in custody the only time a call will not be made to a victim-survivor is when the VEU is unable to locate a number, and in these cases the initial letter will advise the victim-survivor of this and request they contact the VEU. There are also occasions when the victim-survivor may be interviewed in person, either by home visit or in the VEU's office. Such contact is usually instigated at the victim-survivor's request.

The primary role of VEU is to engage the victim-survivor about what protective conditions they might want if the offender is released. One such condition is that the offender is to have no contact with the victim-survivor. Other conditions may include exclusion zones such as suburbs, workplaces and local shops, or additional people who are not able to

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<sup>15</sup> The Supervised Release Review Board (SRRB) reviews young people who were under 18 at the time of the offence. Victim-survivors can also make submissions to the SRRB. The newly established Mental Impairment Review Tribunal will review supervised persons under the *Criminal Law (Mental Impairment) Act 2023* (WA).

contact the victim-survivor. The VEU will make recommendations on the protective conditions to be applied in their report, which is provided to the PRB or other releasing authority.

The VEU will also discuss options such as family violence restraining orders or violence restraining orders if protection is still required after the post-release supervision is complete. As part of these discussions, VEU will invite victim-survivors to discuss the impact of the offending on them and their family. This information is relayed to the PRB when VEU submits its report.

Victim-survivors told us they can feel unsupported in the process leading up to an offender's release. When victim-survivors are engaged about protective conditions prior to a perpetrator's release, it can bring back painful memories and trigger an emotional response. The VEU's service model does not include therapeutic support or care, and the victim-survivor must instead rely on referrals to support organisations or private providers. In consultation, we also heard that some population groups struggle to engage with VEU because it does not offer a culturally informed service. In the above section we discuss the need for long-term therapeutic care and support for victim-survivors post-sentence.

The PRB also considers the offender's needs when deciding on conditions to apply release, and the outcome may not reflect the recommendations made by VEU or contained in the victim-survivors submission. Victim-survivors can find the process upsetting and frustrating if conditions on the offenders' release do not match their submission because they view it as the offender's rights and needs being prioritised over their need for safety and protection in the community.

Following the review of the release on parole of an offender on drug-related offences who subsequently killed his ex-partner, the former Attorney General, the Hon John Quigley MLA, recommended that victim representatives from the Office of the Commissioner for Victims of Crime with expertise in family violence should attend and participate in meetings of the PRB (Western Australia, 14 November 2023). From 1 July 2024, all PRB hearings now include victim representatives from the Office of the Commissioner for Victims of Crime, although we note this does not include other releasing authorities such as the Supervised Release Review Board or the Mental Impairment Review Tribunal.

While the victim representatives are predominantly intended to assist the PRB by providing a greater understanding of the dynamics of family violence and helping the Board recognise offences as potential family violence offences, they also provide a valuable victim-informed lens for the proceedings more generally. The victim representatives can bring their theoretical understanding and experience to identifying safety risks, characterising offender behaviour and adding depth to establishing victim-survivor needs and their ability to keep themselves safe. This is critical for many victim-survivors of sexual offending, as the data tells us that many sexual offences are perpetrated by a partner or ex-partner. Enhanced understanding of the interpersonal dynamics that underpin IPSV and sexual offending more broadly can help address the myths and misconceptions that arise in relation to victim-survivor behaviour during the decision-making process.

In recent years, sexual offenders have increasingly become subject to a range of post-sentence or release measures designed to reduce their risk of reoffending and improve

community safety (Richards et al., 2023, p. 418). The *High Risk Serious Offenders Act 2020 (WA)* (HRSO Act) grants the Supreme Court the power to make a continuing detention order or supervision order (with strict conditions) for persons deemed to be serious violent offenders. ‘Serious offence’ is defined by reference to Schedule 1 of the HRSO Act and includes sexual and violent offences. Victim-survivors are able to make a submission as part of the process. VEU engage with victim-survivors to support the submission process.

Certain sexual offenders may also be considered reportable offenders for the purpose of the *Community Protection (Offender Reporting) Act 2004 (WA)*, which allows for details of serious and high-risk sexual offenders to be available through the community protection website (WA Government, 2012a). The website provides three tiers of information access to ensure that families and the public have information on known sex offenders, to assist with the protection and safety of children and the community (WA Government, 2012a).

There is a scarcity of research on victim-survivors’ views of post-release or post-sentence measures, and the results of the existing studies are mixed. We also did not receive any information on this topic during consultation. One recent study by Richards et al. (2020) found that victim-survivors’ views on post-release/post-sentence measures reflect the broader literature on victim justice needs and demonstrate that victim-survivor views about post-release measures are closely aligned with those relating to other stages of the criminal justice process, such as accountability. This finding underscores the need to embed understandings of victim justice needs at every stage of the criminal justice system, including post-sentence.

## 12 Alternative justice responses

In Chapter 6, we explained that the reporting rates for sexual offending are very low. Nationally, the data suggests less than 10% of sexual offences are reported to police. In light of this justice gap, it is important to consider other mechanisms for addressing victims' justice needs and holding perpetrators to account. Victim-survivors also have justice needs that are not always met by criminal justice processes, including participation, voice, validation, vindication and offender accountability (Daly, 2017; McGlynn & Westmarland, 2019). For example, people who experience sexual offending may want to:

- join in criminal justice processes
- speak about their experiences
- share their feelings and opinions and be understood
- be told it was not their fault
- see the person who has used sexual violence take responsibility for their behaviour.

Alternative justice responses do not replace criminal legal processes; instead, they provide options for victim-survivors outside of the standard processes of the criminal justice system. They are approaches that provide different ways for victim-survivors to heal from the harm caused by sexual offending. Alternative justice responses aim to meet victim-survivors' justice needs that are not met by criminal justice processes, including through restorative justice models, civil litigation, compensation or financial assistance schemes and workplace laws (ALRC, 2024).

In Discussion Paper 4, we talked about some examples of alternative justice responses that could be used by victim-survivors. We asked whether WA should introduce restorative justice and Aboriginal-led justice models, and we also asked how our existing civil responses to sexual offences were working. In this chapter we consider the outcomes of our consultation and discuss possible options for WA.

During consultation, many stakeholders, including victim-survivors, raised the need for alternative responses to sexual offending outside the standard processes of the criminal justice system. Justice means different things for different people. For example, stakeholders shared that women may disclose the offending because they want to put an end to the abuse or violence but do not want the perpetrator to be charged and sentenced to prison, particularly if the perpetrator is an intimate partner and they share children. One victim-survivor shared that what she wanted was to tell her story, to be believed and to have her perpetrator recognise they had done something wrong — that was what justice meant for her.

*Justice feels different for people — it would've been nice to have this conversation early on about what I would like to get out of this process ... I felt pressure to go through the process from my family. I was so fearful of what it would look like going to court and was getting stomach ulcers because I was so stressed. Is it worth it? ... all I wanted to do was to feel heard and tell my story — I never wanted to go through the whole way.*

*Victim-survivor*

## 12.1 Restorative justice

Restorative justice was raised as an option by several stakeholders, including service providers and victim-survivors. There is no single definition of restorative justice. The United Nations defines restorative justice as ‘any process in which the victim-survivor, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party’ (United Nations Office on Drugs and Crime, 2020, p. 15).

Restorative justice prioritises understanding and then meeting the needs of victim-survivors, offenders and communities. Models vary considerably, but the foundation is the opportunity for the parties directly affected by a crime to come together to acknowledge the impacts and discuss the way forward. Restorative justice does not set out to resolve or mediate a dispute about contested facts in a particular case but, rather, to address harm done (Fellegi, 2005).

*I would have liked some sort of acknowledgment [from the perpetrator] that what happened to me was wrong. I would have liked to be able to tell him about [the harm that] he has done to me.*

### *Victim-survivor*

*Where the perpetrator is a drunk ‘friend’, the victim may not want that person to have official or major social consequences. Or they may be afraid of consequences within the friend group. Rather they just don’t want them to do it again.*

### *Legal assistance provider*

Restorative justice processes may be an alternative to or complement criminal court proceedings. They can also take place at different points in the criminal justice process, for example before charge (diversionary), trial or sentencing or after sentencing. Restorative justice processes may look different depending on the situation and what the parties want to do. Some examples include (Maryfield et al., 2020):

Victim-Offender dialogue	<ul style="list-style-type: none"> <li>The victim-survivor and the perpetrator write letters to each other.</li> <li>The victim-survivor agrees to receive a letter from the perpetrator.</li> </ul>
Victim-Offender mediation	<ul style="list-style-type: none"> <li>A meeting between the victim-survivor and the perpetrator (including a facilitator and support people). This is a structured meeting run by a trained person. It looks like a facilitated conversation between the victim-survivor and the perpetrator.</li> </ul>
Restorative justice conferencing	<ul style="list-style-type: none"> <li>A meeting between the victim-survivor and the perpetrator (including a facilitator and support people). The meeting can also include family members or community members. This is a structured meeting run by a trained person.</li> </ul>
Reparative boards	<ul style="list-style-type: none"> <li>A group of community members who talk to an offender about the consequences of their crimes.</li> <li>The group of community members may include people who have been victims of crime, but not necessarily victims of the particular offender.</li> </ul>

Victim impact panels	<ul style="list-style-type: none"> <li>• A panel of victims tell a group of offenders about the impact of crime on their lives, as well as their family, friends, and community.</li> <li>• Victims do not speak to groups including the person who harmed them.</li> </ul>
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Most commonly, restorative justice involves conferencing between the victim-survivor and the perpetrator and, for the purposes of this report, we focus on restorative justice conferencing.

### 12.1.1 Restorative justice in other jurisdictions

Other jurisdictions offer restorative justice conferencing as an alternative response to sexual offending. In New Zealand (NZ) a restorative justice model has been in place for almost two decades (Project Restore NZ, n.d.). During consultation we met with team members at Project Restore and heard that restorative justice can provide victim-survivors with a process that focuses on and acknowledges them and not the perpetrator, provides an alternative to court proceedings that are retraumatising and impose significant burdens on victim-survivors, and provides avenues to help repair relationships where the perpetrator is known to the victim-survivor.

#### *Project Restore – New Zealand*

Project Restore is a national provider of restorative justice which has been in operation since 2005. If someone pleads guilty to a sexual offence, they are automatically referred to Project Restore. Most referrals are from courts, although some come through from the community, organisations and police.

Project Restore sees the key benefits of its model as providing victim-survivors with a sense of power. It can help put a victim-survivor's fear in perspective; help to repair and transform relationships between victim-survivors and perpetrators; provide an opportunity for victim-survivors to talk about the impact of the perpetrator's actions on them to negotiate change; and in small communities, help to negotiate future contact between parties.

It is important to recognise that restorative justice may not be the right approach for everyone. Project Restore will check with the victim-survivor first to hear from them what they want from the process. It will also approach the perpetrator about the process to ensure they are ready to take responsibility for their actions. Project Restore will decline to continue with the process if it thinks it will not benefit the victim-survivor.

The Project Restore team shared lessons learned from its model and its operations. Key points included making sure an Indigenous lens is used and that the model can translate across different cultures, ensuring that the model and training units are funded appropriately. There also needs to be support from the courts, judiciary and defence lawyers. Finally, a clear legislative scheme regulating restorative justice practices and treatment of information is needed.

We also met with practitioners from Open Circle, a restorative justice service within the Centre for Innovative Justice at RMIT University in Victoria. Established in 2019 following a successful pilot, Open Circle offers restorative justice processes throughout Victoria and works with adults who have been affected by a wide variety of crimes and other incidents of harm (Open Circle, n.d.). Similarly to Project Restore, Open Circle is not a form of diversion from a criminal justice prosecution. Participants can choose to engage in the process as something additional to, and separate from, criminal proceedings (Centre for Innovative Justice, 2019).

Unlike Project Restore, Open Circle does not generally operate on referrals from criminal justice agencies and does not have a clear legislative scheme regulating its restorative justice framework, treatment of information or protecting participants. In our meeting with the practitioners, they emphasised the importance of preparation and spending time with all participants to be really clear about the role and purpose of the restorative conferencing. They were also very clear that the restorative justice conference must be victim-led and centred but that participation from both victims and perpetrators must be voluntary. Both Open Circle and Project Restore undertake a thorough intake process to assess suitability.

In 2018, the Restorative Justice Unit (RJU) within the Justice and Community Safety Directorate in the ACT started accepting referrals for sexual violence offences (Phase 3) (VLRC, 2020b). The RJU began as a diversionary program aimed at young people in the early 2000s (Phase 1) before expanding to accept referrals for adult offenders and serious offences in 2016 (Phase 2) (Lawler et al., 2025, p. 8). The RJU is underpinned by a legislative framework via the *Crimes (Restorative Justice) Act 2004* (ACT).

Restorative justice conferencing in the ACT adopts a victim-centred approach that prioritises the justice interests and safety of individuals impacted by crime. Participants are carefully considered on the basis of their situation and justice needs, and whether the process is likely to facilitate those needs. In recognition of the complex dynamics in situations of sexual violence, the process is premised on safety assessment and planning to ensure facilitation of victim-survivors justice needs and avoiding the risk of compromising their healing process. A critical safeguard of restorative justice processes in the ACT is that offenders must indicate a willingness to accept responsibility and present an active preparedness to make amends to the extent of their capacity (Lawler et al., 2025).

The RJU commissioned the AIC to evaluate Phase 3 of its scheme. The outcome evaluation examined the overall effectiveness of Phase 3 and the nature of outcomes that had been achieved for participating victim-survivors (referred to as persons harmed), offenders (referred to as persons responsible) and other people participating in conferences. The evaluation found that Phase 3 provided an important mechanism for persons harmed to seek redress in the aftermath of FDV and sexual violence victimisation, and for persons responsible to address the factors associated with their offending (Lawler et al., 2025, p. 12). The evaluation also made 10 recommendations to strengthen Phase 3 of the scheme, including ongoing training for stakeholders involved in the delivery and operation of Phase 3 and investigating options to work with communities to encourage buy-in to Phase 3 from First Nations and other culturally diverse participants (Lawler et al., 2025, p. 13).

### 12.1.2 Risks associated with restorative justice

Restorative justice for sexual offences carries risk. Safety for victim-survivors is a key concern that has been raised for people who have experienced sexual violence. It is important that restorative justice processes do not:

- retraumatise the victim-survivor
- repeat the power imbalance or power dynamics of the sexual violence offending
- reinforce harmful attitudes that minimise sexual violence as not something to be addressed by the criminal justice system.

The power imbalances that can exist between victim-survivor and perpetrator have led to concerns that a restorative justice program will lead to revictimisation of the victim-survivor. Some suggest that the stakes are higher for restorative justice processes because they potentially give an offender the power to withhold something that would support a victim-survivor's recovery, such as meaningful acknowledgment of responsibility, thereby replicating power inequalities of the offending (Godden-Rasul, 2017, p. 22). For that reason, particular care and caution is needed in cases where sexual offending occurs in the context of intimate partner or family violence.

The WSJT noted that some academics have claimed that restorative justice processes dealing with gendered violence can lack a gender- and trauma-sensitive lens and require particular attention to women and girls' experience of stigmatisation and shame (McKenna & Holtfreter, 2021; Hodgson, 2020). A 2016 research paper for the RCIRCSA highlighted that, in cases involving child sexual abuse in an institutional setting, the risk of further harm or trauma to the victim-survivor was high (Bolitho & Freeman, 2016, p. 60).

However, the same 2016 research paper noted that restorative justice programs could prove effective in certain cases and that restorative approaches were likely to be experienced as positive encounters by victim-survivors and many perpetrators. Benefits of the programs included:

- a potentially more efficient process than the courts
- assurance in the form of a plan for reducing reoffending
- a higher likelihood of an apology from the offender (Bolitho & Freeman, 2016, p. 45).

The 2016 research paper found a shared recognition in the literature and programs it reviewed of the need for specialisation in restorative practice for sexual violence (sexual abuse perpetrated against adults and children). Facilitators working in this field are generally advanced in their practice of restorative justice, have additional knowledge bases around the dynamics of sexual violence and trauma more broadly, and bring in (or draw from) the knowledge bases of clinical specialists to support parties before, during and after a meeting to enact a team-based approach (Bolitho & Freeman, 2016, p. 58).

The VLRC commented that sexual violence is a public wrong that the state must redress. Dealing with sexual violence in the criminal justice system is an important way of signalling its seriousness and the justice system should be the focus of reform. However, the VLRC also acknowledged that more justice options should be available. While the

risks of restorative justice are real and must be managed, it should be an option that supplements criminal justice (VLRC, 2021, p. 196).

The VLRC considered that the risks of restorative justice can be managed through careful design and implementation of a principle-based scheme. In its issues paper, the VLRC tested principles drawn from Australian and international expertise and regulatory frameworks, and they received widespread support. The principles can be summarised as:

- Voluntary participation.
- Accountability.
- The needs of the person harmed take priority.
- Safety and respect.
- Confidentiality.
- Transparency.
- An integrated justice response.
- Clear governance (VLRC, 2021, p. 197).

### 12.1.3 Restorative justice in WA

WA already operates some alternative justice models. Within the criminal justice system, examples include juvenile justice teams and shuttle conferencing. The University of Western Australia Mediation Centre has also conducted mediations for matters referred from the Children's Court. WA's longest running restorative justice program is reparative mediation, currently offered by the recently established Restorative Justice Unit (RJU) within the Office of the Commissioner for Victims of Crime, which draws together the reparative mediation team and the administration of the National Redress Scheme for victims of institutional child sexual abuse. The RJU has convened a Steering Committee of key stakeholders to guide further development of WA's restorative justice capacity.

#### *Reparative mediation*

The RJU was created in June 2024 to implement and facilitate contemporary reparative mediation based on restorative justice principles which are victim-centred and trauma-informed. Prior to this, the Victim-offender Mediation Unit (VMU) facilitated reparative practices. The RJU (and previously VMU) is part of the Office of the Commissioner for Victims of Crime in Western Australia. Since September 2014, the RJU and VMU have dealt with 2,754 referrals.

Reparative mediation can occur pre- or post-sentence. All offences can be referred for reparative mediation, but in practice offences involving intimate partner or sexual violence are subject to more stringent assessments to ensure victim safety.

Pre-sentence reparative mediation occurs after a guilty plea has been entered by the offender but before sentencing has occurred. Reports from pre-sentence reparative mediation are provided to the court. Post-sentence mediation occurs at any time after an offender has been sentenced. Mediation can be initiated by a victim-survivor, offender or criminal justice actors (the court, legal professionals, Adult Community Corrections or Youth Justice Service).

Once a referral has been made, the case is assessed and pre-mediation meetings are had with both parties. Participation is voluntary and the participants can withdraw at any time. Each reparative mediation is assessed on a case-by-case basis and has individual outcomes. Outcomes may include an apology – verbal or written – from the offender; an explanation for the offence; return of property; and monetary compensation. The process is victim-centred and takes different forms including shuttle conferencing, face-to-face meeting, exchange of information, exchange of letters and compensation only.

#### 12.1.4 Aboriginal-led alternative justice models

Experience in NZ and the ACT demonstrates that it is critical to approach restorative justice with an inclusive lens and develop a model than can translate across cultures, with a focus on First Nations communities. A highly regulated, formulaic alternative justice program may risk excluding cohorts of people most in need of access to alternative justice programs. The New Zealand Law Reform Commission (NZLRC) stressed the need for flexible and culturally appropriate programs to best meet the needs of both victim-survivors and offenders (2015, p. 135). The NZLRC highlighted that restorative justice providers who worked with the Māori community recognised a demand for services that were targeted at sexual assault but were also underpinned by kaupapa Māori (principle of collective philosophy of the Māori community) and allowed for participation of whānau (extended family/community) (p. 155).

The VLRC commented that Victoria's Aboriginal communities should be central in the design of any restorative justice scheme (VLRC, 2021, p. 202). In its submission to the VLRC the Aboriginal Justice Caucus, supported by the Victorian Aboriginal Legal Service, said:

*There is evidence to support restorative justice processes can be effective in responding to sexual offending. However, design, development and implementation of these justice responses will take time, and must be community-led. Responses must be aligned with Aboriginal community values, victim-centred and responsive to the community.*

**VLRC (2021, p. 203)**

Research recognises the prevalence and damaging effects of sexual violence as a leading factor of the incarceration of Aboriginal men and, increasingly, women, due to a 'normalisation of violence' (McGlade, 2010). This normalisation of violence is often cyclical and intergenerational and may be addressed through alternative justice mechanisms, which work to prevent the breakdown of community ties and relationships. In an ANROWS report on innovative models in addressing violence against Indigenous women, the authors state that 'research calls for a paradigm shift that moves attention away from a simple criminal justice model towards collective processes of community healing grounded in Indigenous knowledge' (Blagg et al., 2018, p. 6).

In the *Aboriginal Family Safety Strategy 2022–2032*, which was developed to address family violence impacting Aboriginal families and communities, there is a focus on

healing, culturally capable services and Aboriginal-led intervention. Focus area 1 in the strategy is Healing: ‘ensure healing is what guides prevention and the delivery of family violence services and practice’. The strategy says that ‘family violence does not sit in isolation from other societal and community dynamics … effective responses must be informed by holistic perspectives to achieve the best possible outcomes’ (WA Department of Communities, 2022, p. 13). The approach in the *Aboriginal Family Safety Strategy* is to emphasise Aboriginal family safety. Just as we are shifting our approach to supporting people who experience family violence, it may be necessary to consider how to shift our approach to supporting people who experience sexual violence.

During consultation, stakeholders outlined that there are opportunities to draw on Aboriginal-led solutions to inform alternative responses that are culturally appropriate and responsive to the needs of Aboriginal people and emphasised that Aboriginal communities need to be engaged in the development of any approaches that affect them. Stakeholders discussed alternative approaches to responding to sexual offending for both victim-survivors and perpetrators. While stakeholders acknowledged that the review is focused on experiences of victim-survivors of sexual offending, they emphasised responses should also focus on preventing sexual violence, which has long-term benefits for victim-survivors.

One of the underpinning frameworks for WA’s state government policies, plans, initiatives and programs is the *Aboriginal Empowerment Strategy: Western Australia 2021–2029* (Aboriginal Empowerment Strategy), which directs the Western Australian Government to consider how its work will affect ‘a future in which all Aboriginal people, families and communities are empowered to live good lives and choose their own futures from a secure foundation’ (WA Department of the Premier and Cabinet, 2021). The strategy encourages increased investment in prevention and intervention measures and more integrated service experiences.

An alternative model that several stakeholders referenced as an example to reduce offending (and reoffending) is the Koori Court in Victoria. The Koori Court has been developed to reflect cultural issues and operate in a more informal way, with Aboriginal Elders or respected persons giving cultural advice to the magistrate to assist them in making a culturally appropriate judgement that helps reduce the likelihood of reoffending (Magistrates’ Court of Victoria, 2025). WA operates a similar court, Barndimalgu, for family violence offending in Geraldton. The Office of the Commissioner of Crime visited Barndimalgu as part of its consultation on legislative responses to coercive control and noted that the court included a prominent role for a victim advocate, and that this victim-centred voice was critical to its success.

### **12.1.5 Next steps**

Both the WSJT and the VLRC recommended establishing restorative justice schemes to address sexual offending. We agree with the WSJT and the VLRC and consider that restorative justice has the potential to be a valuable option that supplements criminal justice processes and addresses victims’ justice needs. However, time will be needed to increase WA’s restorative justice resourcing and capacity. Effective restorative justice conferencing requires an expert workforce of facilitators and support workers, a very clear set of guiding principles and a legislative framework.

Restorative justice in sexual offending matters carries risk, but we consider the risks can be managed and are outweighed by creating options for victim-survivors that may better address their justice needs and promote their long-term healing and recovery. We also acknowledge that restorative justice received significant support during our consultation.

We highlight recommendations 90 and 91 from the WSJT:

*90. The Queensland Government, led by the Department of Justice and Attorney-General, develop a sustainable long-term plan for the expansion of adult restorative justice in Queensland and appropriately fund that plan for victim-survivors to access this option throughout the state.*

*91. The Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence co-design (with people with lived experience, Aboriginal and Torres Strait Islander peoples and service and legal system stakeholders) a victim-centric legislative framework for adult restorative justice in Queensland.*

We also note that the ALRC's final report on its Inquiry into Justice Responses to Sexual Violence require it to consider alternatives made extensive recommendations on alternative justice responses for sexual violence and these will provide guidance on providing a scheme for WA.

#### **Recommendation 22:**

The Department of Justice undertake further policy work on establishing the framework for a long-term, sustainable restorative justice scheme. The policy work should consider:

- existing practice in WA
- the recommendations from the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence
- best-practice models in other jurisdictions
- development of guiding principles and a legislative framework
- mechanisms to co-design the scheme with Aboriginal communities and other population cohorts
- funding and workforce development.

#### **12.2 Civil responses**

People who experience sexual violence may use civil legal responses as well as, or instead of, criminal legal responses. This may include accessing criminal injuries compensation or seeking compensation through civil litigation. The Victims of Crime Act specifies that victims should be given access to counselling about the availability of welfare, health, medical and legal assistance services and criminal injuries compensation (which is a civil response). We have talked in previous chapters about the need to improve communication, information and support. This includes providing victim-survivors with the information and support they need to make decisions in relation to any civil responses

they may choose to pursue. Here we see a critical role for victim advocates and independent lawyers, who can provide this information and advice early in the process.

### 12.2.1 Criminal injuries compensation

The Office of Criminal Injuries Compensation (OCIC) is a specialist tribunal that assesses applications for compensation by victims of crime in Western Australia. To support victims and try to avoid retraumatisation, most applications are decided by looking at documents provided by victim-survivors rather than through a hearing. Any person who is the victim of an offence in Western Australia and is injured or experiences financial loss as a result of the injury can apply for criminal injuries compensation, and this includes victim-survivors of sexual offending. The OCIC made 997 awards for sexual assault in 2023–24 and 797 awards in 2022–23 (OCIC, 2024, p. 10).

A person who has experienced sexual violence can apply for criminal injuries compensation in these situations:

- The person who uses violence is found guilty in court.
- The person who uses violence is charged with an offence but found not guilty.
- The person who uses violence is charged with an offence but the charge is withdrawn or dismissed.
- Nobody is charged with an offence.

An applicant can receive an interim payment to help with treatment, report and travel expenses. This is a small payment while they wait for the application process to be completed. When the final decision is made, it can include money put aside for future treatment expenses. This must be used within 10 years. The OCIC is a tribunal; it is not a support service and so does not directly provide support to people who make an application. It may, however, refer people who have experienced sexual violence to other support services, such as VSS. People who need help with the application forms can get help from a community legal service, Legal Aid Western Australia or a private lawyer.

Stakeholders reported that it can be difficult for victim-survivors to access criminal injuries compensation in a timely way, the amount compensated does not reflect the loss they have suffered, and the process and interaction of different compensation schemes can be confusing and difficult to navigate. Victim-survivors told us they do not always feel supported to make a claim and it can take a long time for the claim to be processed. Stakeholders shared that some clients have to wait more than two years before they receive compensation, and that victim-survivors are not always able to access support to fill out forms and provide information related to the claims process. Stakeholders suggested that compensation should be easier to apply for or that victim-survivors should be connected to lawyers or other support to fill out applications.

The OCIC's most recent annual report shows that, in 2023–24 the proportion of applicants with legal representation was 60% (OCIC, 2024, p. 13). It is likely that many of the applicants will seek assistance from low-cost legal assistance services such as Legal Aid and community legal centres due to the cost of seeking private legal advice and representation. Reducing the complexity of the application process so that applicants can prepare their own applications may reduce the burden on what we know are overstretched legal services.

*I pursued criminal injuries compensation. That was quite an experience – I had to be interviewed by a forensic psychiatrist. I was homeless at the time, so they pushed for it, there was some urgency. It took three months. But there were no specialist services for people to go to, to help lodge [the claim]. I got it handled through five lawyers. It took three years before the claim got lodged. I had to tell my story over and over again.*

#### ***Victim-survivor***

We also heard that the amounts awarded do not reflect the loss suffered by victim-survivors, particularly those who are victim-survivors of historical sexual offending. The maximum amount of compensation that may be awarded depends on the extent of the injuries and losses suffered by a person, and the date of the offence. For example, if the offence occurred on or after 1 January 2004, the maximum compensation is \$75,000 for a single offence, compared with \$7,500 if the offence occurred between 18 October 1976 and 31 December 1982 (OCIC, 2020).

*Criminal compensation is not enough. Some of the clients are still waiting for compensation after two years.*

#### ***Aboriginal Community Controlled Health Organisation***

*Criminal injuries compensation is not effective for historical cases. The amount is insignificant.*

#### ***Specialist sexual assault provider***

A review of the criminal injuries compensation scheme in WA was undertaken in 2019 (WA Department of Justice, 2019), but stakeholders said it remains unclear whether the recommendations from that review have been implemented and, if they have, whether they would address some of the issues raised by stakeholders to the review. Some legal assistance providers noted that the WA scheme is an outlier, with other states and territories having different structures that WA could learn from.

Considering or recommending changes to the criminal injuries compensation scheme is beyond the terms of reference for this review and requires substantial and careful policy work. However, we are concerned about the gap in support for the victim-survivors who proceed through the criminal justice process and where the accused is acquitted. While they are eligible for criminal injuries compensation, in practice it is rarely awarded. In Chapter 11, we presented statistics that show more charges are finalised through acquittal as opposed to conviction following a trial by jury. There is very little support for this cohort of victim-survivors post-trial and yet the trauma caused by participating in the criminal justice process is likely to have a long-term impact on the victim-survivor's wellbeing.

#### **12.2.2 Civil litigation and redress schemes**

If someone has experienced sexual violence they also have the option to make a compensation claim through a civil court. This applies to people who have experienced sexual violence and want to make an abuse claim against both individuals and institutions. The option of a civil claim is available even if a criminal court says that

someone is not guilty of a sexual offence. People who need help with civil abuse claims can receive assistance from a private lawyer.

In its submission, Knowmore noted the RCIRCSA's observation that 'the current civil litigation systems have not provided justice for many survivors'. The RCIRCSA also acknowledged that survivors seeking compensation through civil litigation may face difficulties including 'legal costs, difficulties in bringing class or group actions and the burden of giving evidence and being subject to cross-examination'. We note that the *Evidence Act 2025* contains protections for victim-survivors giving evidence in civil proceedings; however, for most victim-survivors the cost of bringing civil proceedings will be prohibitive and may not provide an award of damages if the perpetrator has limited assets or limits their exposure to civil law claims by protecting their money through superannuation and transferring their assets. Work is underway at the national level to prevent child sexual abuse offenders from shielding their assets in the superannuation system (Department of Treasury, 2023). We also await the ALRC Inquiry's findings and recommendations on civil claims and compensation schemes.

The recently tabled *Seeking Justice* report noted there is limited support for victim-survivors (many of whom are adults at the time of disclosure) of institutional child sexual abuse who pursue civil litigation. It is not commonly understood that a plaintiff in a civil case might require counselling and care, and the presumption is that the cost of that counselling and care would be recovered as part of the damages from successful litigation (Community Development and Justice Standing Committee, 2024, p. 50).

Acknowledging the focus on victim-survivors of institutional child sexual abuse, the *Seeking Justice* report ultimately recommended that the WA Government work with the Commonwealth to increase services for survivors, including funding counselling services for survivors who choose to seek compensation through the civil courts in a similar manner to that available under the National Redress Scheme (Recommendation 18).

Stakeholders acknowledged other avenues for victim-survivors to receive support and compensation, including through the National Redress Scheme, but noted there are limitations with these options as well, many of which are detailed in the *Seeking Justice* report. For example, victim-survivors are only eligible for the National Redress Scheme if an institution is the responsible medium between the victim-survivor and the perpetrator. It can also be difficult to understand and navigate different compensation schemes. One stakeholder outlined that for many victim-survivors there is potential interaction between compensation options; however, these interactions can be complex and can have significant implications for the redress or compensation a victim-survivor can receive. For example, a survivor who accepts a National Redress Scheme offer cannot later make a civil claim against the same institution or official for abuse within the scope of the National Redress Scheme, but the same is not true in reverse.

## 13 Conclusion

The purpose of this review was to examine the experiences of victim-survivors of sexual offending as they engaged with the criminal justice system. We sought feedback from stakeholders and the broader community on whether current criminal justice responses in WA are effective, and if not, how they could be improved.

We opened the consultation to victim-survivors, academics, advocates, people working within the criminal justice system, the specialist sexual violence sector, health sector, legal sector, and the general community. We extend our deep respect and gratitude to the people who shared their thoughts and experiences with us throughout this process. We especially thank and acknowledge those who have experienced sexual offending and recognise those who work tirelessly to support victim-survivors and hold perpetrators to account.

We must also acknowledge some limitations with consultation. Responses focused largely on aspects of the criminal justice system preceding the trial stage and we received less submissions from victim-survivors than we had anticipated. There may be many reasons for the low rate of engagement by victim-survivors, including the silencing effect of the shame and stigma often associated with sexual offending.

Despite these limitations, we received a wide range of responses on topics related to victim-survivors' experiences in the criminal justice system. Some victim-survivors and organisations told us they had experienced positive interactions with the justice system, but many did not. All respondents agreed that change was necessary.

The report highlights the multi-faceted challenges victim-survivors face when engaging with the criminal justice system in WA. We have made recommendations that are shaped by consultation feedback, are evidence-based, and that align where appropriate with the state and national policy landscape. However, criminal justice system reform in isolation is insufficient. Recognising this, our recommendations extend beyond reforms in the criminal justice system. Timely medical, social, and therapeutic support is critical for victim-survivors' long-term recovery and healing, including for victim-survivors who will never engage with the justice system.

Achieving lasting improvement in the criminal justice system's response to sexual offending requires more than legislative or procedural reform; it demands coordinated, well-resourced, and system-wide implementation. Both the LRCWA and the ALRC in their respective reports explained that reform is most effective when it is embedded within broader cultural, operational and institutional change.

This report supports the elements articulated in those reports, including trauma-informed training for people who work in the criminal justice system, robust and ethical data collection, scheduled evaluation and review, and inclusive governance involving both lived experience and sector expertise. These elements should underpin the delivery of reforms arising from the report. While we have provided recommendations to improve justice system responses, the delivery and coordination of reform may be most appropriately addressed through the Sexual Violence Prevention Strategy, which provides a whole-of-government framework to drive systemic change.

We acknowledge the courage, strength and resilience of victim-survivors. Sexual offending inflicts profound and enduring harm, often eroding one's sense of self, autonomy, and trust in the institutions designed to protect us. We cannot overstate the potential for the criminal justice system to cause further harm to victim-survivors and we also conclude that, despite progress, there remain flaws in the system that fail utterly to meet victim justice needs.

The insights gathered in this report highlight the necessity for a criminal justice system that is not only responsive, but also proactive in preventing sexual violence. This entails fostering a culture of accountability, enhancing support mechanisms for victim-survivors, and ensuring that reforms are informed by those with lived experience. By embracing a comprehensive, inclusive, and sustained approach to reform, WA can move towards a more just and compassionate response to sexual offending that focuses on the needs of victim-survivors.

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## 14.2 Case Law

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## 14.3 Legislation

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*Community Protection (Offender Reporting) Act 2004 (WA)*  
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*Criminal Code (Decriminalising Sex Work) and Other Legislation Amendment Act 2024 (QLD)*  
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