

Inquiry into Current and Proposed Sexual Consent Laws in Australia

16 March 2023

Acknowledgement

WLSA acknowledge the Traditional Owners of the countries on which we live and work and we pay respects to their Elders past and present. We support the ongoing work of First Nations specialist women's organisations and advocates who have been working to unravel and heal the injustices imposed on First Nations women and communities since colonisation. First Nations women have the cultural knowledge, strength and wisdom to lead the solutions that will address domestic and family violence in their communities.

Our submission sets out practice-based evidence largely informed by the insights and observations of our lawyers, policy staff and clients. These observations provide a unique perspective into the experiences of women who have lived concurrent domestic and family violence and sexual violence and are accessing legal assistance.

Who we are

Women's Legal Services Australia (**WLSA**) is a national network of 13 specialist Women's Legal Services across states and territories in Australia, each founded to improve women's lives through free legal representation, support and advocacy. We are the only service providers of comprehensive, multidisciplinary services for women in the areas of domestic and family violence, family law and child protection services. We are experienced in providing holistic and trauma-informed services. Some of our services have operated for more than 40 years.

Our legal practices are supported by social workers, cultural safety workers and financial and trauma counsellors. We focus on long term safety outcomes and approach the legal issues facing women within a broader analysis of systemic gender inequality. We work towards encouraging a legal system that is safe, supportive, non-discriminatory and responsive to the needs of women.

Throughout this submission, WLSA will refer to the views of the Northern Territory Women's Legal Services (**NTWLS**) which is a collective held between the Central Australian Women's Legal Service (**CAWLS**), Katherine Women's Information & Legal Service (**KWILS**) and Top End Women's Legal Service (**TEWLS**) that provides place-based specialist domestic and family violence and sexual violence services, community legal education and professional training services in both urban and remote First Nations communities.

What we do

WLSA and our individual member services contribute to policy and law reform inquiries to advocate for law that does not further gender inequality, gender-based discrimination, or unfairly impact women and children experiencing violence and relationship breakdown. We are informed and guided by a feminist framework that recognises the rights of all women as central.

We do not advise on criminal law with respect to sexual offences, yet remain uniquely placed to respond to the Consent Inquiry and to advise the Senate Committee on the laws of consent. Our clients are often women who have experienced sexual assault in the context of domestic and family violence and coercive control. Therefore, we understand 'consent' through the lens of family violence and sexual coercion which is usually perpetrated over time and alongside other controlling behaviours.

The terms "victim," "survivor," and "victim-survivor" have been used interchangeably throughout this submission to refer to women, children and others who have experienced or are experiencing family and domestic violence and violence in any of its forms. Coercive control is the underlying dynamic of domestic and family violence, not a form of domestic and family violence. As such the terms "domestic and family violence" and "coercive control" are used interchangeably throughout this submission.

While acknowledging that anyone can experience domestic and family violence, the research and the experiences of our members indicate that domestic and family violence is predominantly perpetrated by men against women and children. This is reflected throughout this submission and in our use of gendered language.

Contact us

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Introduction

Women's Legal Services Australia welcomes the Senate Legal and Constitutional Affairs Committee inquiry into current and proposed sexual consent laws in Australia (**Consent Inquiry**). This submission was prepared with input from the 13 Women's Legal Services across Australia. We give permission for this submission to be published.

Our submission makes recommendations in relation to legislative reform that is primarily the responsibility of State and Territory Governments, however we acknowledge the Australian Government has committed to working with the States and Territories to improve laws relating to sexual assault and consent.

Women's Legal Services are specialist, gender-led legal assistance services for women, particularly women who have experienced or are experiencing family and domestic violence. Our services provide assistance to women who have experienced sexual assault within the context of family and domestic violence, including access to legal assistance with family violence, family law, victims of crime compensation, child protection, migration law, and employment and discrimination law, alongside social work and financial counselling support. In addition to these services, Women's Legal Service Queensland (**WLSQ**) and Women's Legal Service NSW (**WLSNSW**) provide assistance to victim-survivors in relation to protecting counselling records.

We make the following recommendations:

1. WLSA recommends the Commonwealth Government work with State and Territory Governments to ensure sexual consent laws respond to sexual violence that occurs within the context of family and domestic violence.
2. WLSA recommends the Commonwealth Government invest in Women's Legal Services to provide independent legal advice and representation services for victim-survivors of sexual violence.
3. WLSA recommends the Commonwealth Government work with State and Territory Governments to establish nationally consistent, strong models of affirmative consent.
4. WLSA recommends the Commonwealth Government work with State and Territory Governments to increase and target recruitment of female police officers.
5. WLSA recommends the Commonwealth Government work with State and Territory Governments to improve legislative protections for victim-survivors in relation to therapeutic records, as well as improved oversight and accountability mechanisms for existing protections and early referral to specialist legal assistance.
6. WLSA recommends the Commonwealth Government work with State and Territory Governments to review the effectiveness of judicial training, and to develop a national approach to improving judicial understanding of the complexities of sexual violence and trauma.
7. WLSA recommends the Commonwealth Government work with State and Territory Governments to legislate jury directions that address misconceptions about consent, trauma, sexual violence, and family and domestic violence.
8. WLSA recommends the Commonwealth Government invest in a nation-wide community education campaign informed by experts in gender equality and violence against women.
9. WLSA recommends the Commonwealth Government work with State and Territory Governments to provide absolute immunity from defamation for people who make sexual violence complaints to police and regulatory bodies.

The Consent Inquiry is a welcome step towards strengthening the justice system's response to victim-survivors of sexual violence. Legislative reform on its own will not improve outcomes for victim-survivors without significant and meaningful investment in the justice system, supports for victim-survivors, restorative justice options, and investment in specialist legal assistance services for women.

Sexual violence in the context of domestic and family violence

The epidemic of violence against women has gained nationwide attention in recent years, with a number of State and Territory inquiries into sexual violence, domestic and family violence, and family law. Despite maturing community literacy on family and domestic violence and its links to gender inequality, community understanding of sexual violence within the context of family and domestic violence is weak. This is reflected by a justice system that is not adequately equipped to respond to sexual violence that occurs in the context of family and domestic violence.

Sexual assault is frequently an element of a broader pattern of coercive control, relationship dependence, power imbalance, and violence. These relationship dynamics can impact on whether consent is being freely given. Domestic and family violence can create a climate of entrenched fear which makes it difficult to facilitate or negotiate safe sexual activity. At times, a natural response to coercive control will be to compromise autonomy to manage safety. In such situations, women may prioritise other aspects of physical safety for themselves and others, rather than take the risk of triggering an escalation of violence or abuse by refusing to engage in sexual activity.¹

Coercive control tactics are nuanced and often targeted to the circumstances of the victim-survivor.² Tactics can be subtle and difficult to identify externally. Sexual violence in these relationships can occur within the context of sexual routine, prior consensual activity, and the presumption of continuous consent. This can create situations where unwanted sex is agreed to, or there is a resistance to ask for sex to stop.³ Often it is only the victim-survivor in the relationship who can comprehend the level and likelihood of harm and punishment if she says no. This highlights that consent in family and family-like relationships must be understood within an entrapment context that is riddled with risks, survival mechanisms, and based on the perpetrator's establishment of power.⁴

Sexual violence in family and family-like relationships can form part of a process of abuse that aims to create psychological control. These forms of abuse "interact in ways that can be unidirectional, bi-directional or simultaneous to develop and maintain an environment of fear and control and erode women's self-worth. This often results in women not being able to say "no" even when [she is] fearful or distressed".⁵ Shame is often also used as a tool to engage in sexual violence. At times rendering the victim-survivor in a position of diminished self-worth. Shame works to create a sense of vulnerability that can be exploited.⁶

TK Logan et. al., (2007) studied the use of sexual degradation of women in violent relationships and interpreted this dimension of sexual abuse as closely resembling psychological abuse. Some of the women in this study understood that humiliation and degradation was a way for perpetrators to reinforce psychological abuse. Forcing the victim-survivor to submit to particular sexual acts that degrade, humiliate

¹ Australia's National Research Organisation for Women's Safety (2019), Intimate partner sexual violence: Research synthesis (2nd Ed.; ANROWS Insights, 08/2019). Sydney, NSW: ANROWS, p. 1 <[IPSV-Research-Synthesis-2ed.pdf \(anrowsdev.wpenginepowered.com\)](#)>.

² Stella Tarrant, Julia Tolmie and George Giudice (2019), Transforming legal understandings of intimate partner violence (Research Report, 06/2019), Australia's National Research Organisation for Women's Safety, p. 18 <[RP.17.10_Tarrant_RR_Transforming-Legal-Understandings-of-IPV.pdf \(anrowsdev.wpenginepowered.com\)](#)>.

³ Australia's National Research Organisation for Women's Safety, Submission to the New South Wales Law Reform Commission on: Consent in relation to sexual offences (draft proposals), 18 November 2019, p.6 <[CO67.pdf \(anrowsdev.wpenginepowered.com\)](#)>.

⁴ Evan Stark (1995), pp.10-11 in Stella Tarrant, Julia Tolmie and George Giudice (2019), Transforming legal understandings of intimate partner violence (Research Report, 06/2019), Australia's National Research Organisation for Women's Safety, p. 28 <[RP.17.10_Tarrant_RR_Transforming-Legal-Understandings-of-IPV.pdf \(anrowsdev.wpenginepowered.com\)](#)>.

⁵ Laura Tarzia and Kelsey Hegarty (2023), "He'd Tell Me I was Frigid and Ugly and Force me to Have Sex with Him Anyway": Women's Experiences of Co-Occurring Sexual Violence and Psychological Abuse in Heterosexual Relationships, *Journal of Interpersonal Violence*, Vol. 38(1-2).

⁶ Liz Wall (2012), The many facets of shame in intimate partner sexual violence (Research Summary), Australian Centre for the Study of Sexual Assault, p. 6 <[The many facets of shame in intimate partner sexual violence \(aifs.gov.au\)](#)>.

and induce shame.⁷ Victim-survivors may also have a sense of sexual obligation to their partners once a sexual relationship has been established. This perception can create a further shame dynamic.

It is vitally important that all sexual consent laws respond to the complex dynamics of coercive control, and acknowledge that there is no consent where a sexual act is submitted to because they are a victim of coercive control. For example, the Victorian legislation provides that consent is vitiated where the person submits to the act because of force, a fear of force, harm of any type or a fear of harm of any type, whether to that person or someone else or to an animal, regardless of when the force, harm or conduct giving rise to the fear occurs, and whether it is, or is a result of, a single incident or is part of an ongoing pattern.⁸ The legislation explicitly includes examples of the type of harm this includes, including family violence.

Recommendation 1

WLSA recommends the Commonwealth Government work with State and Territory Governments to ensure sexual consent laws respond to sexual violence that occurs within the context of family and domestic violence.

The experiences of our clients

Women's Legal Services are often informed about sexual violence experienced by their clients, while providing assistance with family or domestic violence matters. The below case illustrations demonstrate the experiences of victim-survivors of sexual violence in the context of domestic and family violence that have been shared with Women's Legal Services.

Case Illustration – Expectation of sexual activity as and when required⁹

Lisa and Dwayne*, both aged 50, were married for 25 years and had three children. During their marriage, Dwayne controlled multiple aspects of Lisa's life, through a pattern of emotional, economic, and sexual abuse. Dwayne made it clear that he required Lisa to have sexual intercourse with him four times a week. After complying for 25 years, Lisa asked Dwayne to reduce the frequency of sexual intercourse each week. Shortly after, Dwayne ended their marriage.

Following their separation, Dwayne continued to exert control over Lisa. He made her leave the family home and required her to pay to rent elsewhere on an income equivalent to a quarter of his earnings. He also insisted the children remain in the family home even though Lisa had been their main carer. He required Lisa to pay half of the children's living expenses, including an amount for their accommodation.

Lisa sought assistance from Women's Legal Service Victoria to negotiate parenting and financial arrangements. During mediation, Dwayne revealed he had ended the relationship because he assumed Lisa had been sexually unfaithful because she asked to reduce the frequency of sexual intercourse after 25 years of marriage.

Over the course of 25 years, Lisa did not have a choice about their sexual activity. Rather than freely agreeing to regular sexual intercourse, she felt obliged to comply with his expectations or suffer the consequences of the power he held over her. Lisa's request to reduce sexual activity prompted a punitive response from Dwayne. He limited her contact with her children and placed her in a position of financial

⁷ TK Logan and Jennifer Cole et. al., (2007), A mixed-methods examination of sexual coercion and degradation among women in violent relationships who do and do not report forced sex, *Violence and Victims*, Vol. 22(1), 71–94 in Liz Wall (2012), *The many facets of shame in intimate partner sexual violence* (Research Summary), Australian Centre for the Study of Sexual Assault, p. 6 <[The many facets of shame in intimate partner sexual violence \(aifs.gov.au\)](https://www.aifs.gov.au/indigenous/indigenous-justice-system/indigenous-justice-system-research-summary)>.

⁸ *Crimes Act 1958* (Vic), s 36AA, amended by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic).

⁹ Case illustration extracted from Women's Legal Service Victoria, Submission responding to recommendations 50 and 51 of the Victorian Law Reform Commission's Report into Improving the Justice System Response to Sexual Offences, 2021, p. 8.

and housing insecurity. Lisa's experience of sexual abuse was only revealed in the context of family dispute resolution.

*Names have been changed to protect confidentiality

Case Illustration – Relationship of dependence¹⁰

At the age of 22, Ishani* moved to Australia on a spousal visa to enter an arranged marriage to Viraj, aged 34. Ishani lived in the home of her parents-in-law and was subject to their scrutiny. She had limited contact with the wider community, was financially dependent on her husband's family, and was isolated from her own family who remained in her country of origin. She feared the loss of her visa if she left the marriage.

During their marriage, Viraj subjected Ishani to violent abuse and engaged in sexual behaviour which Ishani felt was degrading and shameful. Ishani felt compelled by her situation to engage in sexual intercourse with Viraj even though she found it very unpleasant, and it was against her wishes. She became pregnant and had a child to Viraj.

Ishani's parents-in-law were aware of their son's abusive behaviour but offered no support. On at least one occasion, Viraj's uncle, who was a regular visitor to the home, sexually assaulted Ishani. However, she did not report the assault to the police and felt obliged to remain in the home.

Eventually Viraj's escalating violence resulted in police intervention. At this point, Ishani left her parents-in-laws' home. Ishani was referred to Women's Legal Service Victoria for assistance with parenting orders. It was only in this context that she revealed the sexual assaults perpetrated against her by her husband and his uncle.

*Names have been changed to protect confidentiality

Case Illustrations – Examples of sexual violence perpetrated by an intimate male partner¹¹

Trudy* reflects – I had no say whatsoever. I'd end up just laying there. I wasn't going to fight him because I didn't have the strength to fight him, and if anybody thinks that a woman can fight off a rapist, they can't. It is too hard and you end up worse. So I'd end up just laying there, and when he'd finished, I'd cry myself to sleep and wished that I was dead. The rapes used to scare the hell out of me because I had already told him no, but I was supposed to be a good wife. He thought it was funny when he tied me to the bed. I didn't find it funny.¹²

Holli* reflects – I was dating a guy for maybe about a year and a half and he was extremely emotionally manipulative. I wasn't really aware of that because I hadn't really – I'm not a manipulative person myself. I haven't really been exposed to that sort of thing before. So it was really quite easy for him to sort of gain control over my self-esteem sort of slowly over the relationship. It started out really fantastic. Everything was fantastic and all my friends really liked him. Then, as time went on, you know, things sort of got worse and worse. I'd had an abnormal pap smear and I had HPV – which causes the cancerous cells – and I had to have an operation to have those removed. So after I had this operation, he still would make me have sex with him and I was just not really ready to do that, because I was just feeling really, you know, it's a really personal thing to go through to have that sort of operation done. He made me do it anyway, not with physical force

¹⁰ Ibid, p. 7.

¹¹ Hayley Clark and Antonia Quadara (2010), Insights into sexual assault perpetration Giving voice to victim/survivors' knowledge, Research Report No.18, Melbourne: Australian Institute of Family Studies, p. 2 <[Insights into sexual assault perpetration: Giving voice to victim/survivors' knowledge \(aifs.gov.au\)](#)>.

¹² Ibid, p. 18 in Women's Legal Service New South Wales, Submission to NSW Law Reform Commission on Consent in Relation to Sexual Assault Offences, 22 February 2019, p. 11 <[WLS NSW submission to NSWLRC review on consent in relation to sexual assault offences DP \(fa\).docx](#)>.

but just emotional manipulation. Once someone can break down your self-esteem, and they can start to control you, and they can start to control the things you think and what you do. They can basically make you do whatever they want, which is what he did.¹³

Gaiana* reflects – The violence didn't start until about nine months in and there was a whole grooming process that I now, on reflection, was aware it was going on ... but while I was in it didn't realise. It wasn't probably until about three or four years after that that I started to really reflect on what had happened and what that had meant for me and the situation. We started dating very harmless. At about the five-and-a-half/six month mark he started to become slightly more controlling. He changed the phone number and made it a silent number because he was very big about protection. The only thing I didn't have protection from was him. His basic rule was that I had three orifices and one of them was going to get used and that was every day without fail, whether I was interested or not, whether I wanted to or not, whether I was sick or not, whether I had my period or not. That was the deal.¹⁴

*Names have been changed to protect confidentiality

Independent legal representation for victim-survivors

Given that Women's Legal Services have specialist expertise in providing assistance to victim-survivors, our services are well placed to provide assistance to victims to navigate the criminal justice system, to pursue their rights and entitlements, and to identify and pursue alternative avenues such as civil litigation, financial compensation or restorative justice. However, Women's Legal Services would require additional funding to be able to provide these services.

Traditionally, victim-survivors have not been recognised as participants in the criminal justice system, and victims have merely been treated as witnesses for the prosecution. However, this is slowly changing and there is increasing recognition in many jurisdictions that victims have rights and entitlements and a personal stake in the criminal justice process, for example through the introduction of Victims' Charters and additional legislative protections for victims. For example, the Victorian Law Reform Commission (VLRC) has acknowledged that victims have an 'inherent interest' in the criminal justice process and must be recognized as key participants.¹⁵ As this is increasingly recognised, there are more opportunities for victim-survivors to pursue their rights and entitlements – and they should have access to legal assistance to do this.

Specialist legal assistance must be available to victim-survivors to ensure that their substantive legal entitlements, such as rights to be consulted by police or the prosecution, rights to privacy, and rights to respectful and dignified treatment are upheld. Victim-survivors often need legal assistance to engage in the criminal justice process, for example they may require assistance with drafting special witness arrangements applications, applications for ground rule hearings, victim impact statements, or applications in relation to protecting confidential records. Victim-survivors may also seek assistance with understanding their options in relation to civil litigation, financial compensation, and restorative justice. Particularly given the barriers to reporting to police, and the difficulties with successfully prosecuting sex offences, legal representatives for victim-survivors can advocate for them throughout the process and ensure that it meets their needs.

For example, the VLRC has recommended Victorian Government fund legal advice and, where necessary, representation until the point of trial and in related hearings, to ensure victim survivors can exercise their

¹³ Ibid, p. 19 in Women's Legal Service New South Wales, Submission to NSW Law Reform Commission on Consent in Relation to Sexual Assault Offences, 22 February 2019, p. 11 <[WLS NSW submission to NSWLRC review on consent in relation to sexual assault offences DP \(fa\).docx](#)>.

¹⁴ Ibid, p. 20 in Women's Legal Service New South Wales, Submission to NSW Law Reform Commission on Consent in Relation to Sexual Assault Offences, 22 February 2019, pp. 11-12 <[WLS NSW submission to NSWLRC review on consent in relation to sexual assault offences DP \(fa\).docx](#)>.

¹⁵ Victorian Law Reform Commission, 'Victims of Crime in the Criminal Trial Process: Report', 22 November 2016 <[Victims of Crime in the Criminal Trial Process: Report \(pdf and Word\) - Victorian Law Reform Commission](#)>

rights and protect their interests, including their rights and privileges in relation to evidence (for example, the confidential communication privilege, alternative arrangements (pre-recorded) and special protections, access to intermediaries), their rights to privacy in relation to disclosures of personal information (for example, information about their sexual history, the nature of cross-examination, or suppression orders), their options for compensation, including under the *Sentencing Act 1991* (Vic), victims of crime compensation, and civil or other compensation schemes, and the implications of taking part in restorative justice and referrals to restorative justice when applying for compensation or restitution orders.¹⁶

We welcome the Commonwealth Government's commitment of \$8.4 million over three years for victim-survivors of sexual assault to access dedicated legal services to support their recovery and engagement with the criminal justice system.¹⁷ We understand that the Attorney-General's Department (AGD) will undertake targeted consultations with states and territories, victim-survivor advocates and the legal assistance sector to identify appropriate service providers and select pilot locations¹⁸.

Recommendation 2

WLSA recommends the Commonwealth Government invest in Women's Legal Services to provide independent legal advice and representation services for victim-survivors of sexual violence.

Stronger models of affirmative consent

WLSA is concerned about the inconsistent use of consent law terminology across jurisdictions. The Commonwealth Government should work with State and Territory Governments to ensure that all jurisdictions establish nationally consistent, strong models of affirmative consent. A uniform national approach to affirmative consent will send a powerful message to the community about appropriate sexual conduct, contribute to cultural change, and will better serve victim-survivors and deter perpetrators.

In our view, the Victorian approach to affirmative consent is the current best practice model, noting that there are ongoing concerns in relation to exceptions for cognitive impairment and mental illness. We support a definition of consent that refers to 'free and voluntary agreement' and a requirement to 'say or do something' to check whether there is consent. We also support legislation which recognises that consent can be vitiated in the context of family and domestic violence, particularly where sexual activity is submitted to as a result of fear, harm, coercion or intimidation, regardless of when it occurs or whether it is a single incident or part of an ongoing pattern.

Victoria, New South Wales, Northern Territory, South Australia and Tasmania define consent in terms of 'agreeing' to sexual activity.¹⁹ The Australian Capital Territory defines consent in terms of the 'informed agreement' of the participants that is freely and voluntarily 'given'.²⁰ Western Australia and Queensland provide that consent must be freely and voluntarily 'given' and set out some circumstances in which that is not the case.²¹ England, Wales and Northern Ireland define consent as occurring when a person 'agrees by choice, and has the freedom and capacity to make that choice'.²²

Consent defined in positive terms has been the focus of reform in recent years. The Australian Law Reform

¹⁶ Recommendation 46, Victorian Law Reform Commission, 'Improving the Response of the Justice System to Sexual Offences', 12 November 2021 < [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#) >

¹⁷ Attorney-General's Department, 'Investing in Integrity, Human Rights and Safety' (Media Release, 25 October 2022) < [Investing in Integrity, Human Rights and Safety | Our ministers – Attorney-General's portfolio \(ag.gov.au\)](#) >.

¹⁸ Ibid.

¹⁹ *Crimes Act 1958* (Vic), s 36(1), amended by *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic), s 5, *Crimes Act 1900* (NSW), s 61H(1), *Criminal Code Act 1983* (NT), s 192(1), *Criminal Law Consolidation Act 1935* (SA) s 46(2) and *Criminal Code Act 1924* (Tas) s 2A(1).

²⁰ *Crimes Act 1900* (ACT), s 50B.

²¹ *Criminal Code Act Compilation Act 1913* (WA), s 319(2) and *Criminal Code Act 1899* (Qld), s 348(1).

²² *Sexual Offences Act 2003* (UK), s 74; *The Sexual Offences (Northern Ireland) Order 2008* (NI), s 3.

Commission (**ALRC**) and the New South Wales Law Reform Commission (**NSWLRC**) have recommended that all federal, state and territory sexual offence provisions “include a statutory definition of consent based on the concept of free and voluntary agreement”.²³ The VLRC recommended that Victoria should move towards a stronger model of affirmative consent which goes further than requiring ‘free agreement’.

WLSA considers that the ‘mistake of fact’ defence has the potential to undermine affirmative consent models. Although the law in most jurisdictions provides that a failure to offer physical resistance does not of itself constitute consent, a perpetrator could still argue that because the victim-survivor did not resist they had reason to believe they were consenting, and that in light of the lack of resistance their belief was reasonable.²⁴ This creates a concerning defence loophole. An analysis of 2018 sexual assault trials in Queensland by the Queensland Law Reform Commission found that the mistake of fact defence had been invoked in one in three trials.²⁵ An estimated 66% of perpetrators who use the mistake of fact defence in Queensland were acquitted.²⁶

We note that in Western Australia, Queensland and Tasmania, a perpetrator’s mental state is relevant to the mistake of fact defence.²⁷ Victoria does not have an excuse of mistaken belief as to consent. Rather, a jury will consider whether the accused person’s belief as to consent was reasonable. The Victorian law provides that ‘a person must reasonably believe that another person is consenting to an act.’²⁸ This belief will not be reasonable if they do not say or do anything to find out whether there is consent, unless they have a cognitive impairment or mental impairment which is the substantial cause of them not saying or doing anything.

WLSA is also concerned that the current models of consent in many Australian jurisdictions fail to adequately address the nature of sexual violence where it occurs in the context of domestic and family violence. Interpretations of ‘consent’ have been narrow, incident-based and contingent on proximity or immediacy of force as evidence of sexual assault. This interpretation does not work in the context of coercive control dynamics. Models of consent must capture sexual violence that occurs in the context of force, harm, shame, and punishment. Otherwise, it is easier for perpetrators to argue that they had a ‘reasonable belief’ that consent was given or that they ‘took steps’ to ascertain consent.

Models of consent must respond to the complexities of how consent functions in the context of domestic and family violence. This includes ensuring that legislation responds to the impacts of sexual coercion and force that can occur and cumulate over time. For example, including a non-exhaustive list of examples of circumstances and factors to demonstrate where consent is negated, such as the approach taken in Victoria.

Models of consent must also appropriately respond to women who are experiencing impaired capacity or different abilities which can impact their ability to exercise consent. Women with different abilities experience high rates of sexual violence, within and outside care relationships,²⁹ and are particularly disadvantaged by systemic neglect with respect to participation in the justice system.

²³ Australian Law Reform Commission and NSW Law Reform Commission (2010), Family Violence – A National Response (Final Report), Rec 25-4, p. 37 < [Microsoft Word - 0 Front pages.docx \(nsw.gov.au\)](#)>.

²⁴ Hayley Gleeson, ‘Mistake of fact defence: The legal loophole stopping Queensland rape complainants from getting justice’, *ABC News* (Online, 13 May 2019) < [Mistake of fact defence: The legal loophole stopping Queensland rape complainants from getting justice - ABC News](#)>.

²⁵ Justice Jackson, Judge (now Chief Judge) Devereaux and Margaret Wilson QC (2020), Review of consent laws and the excuse of mistake of fact, Queensland Law Reform Commission, pp. 38-39 < [qlrc-report-78-final-web.pdf](#)>.

²⁶ Amy MacMahon, ‘Response to the Criminal Code (Consent and Mistake of Fact) Amendment Bill 2020’ (Media Release, 25 March 2021) < [Response to the Criminal Code \(Consent and Mistake of Fact\) Amendment Bill 2020 - Amy for South Brisbane 2020 \(amymacmahon.com\)](#)>.

²⁷ *Criminal Code Act Compilation Act 1913* (WA), s 24; *Criminal Code Act 1899* (Qld), s 24; *Criminal Code Act 1924* (Tas), ss 14-14A.

²⁸ *Crimes Act 1958* (Vic), s 36A.

²⁹ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, ‘Alarming rates of family, domestic and sexual violence of women and girls with disability to be examined in hearing’ (Media Release, 12 October 2021) < [Alarming rates of family, domestic and sexual violence of women and girls with disability to be examined in hearing | Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability](#)>.

Recommendation 3

WLSA recommends the Commonwealth Government work with State and Territory Governments to establish nationally consistent, strong models of affirmative consent.

Barriers to reporting sexual violence to police

The majority of victim-survivors do not engage with the justice system due to a number of barriers, including a well-founded fear that the justice system will not provide a safe or effective response. Sexual violence perpetrated in the context of domestic and family violence is also often perceived as less believable.

Barriers to reporting include self-blame, guilt, low self-esteem, and shame.³⁰ Often this is exacerbated by perceptions that discussing sex or sexual assault within relationships is private, particularly in culturally and linguistically diverse communities. Shame is further reinforced by police responding through the lens of rape stereotypes and misconceptions. For example, a study on the attitudes of Australian police towards sexual assault victim-survivors found that police were more likely to consider a victim to be credible if the sexual assault was perpetrated by an ex-partner rather than by a current partner or husband.³¹

Barriers to reporting sexual violence are compounded for victim-survivors who face marginalisation, discrimination and structural unfairness, particularly for culturally and linguistically diverse victim-survivors who experience domestic and family violence on a dual paradigm. Many of our culturally and linguistically diverse clients tell us that they are fearful of family and community response to disclosures of domestic and family violence and sexual violence.³² For this reason, culturally and linguistically diverse women are likely overrepresented as victim-survivors of domestic and family violence and sexual violence, but underrepresented in statistics on domestic and family violence, sexual violence and victimisation.³³

Sexual violence is particularly underreported in First Nations communities despite its prevalence. NTWLS' clients have reported experiences of being 'cut off' when reporting, often being turned away, a lack of interpreters and very few available female officers.³⁴ The communication gap that often exists between police and sexual assault victim-survivors is particularly pronounced for First Nations women. When police do respond to First Nations women's calls for help, they can often apply gender bias along with racist myths about First Nations.³⁵ Wurringa Baiya Aboriginal Womens Legal Centre also report that victim-survivors who report violence perpetrated by ex-partners are often persuaded by police that the act of violence was merely a 'misunderstanding' or 'dispute.'³⁶ Stereotyping by police can often be linked to the increasing rate of First Nations women imprisonment.

In addition to barriers to reporting, current conviction rates for sexual violence offences are an indication that justice system responses are often failing and consent laws are not operating as intended. Overall, very

³⁰ Peta Cox (2016), Violence against women: Additional analysis of the Australian Bureau of Statistics' Personal Safety Survey (ANROWS Horizons, 01.01/2016 Rev. ed.). Sydney, NSW: ANROWS <[PSS_2016update.pdf \(anrowsdev.wpenginepowered.com\)](#)>.

³¹ Denise Livemore (2005), No Longer Silent: A study of women's help-seeking decisions and service responses to sexual assault, A report prepared by the Australian Institute of Criminology for the Australian Government's Office for Women, p. 52 <<https://www.aic.gov.au/sites/default/files/2020-05/no-longer-silent-a-womens-help-seeking-decisions-and-service-responses-to-sexual-assult.pdf>>.

³² Women's Legal Service WA (2022), Submission to the Western Australia Government's Inquiry into Legislative Responses to Coercive Control in Western Australia, 8 August 2022, p. 4.

³³ Victoria Government (2016), Royal Commission into Family Violence: Volume 5 Report and recommendations, p.101 < [Microsoft Word - ENDORSED Family Violence Data Collection Framework FVDCF.DOCX \(content.vic.gov.au\)](#)>.

³⁴ The Central Australian Women's Legal Service, Katherine Women's Information & Legal Service and Top End Women's Legal Service, Submission to the Northern Territory Department of the Attorney-General and Justice on the Exposure Draft – Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023, 20 February 2023, p. 4.

³⁵ Wurringa Baiya Aboriginal Women's Legal Centre Inc., Submission No. 142 to the New South Wales Inquiry into Coercive Control in Domestic Relationships, 19 February 2021, p. 6 <[Submission - 142.pdf \(nsw.gov.au\)](#)>.

³⁶ Ibid.

few sexual violence offence claims progress to trial and result in conviction.³⁷

The failure of consent laws is also evidenced through attrition rates. Across Australia, rape has the highest attrition rate of any offence and is therefore least likely to progress through the justice system.³⁸ In Victoria, between 2015-16 and 2016-17, allegations of sexual violence involving current partners were the most likely to be withdrawn and least likely to succeed at trial, despite police arguably having the evidence.³⁹ Attrition was highest during police investigation (e.g., police identifying a perpetrator, recording a perpetrator and ultimately charging a perpetrator).⁴⁰ During this time, police formally identified a perpetrator for half (48%) of incidents and charged half (52%) of those identified perpetrators. This means around 75% of incidents that entered the criminal justice system did not progress past police investigation.⁴¹

Police officers will often prioritise cases that they predict are most likely to result in a conviction. This can involve considering the likelihood of whether a jury would convict.⁴² A strong affirmative consent model, which shifts the focus from the actions of the victim-survivor to the perpetrator, has the potential to minimise the influence of non-legal factors on attrition rates.

A United States study on female police officers from the late 1970s to the early 1990s, confirmed that an increase in female officers in a particular district was associated with an increase in crime reporting by female assault victims.⁴³ In particular, a 7.4% increase in female officer representation correlated with a 13.6% increase in reports of domestic and family violence, and there was a significant reduction in intimate partner homicides in districts with more female officers.⁴⁴ Female officers were said to change the culture of police departments by influencing male behaviours, following-through on domestic and family violence reports and encouraging reporting by taking victim-survivor statements in lieu of male officers.⁴⁵

If victim-survivors were provided with access to legal assistance prior to reporting, this would enable legal services to work with victim-survivors to address any concerns they have about reporting, act as their advocate throughout engagement with police, to understand the consequences of reporting, particularly if the violence is occurring within the context of family and domestic violence, or to identify alternative avenues to reporting.

Recommendation 4

WLSA recommends the Commonwealth Government work with State and Territory Governments to increase and target recruitment of female police officers.

Protecting access to confidential counselling and medical records

WLSA is concerned that protections for therapeutic records are constantly overridden during sexual assault trials resulting in sensitive records being accessed by the perpetrator. This fundamentally prejudices the

³⁷ Australian Institute of Criminology (2007), Guilty outcomes in reported sexual assault and related offence incidents, Factsheet No. 162.

³⁸ Crime Statistics Agency (2021), Attrition of sexual offence incidents through the Victorian criminal justice system: 2021 update, Government of Victoria, p. 3 < [Crime Statistics Agency - Attrition of sexual offence incidents through the criminal justice system.pdf](#)>.

³⁹ Ibid, pp. 20 and 32.

⁴⁰ Ibid, p. 1.

⁴¹ Ibid.

⁴² Ibid, pp. 135 and 138.

⁴³ Amalia R Miller and Carmit Segal (2019), Do Female Officers Improve Law Enforcement Quality? Effects on Crime Reporting and Domestic Violence, *The Review of Economic Studies*, Vol. 86(5), 2220–2247 in Caroline Newman, 'Study: Hiring Female Police Officers Helps Women Report Violence, Sexual Assault', *University of Virginia Today* (Online, 27 September 2018) < <https://news.virginia.edu/content/study-hiring-female-police-officers-helps-women-report-violence-sexual-assault>>.

⁴⁴ Ibid.

⁴⁵ Ibid.

victim-survivor and furthers harm. The defendant will often try to obtain therapeutic records to intimidate victim-survivors, and the prosecution are rarely able to limit subpoenas. Harm also occurs when trials are delayed while parties debate the probative value of therapeutic records.

Victim-survivors often avoid counselling for fear that their records will be subpoenaed and weaponised against them⁴⁶ which undermines the provision of therapeutic care.⁴⁷ It is broadly reported that the very possibility of disclosure will encourage patients to restrict what they say to counsellors, psychologists or psychiatrists or avoid seeking counselling altogether.⁴⁸

For women who are already in counselling, the therapeutic relationship risks erosion when the victim-survivor is exposed to what has been recorded about them from the therapist's perspective.⁴⁹ Often, a victim-survivor does not want the perpetrator to know the impact of their behaviour as it empowers the perpetrator and further fuels power misuse. Many victim-survivors experience a perpetrator accessing their sensitive records as court sanctioned violence and abuse.

WLSA's view is that existing legislative protections could be strengthened by oversight and accountability mechanisms, including regular statutory review provisions to ensure the protections are working as intended. The current laws need to be more effectively implemented, and this should also be accompanied by regular education for police, legal practitioners and judicial officers. There should also be mechanisms to ensure early referrals to specialist legal advice and representation for victim-survivors.

We note that WLSQ provides advice and representation for victim-survivors and therapeutic organisations wishing to object to subpoenas of therapeutic records. The Legal Aid Commission is funded to provide this service in New South Wales and WLSNSW also provides an advice service.

Recommendation 5

WLSA recommends the Commonwealth Government work with State and Territory Governments to improve legislative protections for victim-survivors in relation to therapeutic records, as well as improved oversight and accountability mechanisms for existing protections and early referral to specialist legal assistance.

Improving the court system for victim-survivors

Judicial officers and court staff are often not aware of the impacts of court proceedings and process on victim-survivors. For example, victims report that their court experience was "...disrespectful of their dignity as human beings"⁵⁰ and that they found the process "humiliating", "brutal, abrupt and traumatising", "aggressive and insensitive" and "damaging and grueling".⁵¹ Mandatory judicial training in trauma-informed practice, gender-based violence, supporting victim-survivors, and the complex dynamics of sexual violence within the context of domestic and family violence must be a priority.

Women's Legal Services regularly hear concerns from clients about having to wait in common areas near the perpetrator (particularly in the lower courts or in regional areas) and needing to request a screen in court to

⁴⁶ Women's Legal Service Queensland, Submission in response to Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons, 2022, p. 20.

⁴⁷ John Levy, Gary Galambos and Yvonne Skarbek (2014), The erosion of psychiatrist-patient confidentiality by subpoenas, *Australasian Psychiatry*, Vol.22(4).

⁴⁸ The Royal Australian and New Zealand College of Psychiatrists (2016), Patient-psychiatrist confidentiality: the issue of subpoenas, Position Statement No. 83 <<https://www.ranzcp.org/confidentiality>>.

⁴⁹ Carolyn Jones (2016), Sense and Sensitivity: Family Law, Family Violence and Confidentiality, Women's Legal Service New South Wales, p. 34 <[http://www.lawfoundation.net.au/lif/site/templates/grants/\\$file/WLS_SandS.pdf](http://www.lawfoundation.net.au/lif/site/templates/grants/$file/WLS_SandS.pdf)>.

⁵⁰ Victorian Law Reform's Victims of Crime report in 2016 in Louise Milligan, Witness: An investigation into the brutal cost of seeking justice (Hachette Australia, First Edition, 2020) p. 120.

⁵¹ Ibid.

block-out the perpetrator (which should be standard practice). Clients are also often concerned about how they will be treated during cross-examination, particularly given that it is well-known how victim-survivors or often treated by defence counsel, and that judges will often be slow to interject or respond to aggressive behaviour.

In New South Wales for example, the Criminal Justice Sexual Offence Taskforce recommended a number of changes to improve experiences at court, including specialist case management hearings, specialist judges, specialist prosecutors, proactive case management, separate entrances to the court room, and access to CCTV.⁵² Similar reforms have been recommended and implemented across other jurisdictions, however there is more work to be done.

The Australian Human Rights Commission's (AHRC) Respect@work 2020 report contains a comprehensive review of the national training and resources available to the judiciary on sexual assault, sexual harassment and domestic and family violence.⁵³ We note that there are different regimes in place across states and territories.

WLSA endorses the recommendations of the AHRC but note a lack of research and little available data on the effectiveness of existing judicial training for sexual assault cases. For example, WLSA has not been able to identify any information on the number of judges or magistrates who receive existing training and the jurisdictions or courts they preside over, the length of any particular training and how often judges or magistrates are required to participate in training, whether training is compulsory, regular or one-off and whether judges in regional areas receive adequate training (noting that 53% of all sexual assault cases are in the country lists).⁵⁴

This research gap is particularly significant given what we know about the inadequacies of the justice system process for victim-survivors. There is an undeniable need for research to be carried out on the effectiveness of existing training for the judiciary with a view to creating a national set of best-practice training guidelines for the judiciary in sexual assault trials.

The need for a better understanding of the effectiveness of judicial training falls squarely within overarching 'Priority 3: Research and Collaboration' identified in the Meeting of Attorneys-General 'Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027' (Work Plan).⁵⁵ We also encourage the Work Plan focus to develop a national approach to education of common myths and misconceptions about sexual assault amongst judicial officers.⁵⁶

Recommendation 6

WLSA recommends the Commonwealth Government work with State and Territory Governments to review the effectiveness of judicial training, and to develop a national approach to improving judicial understanding of the complexities of sexual violence and trauma.

Jury directions

The efficacy of jury directions has been addressed by the NSWLRC and VLRC in their reviews of sex offence

⁵² Women's Legal Service New South Wales, Submission to NSW Law Reform Commission review into consent in relation to sexual assault offences – Draft Proposals, 18 November 2019, p. 12 < [Consent in relation to sexual offences - Draft proposals \(wlsnsw.org.au\)](https://www.wlsnsw.org.au)>.

⁵³ Australian Human Rights Commission (2020), Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces, pp. 585-587 < [Respect@Work: Sexual Harassment National Inquiry Report \(2020\) | Australian Human Rights Commission](https://www.hrc.org.au/publications/2020/08/respect-at-work)>.

⁵⁴ Ibid, p. i.

⁵⁵ Attorney-General's Department (2022), Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-27, Australian Government, p. 11 < [MAG Work Plan on Criminal Justice Responses to Sexual Assault 2022-2027](https://www.agps.gov.au/Work-Plan-to-Strengthen-Criminal-Justice-Responses-to-Sexual-Assault-2022-27)>.

⁵⁶ Ibid, p.9.

legislation. There is a general view that additional directions are useful to address the misconceptions that jurors may hold about consensual and non-consensual sexual activity, such as misconceptions about a victim-survivor's appearance, their emotional response to sexual violence, and their relationship with the accused and the implications this has for whether there was consent.⁵⁷

There are reports that the new jury directions in Victorian legislation have been successful on the basis that they have simplified directions, improved juror attitudes, and reduced appeals based on misdirection.⁵⁸ However, not enough time has passed since the introduction of new directions in New South Wales and Victoria to adequately assess their efficacy. It is important there are jury directions in relation to sexual offence matters involving complainants who are children and young people. Regular reviews of the effectiveness of jury directions must also be undertaken.

WLSA note that statutory reforms and rules addressing rape myths and misconceptions are not self-executing. Unconscious biases towards victim-survivors will not change, nor will sexual consent literacy increase, until there is social and cultural change in regard to attitudes towards women and sexual violence. There is a view that the efficacy of jury directions will be limited because they are "founded on the (incorrect) assumption that deeply entrenched beliefs about rape can be corrected".⁵⁹

WLSA supports jury directions to clarify assumptions that should not be made regarding the victim's appearance or clothing, the victim's lack of resistance (or 'freezing' response), a continued relationship between the victim and the accused, or the emotional response of the victim given the impacts of trauma. It is particularly important for juries to understand that women may acquiesce to sex to protect themselves or family members from other forms of harm and punishment.

We are also aware of the continued misconception that a delay in reporting rape can be interpreted as suspicious or a sign of fabrication. We are concerned that there continues to be weaponising of delay by defence counsel, and that can be believed by jurors and requires clarification.

WLSA supports expert evidence on the behavioural responses of victim-survivors being admitted as evidence in sexual assault trials. As the 2018 Saxon Mullins trial in New South Wales showed, criminal law has not kept up to date with medical and social science which has established 'flight, fight and freeze' as typical trauma responses.⁶⁰ WLSNSW has previously recommended that the *Uniform Evidence Act 1995* (NSW) be amended to specifically enable expert evidence to be admitted in adult sexual assault trials.⁶¹ WLSQ similarly recommended that jury directions could be led from an expert (on a case-by-case basis).⁶²

Recommendation 7

WLSA recommends the Commonwealth Government work with State and Territory Governments to legislate jury directions that address misconceptions about consent, trauma, sexual violence, and family and domestic violence.

⁵⁷ Victorian Law Reform Commission (2021), *Improving the Justice System Response to Sexual Offences*, p. 437 <[VLRC Improving Justice System Response to Sex Offences Report web.pdf \(lawreform.vic.gov.au\)](https://www.lawreform.vic.gov.au/web/pdf/Improving%20Justice%20System%20Response%20to%20Sex%20Offences%20Report%20web.pdf)>.

⁵⁸ Women's Safety and Justice Taskforce, *Hear her Voice: Report 2, Volume 1, Women and girls' experiences across the justice system*, p. 356 <[WSJT Discussion Paper 2 \(womenstaskforce.qld.gov.au\)](https://www.womenstaskforce.qld.gov.au/discussion-paper-2)>

⁵⁹ Julia Cooper (2022), *Judges as myth-busters: a re-examination of jury directions in rape trials*, *Griffith Law Review*, Vol. 31(4), p. 496.

⁶⁰ Louise Milligan, *Witness: An investigation into the brutal cost of seeking justice* (Hachette Australia, First Edition, 2020) p. 126.

⁶¹ See: Women's Legal Service NSW, *Submission to NSW Law Reform Commission Consent in relation to sexual assault offences*, 22 February 2019, p. 8.

⁶² Women's Legal Service Queensland, *Submission in response to Discussion Paper 3: Women and girls' experiences across the criminal justice system as victim-survivors of sexual violence and also as accused persons*, 2022, p. 19.

Consent education

Women's Legal Services have long called for extensive evidence-based education campaigns developed by front line experts about the drivers of gender-based violence, respectful relationships and ethical sexual practice.⁶³ Addressing gender stereotypes, male entitlement, rape myths and victim-blaming attitudes is also critical. Consent education must engage whole of community to increase literacy on sexual assault and consent laws in a culturally appropriate way. It is critical that young people engage in education around consent, particularly in regard to stealthing, sharing of intimate images and technology-facilitated abuse.

Consent education must be attuned to cultural differences and geographical contexts. The conversations around consent in First Nations and culturally and linguistically diverse communities require nuance and must be led by those communities. WLSA supports comprehensive community consultation, including consultation with First Nation Community Controlled Organisations and culturally and linguistically diverse communities in order to ensure approaches are culturally safe and appropriate.⁶⁴

WLSA note that the positive impacts of consent education will not be realised unless there is a concurrent shift in media representations of violence against women. Media are a key vehicle for perpetuating victim-blaming attitudes and misogynistic representations of victim-survivors. This is confirmed by a study conducted in the United States which shows that rape occurs more often in communities where the media perpetuates rape culture.⁶⁵ The study does not suggest that news coverage causes rape, but that the level of rape culture in the media predicts both the frequency of rape and how it's responded to by the criminal justice system.⁶⁶

Recommendation 8

WLSA recommends the Commonwealth Government invest in a nation-wide community education campaign informed by experts in gender equality and violence against women.

Immunity from defamation

Defamation law is commonly used as a tool to intimidate, silence and control victim-survivors. The threat of defamation acts as a deterrent for victim-survivors to report sexual violence to police, and existing provisions – such as in the *Sex Discrimination Act 1984* (Cth) and Model Defamation Provisions – do not go far enough to encourage victim-survivors to report sexual harassment or sexual violence to state and federal regulatory bodies.⁶⁷ WLSNSW has previously recommended absolute immunity (privilege) for people who make complaints to police or regulatory bodies.⁶⁸ WLSA encourages the Consent Inquiry to review WLSNSW's response to the New South Wales Discussion Paper on the Model Defamation Provisions – Stage 2 for a more

⁶³ See for example: Women's Legal Service New South Wales, Submission to NSW Law Reform Commission review into consent in relation to sexual assault offences – Draft Proposals, 18 November 2019, Recommendation 18 < <https://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-sub-NSWLRC-consent-draft-proposals-fa.pdf> >, Women's Legal Service Western Australia, Submission to the Law Reform Commission of Western Australia for the preliminary review of Chapter XXXI, and related sections, of the Criminal Code Compilation Act 1913 (Project 113), 3 June 2022, p. 6 and Women's Legal Service Tasmania, Submission the Department of Justice in relation to the *Criminal Code Amendment Bill 2022*, 18 February 2022 p. 9 < [WLST Submission in relation to the Criminal Code Amendment Bill 2022 - Womens Legal Service Tasmania \(womenslegaltas.org.au\)](https://www.womenslegaltas.org.au/)>.

⁶⁴ The Central Australian Women's Legal Service, Katherine Women's Information & Legal Service and Top End Women's Legal Service, Submission to the Northern Territory Department of the Attorney-General and Justice on the Exposure Draft – Criminal Justice Legislation Amendment (Sexual Offences) Bill 2023, 20 February 2023, p. 8.

⁶⁵ Meg Dalton, 'Is the news media complicit in spreading rape culture?' Columbia Journalism Review (Online, 26 October 2018) < <https://www.cjr.org/analysis/news-study-rape-culture.php#:~:text=For%20a%20long%20time%2C%20people,the%20media%20perpetuates%20rape%20culture>>.

⁶⁶ Ibid.

⁶⁷ Women's Legal Service New South Wales, Comment to the Defamation Working Party on Stage 2 of the Review of the Model Defamation Provisions, 31 May 2021, p.1 < [wlsnsw-submission](#)>.

⁶⁸ Ibid.

substantive response.⁶⁹

Women's Legal Services have advised many clients who have received correspondence threatening defamation or who have had defamation proceedings commenced against them. The introduction of absolute immunity for sexual harassment, sexual assault and rape allegations would discourage perpetrators from commencing proceedings, and where commenced, would facilitate their timely summary dismissal. Victim-survivors should be able to report sexual violence without the actual or perceived threat of defamation.

Recommendation 9

WLSA recommends the Commonwealth Government work with State and Territory Governments to provide absolute immunity from defamation for people who make sexual violence complaints to police and regulatory bodies.

⁶⁹ See here: Women's Legal Service New South Wales, Comment to the Defamation Working Party on Stage 2 of the Review of the Model Defamation Provisions, 31 May 2021 <[wlsnsw-submission](#)>.