

Submission: Current and proposed sexual consent laws in Australia

We welcome the opportunity to provide feedback to the Senate Legal and Constitutional Affairs Committee on current and proposed sexual consent laws in Australia. This has been a key area of reform for the community legal sector in Victoria which has expertise in providing legal advice and representation to victim-survivors of family and sexual violence, as well as community legal education on consent laws.

This is a joint submission made by the Federation of Community Legal Centres (the **Federation**) and the South-East Monash Legal Service (**SMLS**).

About the Federation of Community Legal Centres

The Federation is the peak body for Victoria's 47 Community Legal Centres (CLCs) and Aboriginal Legal Services. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For more than 50 years community legal centres have been the heart of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We want a community that is fair, inclusive and thriving: where every person belongs and can learn, grow, heal, participate and be heard.

The Federation:

- Enables a strong collective voice for justice and equality;
- Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- Works with members to continuously improve the impact of community legal services;
- Drives creativity and excellence in the delivery of legal services to communities;
- Helps make justice more accessible.

About South-East Monash Legal Service

SMLS was established in 1973. SMLS is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our Victoria within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court and provides legal representation at courts and

tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit Court, Family Court and Victims of Crime Assistance Tribunal.

For most of the 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

Acknowledgment of Country

The Federation and SMLS acknowledge the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the legal system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

Terminology

Throughout our submission, we use the term 'victim-survivor' to refer to people who have been the victim of sexual offences. While acknowledging that anyone can experience sexual violence, research indicates that sexual violence is predominantly perpetrated by men against women. This is reflected throughout this submission and in our use of gendered language.

Executive summary

Sexual violence is a widespread and gendered issue that has devastating and long-term impacts on those who experience it.¹ It is estimated that one in five women in Australia have experienced sexual violence (sexual assault and/or threat) since they were 15 years old, whereas for men, the figure is one in 20.²

Many victim-survivors do not report sexual violence because they fear that they will not be believed or do not want to go through the criminal process.³ Too often the criminal process fails victim-survivors; often leaving “them feeling alone, invisible, and as if they are the ones on trial”.⁴ While positive developments have been made in different jurisdictions across Australia, much more needs to be done.⁵

National harmonisation of affirmative consent laws

While we recognise the challenges involved in harmonising laws nationally, particularly given the complexity of this area, we support national harmonisation in line with an affirmative consent model. Laws relating to sexual offences “set the boundaries for what sexual interactions are acceptable in society”.⁶ It is essential that these laws protect victim-survivors and uphold the fundamental right of every person to make decisions about their sexual activity.⁷ It is important that consent laws take into account dynamics of coercive control and abuse given the high incidence of sexual violence that occurs in a family violence context. To improve the criminal legal system, it is imperative that there is better data on the efficacy of consent laws, any unintended consequences and what needs improving.⁸

Investment in public education to prevent sexual violence

It is widely accepted that legislative change alone is not sufficient to engender cultural change. Alongside legislative reform, it is critical that there is greater community understanding of sexual violence and consent laws. This requires the Commonwealth Government, alongside State and Territory governments, to invest in wide-spread public education about sexual violence, including consent education in schools. It is also imperative that those working in the criminal legal system (including, police, legal professionals and judicial officers) receive specialist training in responding to sexual offences in a trauma-informed and culturally safe way.

¹ Victorian Law Reform Commission (VLRC), *Improving the Justice System Response to Sexual Offences*, September 2021, p. 18 (the **VLRC Report**).

² Australian Institute of Health and Welfare (Cth), *Sexual Assault in Australia In Focus Report*, 28 August 2020, p.14-15.

³ VLRC Report, p.xxii.

⁴ Ibid.

⁵ Ibid.

⁶ VLRC Report, p. 291.

⁷ Ibid. Also see section 37A(a) of the *Crimes Act 1958 (Vic)*.

⁸ Ibid, p.xxii.

Improving the criminal legal system's response to victim-survivors

Reforming consent laws alone will not ameliorate barriers to reporting and attrition rates during the criminal law process. Wide-ranging reform to the criminal legal system is required across Australia to improve responses to victim-survivors. It is important that appropriate and safe support systems are in place for victim-survivors navigating the criminal legal process. Too often, victim-survivors are “left alone to navigate a complex and frightening system”.⁹ This underscores the importance of victim-survivors having access to independent legal representation during criminal proceedings, as well as at the time of reporting and with other related legal matters, such as victim's compensation, civil options and restorative justice processes.

Therapeutic and practical supports for victim-survivors needs to be strengthened. Victim advocates should be resourced “to ‘walk with’ people who have experienced sexual violence”, providing holistic support, ranging from assisting victim-survivors to navigate services to supporting them through the criminal legal system.¹⁰

It is imperative that the criminal legal system is improved to reduce re-traumatisation of victim-survivors during trials. However, not all victim-survivors wish to go through a criminal trial, and for many, this will not be an option. This highlights the importance of strengthening restorative justice mechanisms across Australia.

About this submission

This submission draws on the recommendations made by the VLRC's report, *Improving the Justice System Response to Sexual Offences*, (the **VLRC Report**). This report provides a comprehensive set of recommendations which we suggest the Committee takes into account as part of this inquiry.

This submission focuses on:

- national harmonisation of affirmative consent laws
- the important role of public education to prevent sexual violence and engender cultural change, specialist training for those working with victim-survivors and consent education in schools
- improving the criminal legal system's response to victim-survivors.

We have also outlined the important role of the community legal sector in providing legal assistance to victim-survivors as part of an integrated response. In this submission, we have not commented on any of the consent laws outside of Victoria or the technical aspects of the Victorian legislation which is not yet in force.

We recognise that legislative reform to the criminal legal system is primarily the responsibility of State and Territory Governments. We have commented on the role that the Commonwealth Government can play given its commitment to working with State and

⁹ Ibid, p.xxv.

¹⁰ Ibid.

Territory Governments to improve consent laws and responses to sexual offences nationally.

Summary of recommendations

National harmonisation based on an affirmative consent model

- **Recommendation 1:** The Commonwealth Government work with State and Territory Governments to harmonise consent laws based on an affirmative consent model.
- **Recommendation 2:** Monitoring and evaluation mechanisms are put in place to assess the efficacy of affirmative consent laws and respond to any unintended consequences, as well as to track the criminal legal system's response to victim-survivors.
- **Recommendation 3:** Adopt WLSA's recommendation that the Commonwealth Government work with State and Territory Governments to ensure consent laws effectively respond to sexual violence that occurs within the context of family violence.

Consent education and training

- **Recommendation 4:** The Commonwealth Government invest in evidence-based public education to prevent sexual violence and engender cultural change across Australia.
- **Recommendation 5:** The Commonwealth Government work with State and Territory Governments to ensure that best practice training is delivered to police, judicial officers, first responders and legal professionals on an ongoing basis.
- **Recommendation 6:** The Commonwealth Government work with State and Territory Governments to ensure that best practice consent education is delivered in all schools across Australia.
- **Recommendation 7:** Consent education in schools includes information about consent laws, with schools partnering with community legal services to design and deliver the legal education component.

Improving the criminal legal system's response to victim-survivors

- **Recommendation 8:** The Commonwealth Government fund legal services to provide independent legal advice and representation to victim-survivors at key stages of the police reporting and criminal legal process, as well as to link victim-survivors into legal assistance with related legal matters.
- **Recommendation 9:** The Commonwealth Government work with State and Territory Governments to ensure that victim-survivors have access to practical and therapeutic supports which are culturally safe and trauma informed.

- **Recommendation 10:** The Commonwealth Government work with State and Territory Governments to improve the criminal legal system's response to victim-survivors, including in the following areas:
 - strengthening jury directions to ensure that they counter misconceptions about sexual violence and are made earlier in the proceedings.
 - reducing the risk of re-traumatisation of victim-survivors during cross-examination and ensuring a respectful environment in court.
 - strengthening protections of victim-survivor's confidential health and counselling records. This includes providing victim-survivors with an opportunity to participate in these proceedings and access to independent legal representation.
 - ensuring that the design of court rooms and arrangements for giving evidence are safe and effective and that victim-survivors have access to specialised interpreting services.
- **Recommendation 11:** The Commonwealth, State and Territory Governments resource the expansion of best practice restorative justice processes across Australia.

The important role of integrated legal services in supporting victim-survivors

- **Recommendation 12:** The Commonwealth Government, State and Territory Governments invest in the community legal sector to provide trauma-informed legal services to victim-survivors.

Best practice models for sexual consent laws and national harmonisation

Consultation questions:

- *What similarities or inconsistencies are there in sexual consent laws across Australian jurisdictions? Should these laws be harmonised? If so, or if not, why?*
- *Are there best practice models for sexual consent laws? If so, what are they and how could they be incorporated into Australian law, if not already there?*

Affirmative consent model

National harmonisation based on an affirmative consent model

The framing of sexual consent laws varies across Australia. We refer to the Women Legal Services Australia's (WLSA) submission for an analysis of sexual consent laws in different jurisdictions. While we recognise the challenges harmonising laws nationally, particularly given the complexity of this area, we support national harmonisation based on a model of affirmative consent to ensure that legal systems are responding effectively to sexual offences.¹¹ This would provide clarity and guidance to the States and Territories around best practice in a complex area of law. While we support a consistent approach nationally, the Commonwealth must be careful not to dilute existing consent laws (such as in Victoria).¹²

We support an affirmative consent model for sexual consent laws. A key recommendation of the VLRC Report was that Victoria move to a stronger model of affirmative consent which included stealthing as a sexual offence (i.e., the removal of a condom without consent).¹³ Affirmative consent laws were subsequently passed in 2022 and are due to come into effect on 30 July 2023.¹⁴

A lack of consent is often a key element of sexual offences involving adults.¹⁵ Affirmative consent models requires those involved to actively and positively express consent throughout the sexual activity.¹⁶ This shifts focus from a 'resistance-based model' which examines a lack of consent by the level of force used or resistance of a victim-survivor.¹⁷ Under an affirmative consent model, consent is not merely the absence of physical or verbal objection to sexual activity, it is the positive and ongoing communication of agreement to the activity.¹⁸ This involves a greater focus on the steps that an accused has

¹¹ Ibid, p. 291.

¹² Sexual Assault Services Victoria, *Inquiry into current proposed sexual consent laws: A submission to the Legal and Constitutional Affairs References Committee*, 16 March 2023.

¹³ VLRC Report, p. xxvi, 290.

¹⁴ *Justice Legislation Amendment Act 2022* (VIC).

¹⁵ VLRC Report, p. 293.

¹⁶ Ibid, p. 294.

¹⁷ Ibid.

¹⁸ Ibid, p. 297-298, 304-305.

taken to actively obtain consent. A model of affirmative consent can improve the effectiveness of justice responses to sexual offences.¹⁹

The development of stronger consent laws nationally must be balanced against fundamental principles of our criminal legal system, including the presumption of innocence, the burden and standard of proof and the right to a fair trial. Any changes to consent laws must occur following wide consultation with diverse communities and stakeholders. It is critical to identify any unintended consequences. For example, it is important to consider the impact on children and young people who may have a more limited understanding of the applicable legal framework. It is also important to ensure that affirmative consent laws include safeguards for people with cognitive disabilities.

Monitoring and evaluation of consent laws

To effectively implement a best practice affirmative consent model across different jurisdictions, this requires ongoing research on best practice internationally, as well as monitoring and evaluation of affirmative consent legislation in Australia.²⁰ Affirmative consent legislation is relatively new in Australia and there is limited evidence of its effectiveness. For example, the VLRC Report acknowledged that challenges remained in proposing reforms to the criminal legal system due to “the lack of a solid evidence base” and considered that data collection should be a priority.²¹ We suggest that there are mechanisms to monitor and evaluate legislative reforms to ensure that the legislative changes are achieving their objectives, to identify any unintended consequences and to monitor the education and training that has been delivered alongside any legislative changes. Robust monitoring and evaluation mechanisms will ensure that there is an evidence base to assess the efficacy of any new consent laws and to address any unintended consequences.

For example, the recently passed NSW legislation sets out a regime for review of the consent provisions at specific points (e.g., 3 years after introduction of the legislation and then every 5 years following the first review).²² The Minister is required to conduct reviews to identify if the policy objectives remain valid and whether the provisions are achieving their objectives. This involves the Minister considering transcripts of criminal trials and detailing the type of training that has been delivered, the different types of audiences (e.g., police officers, judicial officers and legal practitioners) and how effective the training has been.²³

It is also important for there to be monitoring and evaluation on the criminal legal process, to measure the impact of the reforms, the response of the criminal legal system to sexual offences (including, progression of cases, trends and the extent of, and reasons, for delays) and the experiences of victim survivors in the criminal legal system.²⁴

¹⁹ Ibid, p. 291.

²⁰ Sexual Assault Services Victoria submission to the *Inquiry into current proposed sexual consent laws: A submission to the Legal and Constitutional Affairs References Committee*, 16 March 2023, p. 11.

²¹ VLRC Report, p. 128.

²² *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021*, s583.

²³ Ibid.

²⁴ VLRC Report, p.139.

Recommendation 1: The Commonwealth Government work with State and Territory Governments to harmonise consent laws based on an affirmative consent model.

Recommendation 2: Monitoring and evaluation mechanisms are put in place to assess the efficacy of affirmative consent laws and respond to any unintended consequences, as well as to track the criminal legal system's response to victim-survivors.

Responding to sexual violence in a family violence context

As highlighted by WLSA, sexual assault often occurs in the context of family violence and is part of a broader pattern of coercive control and violence.²⁵ In a family violence context, victim-survivors may have experienced ongoing fear and threats of harm which result in them being coerced into sexual activity or unable to withdraw consent.

Sexual violence that occurs in the context of intimate partner violence is often perpetrated alongside other forms of violence and abuse.²⁶ Coercive control tactics can be nuanced, often subtle and difficult to detect, and can be targeted to the circumstances of the victim-survivor.²⁷ Perpetrators use a range of tactics to isolate, intimidate and frighten victim-survivors as a way to constrain their autonomy and agency.²⁸ Sexual violence can form part of a process of abuse to create psychological control, which can often result in women not being able to say 'no' when she is in distress or fearful.²⁹

Sexual violence in the context of family violence is not understood well by the Australian community.³⁰ The 2021 National Community Attitudes Towards Violence Against Women Survey found that misconceptions about sexual violence are persisting. For example, the survey found that 34 per cent of respondents believed that it is common for sexual assault accusations to be used as a way of getting back at men.³¹

In line with WLSA's position, it is important that consent laws take into account the complex dynamics of family violence and coercive control.³² There should be recognition

²⁵ Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.6.

²⁶ 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.2.

²⁷ Women's Legal Service Australia, *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.6.

²⁸ Stella Tarrant, Julia Tolmie and George Giudice, *Transforming legal understandings of intimate partner violence*, Research Report, June 2019, Australia's National Research Organisation for Women's Safety, p. 18.

²⁹ 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); Women's Legal Service Australia, *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.6.

³⁰ 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. 3.

³¹ Coumarelos, C., Weeks, N., Bernstein, S., Roberts, N., Honey, N., Minter, K., & Carlisle, E. (2023). *Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Findings for Australia*. (Research report 02/2023). ANROWS.

³² Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.6.

that consent is not freely and voluntarily given where a victim-survivor has been coerced into sexual activity due to ongoing abuse, threats of harm and violence.³³

Victorian and NSW legislation include circumstances where consent is vitiated in a family violence context. For example, under the recently passed NSW legislation, a person does not consent if the person participates in the sexual activity because of force, fear of force or fear of serious harm of any kind regardless of 'when the force or the conduct giving rise to the fear occurs' or 'whether it occurs as a single instance or as part of an ongoing pattern'.³⁴ In the NSW legislation, this also applies to sexual activity that occurs on the basis of coercion, blackmail or intimidation.³⁵ As fear of harm or coercion does not need to be present immediately before or during the sexual violence, this captures the long-term patterns of abuse that can underlie sexual violence in the family violence context.³⁶ Similarly, recently introduced Victorian legislation provides that a person does not consent where this is due to force, a fear of force or harm of any type towards the person, another person or an animal regardless of when the force, harm or conduct giving rise to the fear occurs and whether it is as a result of a single incident or is part of an ongoing pattern.³⁷ As these legislative changes have recently been introduced, the effectiveness and impact of these reforms are not yet known.

As highlighted above, it is important that there is monitoring of this new legislation to ensure that more expansive consent vitiating circumstances do not give rise to any unintended consequences. For example, whether this leads to increasing the length and complexity of trials where significant evidence is required to show abuse during a long-term relationship.

Recommendation 3: Adopt WLSA's recommendation that the Commonwealth Government work with State and Territory Governments to ensure consent laws effectively respond to sexual violence that occurs within the context of family violence.

Consent education and training

Consultation questions:

- *Should police officers, judicial officers and first responders receive specialised training in relation to responding to allegations of sexual assault?*
- *How can sexual consent culture be changed? What topics should be covered by consent education in schools? When and how should this education be delivered?*

It is well recognised that legislative reform alone is not sufficient to engender cultural change which is critical in preventing gender-based violence and dispelling myths around sexual assault. It is imperative that changes to consent laws occurs alongside widespread

³³ Ibid.

³⁴ Ibid, s61HJ(1)(e).

³⁵ Ibid, s61HJ(1)(f).

³⁶ Liz Snell, 'Affirmative consent: What the 'common sense' NSW law reform means', *Law Society Journal Online*, 31 January 2022.

³⁷ *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022 (Vic)*, s36AA.

community education. This involves education at the individual, community and institutional level, including:

- Broad community awareness campaigns and public education.
- Specialist training for people that work with victim-survivors, including police officers, judicial officers, legal professionals and first responders.
- Comprehensive consent education which covers consent laws across all schools in Australia.

Public education to prevent sexual violence

The Commonwealth Government has an important role to play in investing in public education to improve community understanding of sexual violence as part of prevention. It is imperative that the Commonwealth Government works with State and Territory Governments to ensure that community education about sexual violence is ongoing and well-resourced. As highlighted in the VLRC Report, a “society that understands sexual violence is better able to support people who experience it” and “if the community has a good understanding of sexual violence, that will also improve the justice system’s response to sexual offences”.³⁸

There should be comprehensive and evidence-based community education about gender-based violence, respectful relationships and sexual consent (including, consent laws) which challenges common misconceptions about sexual violence.³⁹ This involves using mass media, community-level strategies and peers and leaders to champion positive messages.⁴⁰

Public education should also help people who experience sexual violence to identify and name the violence (including, image-based abuse, technology-facilitated abuse, child abuse and sexual violence in a family violence / intimate partner context), know their legal rights, how to access support and the available legal options.⁴¹

Community education should be developed following broad consultation with diverse community groups, including LGBTIQ+ communities, subject matter experts and people with lived experience. While this involves broad campaigns that can be delivered nationally, community education also needs to be tailored for diverse communities and audiences.

Organisations across Australia have a responsibility to facilitate cultural shifts, including within workplaces, as part of a national campaign to address sexual violence. Public education should be widespread and equip family and friends, health and other service providers and organisations to effectively respond to disclosures of sexual violence.⁴²

³⁸ VLRC Report, p.37.

³⁹ Liz Snell, ‘Affirmative consent: What the ‘common sense’ NSW law reform means’, *Law Society Journal Online*, 31 January 2022; VLRC Report, p.40.

⁴⁰ VLRC Report, p.39.

⁴¹ Ibid, p.40.

⁴² Ibid, p.46.

Recommendation 4: The Commonwealth Government invest in evidence-based public education to prevent sexual violence and engender cultural change nationally.

Specialist training for frontline workers

The sensitive, traumatic and gendered nature of sexual violence poses unique challenges for all those who work with victim-survivors throughout criminal proceedings, from first responders, to police, lawyers, court staff, child protection and judicial officers.⁴³ For victim-survivors who choose to pursue criminal proceedings, it is essential that this entire process, from initial reporting, through to investigation and prosecution, is victim-centred, culturally safe and trauma-informed. Victorian Women Lawyers have noted that this can only be achieved “if everyone is trained in incorporating a victim-centred and trauma-informed approach.”⁴⁴

We strongly support specialist training for police, judicial officers, legal professionals and first responders. Training should not only address consent laws and criminal procedure, but broader areas, such as the drivers of gender-based violence, gender inequality, the nature and dynamics of sexual violence, barriers to reporting, the effects of trauma, and conscious and unconscious bias.⁴⁵ It is important that this specialist training also focuses on trauma-informed practice which responds to the psychological and social impacts of trauma (including on cognition and memory).⁴⁶ Training needs to occur regularly with police, judicial officers, legal professionals and first responders throughout their careers. One-off training is unlikely to be as impactful. There should be mechanisms within the consent laws to monitor and evaluate training that has been delivered and its effectiveness. As noted above, in the recently passed NSW consent legislation, the Minister is required to conduct reviews, detailing the type of training that has been delivered, the different types of audiences (e.g., police officers, judicial officers and legal practitioners) and how effective the training has been.⁴⁷

Police play a critical role in responding to disclosures of sexual offences. We acknowledge that women face significant barriers to reporting sexual violence. This includes, language barriers, lack of knowledge of Australian laws, mistrust of police and the system, fear, shame and stigma,⁴⁸ as well as fear of child removal.⁴⁹ These barriers are compounded for victim-survivors who face marginalisation, discrimination and structural disadvantage. Sexual violence is underreported among First Nations communities.⁵⁰ Victim-survivors from culturally and linguistically diverse backgrounds can be deterred from reporting due

⁴³Victorian Women Lawyers, *Submission to the Federal Senate Legal and Constitutional Affairs References Committee's Inquiry into current and proposed sexual consent laws in Australia*, March 2023, p. 12.

⁴⁴ Ibid.

⁴⁵ Liz Snell, 'Affirmative consent: What the 'common sense' NSW law reform means', *Law Society Journal Online*, 31 January 2022.

⁴⁶ VLRC Report, p.395.

⁴⁷ *Crimes Legislation Amendment (Sexual Consent Reforms) Act 2021*, s583.

⁴⁸ Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p. 12; InTouch Multicultural Centre Against Family Violence, *Submission to the VLRC Review: Improving the Response of the Justice System to Sexual Offences*, 22 January 2021, p. 4.

⁴⁹ Law Institute of Victoria submission to the *Victorian Law Reform Commission - Improving the Response of the Justice System to Sexual Offences*, 15 January 2021, p. 13.

⁵⁰ Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p. 12.

to fear about the response from family and community.⁵¹ It is essential that police are trained on how to respond to reports of sexual violence in a trauma-informed and culturally safe way. For example, there should be flexibility in the way in which police take statements (in terms of both location and format).⁵² As recommended in the VLRC Report, specialist training for police should seek to improve responses to specific groups, including children and young people, people that work in the sex industry and people in contact with the criminal legal system.⁵³

Specialist training for police should also address common misconceptions about sexual offences, including late reporting, varied emotional responses and lack of evidence of 'fighting back'.⁵⁴ It is also important that police and prosecutors receive training on how to communicate decisions about legal proceedings (including, decisions not to prosecute and the court outcomes) in a trauma informed way. Police should be encouraged to work closely with specialist sexual assault services and local communities to make the criminal legal system more accessible for victim-survivors.⁵⁵

While we understand the focus of this inquiry is on consent laws, we highlight that specialist training should not only be confined to staff working within the criminal legal system (police, judicial officers, legal professionals and first responders), but extend to any frontline staff working with victim-survivors, such as health workers, social workers and teachers.

It is well recognised that frontline workers can experience vicarious trauma working in distressing areas. It is important that all professionals have an opportunity to undertake resilience training to promote their health and wellbeing.⁵⁶

Recommendation 5: The Commonwealth Government work with State and Territory Governments to ensure that best practice training is delivered to police, judicial officers, first responders and legal professionals on an ongoing basis.

Consent education in schools

Consistent and effective consent education in schools is essential. There is a high incidence of sexual violence against young women, including stealthing. In 2016, the Australian Bureau of Statistics reported that approximately one in six women and one in nine men in Australia had experienced physical and sexual abuse by the age of 15.⁵⁷ An

⁵¹ Ibid.

⁵² VLRC Report, p.354-356.

⁵³ VLRC Report, p. 374.

⁵⁴ Victorian Women Lawyers, *Submission to the Federal Senate Legal and Constitutional Affairs References Committee's Inquiry into current and proposed sexual consent laws in Australia*, March 2023,, p.13.

⁵⁵ Ibid, p. 351.

⁵⁶ Victorian Women Lawyers, *Submission to the Federal Senate Legal and Constitutional Affairs References Committee's Inquiry into current and proposed sexual consent laws in Australia*, March 2023, p. 12.

⁵⁷ Australian Institute of Health and Welfare, Parliament of Australia, *Family, Domestic and Sexual Violence in Australia: Continuing the National Story* (Full Report, May 2019), p. 4.

even higher proportion of young women may have experienced stealthing. A Monash University study found that one in three women had reported being 'stealthed'.⁵⁸

It is critical that evidence-based consent education is developed with subject-matter experts based on best practice internationally and adapted to meet local community needs. This education should cover a range of topics, including healthy and respectful relationships, consent and sexual assault, gender equality, drivers of gender-based violence and LGBTQIA+ experiences. Consent education programs in school should be mandatory for all schools across Australia. Schools must be appropriately resourced and supported to take a comprehensive, whole-of-school approach to age-appropriate healthy relationships education across the lifespan of students' education.

Education on consent laws

It is important that there is greater emphasis on consent laws during consent education in schools. While explaining the legal implications of consent to students is an added dimension to what is an already complex point of discussion, it is important that students are made aware of their legal obligations to supplement their education of respectful and healthy relationships. Resourcing schools to partner with community legal centres is an effective model for allowing schools to access the legal expertise when developing education content within a legal framework.

The Commonwealth Government has a role to play in promoting best practice and setting a standard of mandatory consent education across Australia. While we understand that sexual consent laws are not identical across the nation, the general concepts of consent and respectful relationships do not change, and all students should be made aware of their rights and responsibilities. We recommend consistent education on consent laws across government, non-government and religious schools.

Case Study – Sporting Change

SMLS' flagship program, *Sporting Change*, supports young people from diverse backgrounds to engage constructively in the community by using sport to teach young people about the law. The program also increases access to justice through an integrated school lawyer.

In this program, consent laws are taught as part of a *Healthy Relationships* unit. The *Sporting Change* team focus on teaching students how consent laws operate with real life examples they may encounter. For example, when speaking about the age of consent, for students over the age of 16, the team discuss issues where power imbalances may exist and negate consent such as with sporting coaches. Students are often surprised to learn about the technicality of consent laws for young people.

⁵⁸ Rosie L. Latimer et al, 'Non-consensual Condom Removal, Reported by Patients at a Sexual Health Clinic in Melbourne, Australia' (2019) 13(12) PLOS One 1, p. 1.

Legal education about consent laws in school is essential. Technology and social media has created additional complexities for young people. For example, young people who distribute intimate images are potentially committing a criminal offence without necessarily understanding the repercussions. Survey data collected prior to community legal education sessions run by SMLS unveiled a significant lack of awareness of the laws regarding intimate images. SMLS's survey indicated that over 80 per cent of students did not know what to do if they received an intimate image, and over 70 per cent reported that they thought it was legal to show their friends the image. These survey results demonstrate the importance of educating young people regarding laws that impact them.

Drawing on SMLS' experience of delivering consent education in schools, SMLS suggests that education about consent laws be delivered in an age-appropriate way once students have an understanding of fundamental concepts around consent and respectful relationships. In SMLS' experience, there can also be benefits to having joint sessions with students of all genders to promote joint discussions around consent. SMLS supports the use of real-life examples of vitiation of consent, such as stealthing, rather than an over-reliance on euphemisms (such as, the Commonwealth's 'milkshake' analogy).⁵⁹ It is important that consent education in schools address prevalent and emerging issues facing young people as part of more holistic sexual education. Chanel Contos advocates for mandatory consent education which is more holistic and delivered to students at an earlier age.⁶⁰ She recommends talking about the "intricacies of it openly."⁶¹ SMLS considers that including other staff with relevant expertise, such as a school nurse, when delivering consent education at school can also be beneficial.

SMLS has provided sexual consent education to LGBTQIA+ youth and have found that current education models are not inclusive of the queer community. In SMLS' experience, there tends to be a greater focus on heteronormative sexual relationships in consent education, or education around stereotypical 'penetrative' sex, which is not always applicable in queer relationships. This calls for a greater focus on empowering young LGBTQIA+ students to explore sex, consent and respect safely.

Online safety

Sexual education at schools should encompass online safety to address the increasing risks of sexual exploitation of children and young people online. SMLS's Youth Lawyer program has seen an increase in intervention orders prohibiting the creation and distribution of fake child pornography targeting young people. For example, Community Legal Centres have seen a growing trend of sextortion. This involves the coercion of child victims into sending intimate images to an offender pretending to be another young person who threatens to distribute the image unless they receive payment.⁶² In 2022, the

⁵⁹ Eden Gillespie, 'Push for 'holistic' sex ed continues, as petition grows to 40k signatures' *The Feed*, 9 June 2021, <https://www.sbs.com.au/news/the-feed/article/push-for-holistic-sex-ed-continues-as-petition-grows-to-40k-signatures/mhrb8e2yo>

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Australian Centre to Counter Child Exploitation, "AFP and AUSTRAC target offshore extortion syndicates preying on Australian youth", 1 December 2022, available at: <https://www.accce.gov.au/news-and-media/media-release/afp-and-austrac-target-offshore-sextortion-syndicates-preying-australian-youth>

Australian Centre to Counter Child Exploitation (ACCCE) received more than 100 reports each month regarding online sextortion scams targeting teenagers, which is a 100-fold increase from the past year.⁶³

Recommendation 6: The Commonwealth Government work with State and Territory Governments to ensure that best practice consent education is delivered in all schools across Australia.

Recommendation 7: Consent education in schools includes information about consent laws, with schools partnering with community legal services to design and deliver the legal education component.

Improving the criminal legal system's response to victim-survivors

Consultation question: How could victim-survivors' experience of the criminal justice system be improved?

The criminal legal process can be daunting and re-traumatising for victim-survivors, particularly for victim-survivor who do not understand the language or process.⁶⁴ As highlighted in the VLRC Report, "[t]oo often, people who have experienced sexual violence are left alone to navigate a complex and frightening system."⁶⁵ This is especially true for victim-survivors who face additional barriers to accessing the justice system, including victim-survivors with a disability, from culturally and linguistically diverse backgrounds,⁶⁶ Aboriginal women,⁶⁷ and those who have previously been in contact with the criminal legal system.⁶⁸ As highlighted in the VLRC Report, "[c]ourts may not provide an environment in which people feel comfortable talking about intimate details, let alone being challenged about them".⁶⁹ Treating victim-survivors with respect and dignity is "more likely than anything else to influence whether they are satisfied with the criminal justice system."⁷⁰

Victim-survivors require strong and continuous support navigating the criminal legal system.⁷¹ Victim-survivors require independent legal representation as part of the criminal legal process, as well as stronger practical and therapeutic supports. Key changes need to be made to the criminal legal system to improve responses to victim-survivors. The VLRC Report has made a number of important recommendations around how the justice system response can be improved for victim-survivors. We suggest that these recommendations are taken into account as part of this inquiry.

⁶³ Ibid.

⁶⁴ VLRC Report, p. 455.

⁶⁵ Ibid, p. xxv.

⁶⁶ InTouch Multicultural Centre Against Family Violence, *Submission to the VLRC Review: Improving the Response of the Justice System to Sexual Offences*, 22 January 2021.

⁶⁷ Djirra, *Submission to the Victorian Law Reform Commission Inquiry: Improving the Response of the Justice System to Sexual Offences*, December 2020.

⁶⁸ VLRC Report, p. 27.

⁶⁹ Ibid, p.455.

⁷⁰ Ibid, p.454.

⁷¹ Ibid.

Independent legal representation for victim-survivors

Victim-survivors have traditionally been treated as witnesses for prosecution and do not generally have access to independent legal representation.⁷² Victim-survivors should have independent legal advice at key stages of the criminal legal process to ensure that the rights and interests of victim-survivors are protected.⁷³

The VLRC Report has highlighted a number of benefits of independent legal representation for victim-survivors. This includes enabling victim-survivors to be more involved in the criminal legal process and giving them a greater sense of having “rights, legitimacy and identity” in the process.⁷⁴ Legal representation can also improve the quality of testimony through more support during cross-examination and safeguard against inadmissible and inappropriate questions.⁷⁵ This is likely to reduce victim-survivor’s distress associated with the criminal legal process and potentially encourage more reporting and minimise attrition.⁷⁶

There are examples internationally of independent legal representation for victim-survivors during criminal proceedings for sexual offences. For example, in a pilot program in Northumbria, England, lawyers:

- advise on the police reporting process
- support victim-survivors during police interviews to ensure that police follow procedures and victim-survivors are made aware of their options
- protect victim-survivor’s privacy rights during the investigation and disclosure
- act in the best interests of victim-survivors in relation to cross-examination on sexual history.⁷⁷

In Northern Ireland, a pilot scheme has commenced to implement the Gillen Review. This review recommended a scheme for legal advocates to provide legal advice from the time the incident was first reported to police up until trial. This includes appearances at a cross-examination discussions to allow the legal advocate to challenge the appropriateness of proposed questioning and uphold the victim-survivors rights to respectful and dignified treatment.⁷⁸

The VLRC Report recommended that Victoria set up a pilot scheme of independent lawyers for victim-survivors which would focus on the “substantive legal entitlements” of victim-survivors, and “their rights to privacy and dignified treatment”.⁷⁹ The VLRC Report’s recommendations aimed to strike a balance between ensuring a fair trial and protecting the

⁷² Women’s Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.9.

⁷³ VLRC Report, p.265.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid, p.266.

⁷⁸ Ibid, p.267.

⁷⁹ Ibid.

rights of victim-survivors.⁸⁰ The VLRC recommended that the Victorian Government fund legal advice and representation until the trial to ensure victim-survivors can exercise their rights and protect their interests, including:

- “their rights and privileges in relation to evidence (for example, the confidential communication privilege, alternative arrangements 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
- the implications of taking part in restorative justice and referrals to restorative justice when applying for compensation or restitution orders.”⁸¹

We support the VLRC’s recommendation and consider that this approach should be adopted nationally. It is also important that victim-survivors have early access to independent legal assistance so that they can make informed choices about reporting a sexual offence and engaging with the criminal legal process.⁸² We suggest that legal services are funded to provide legal advice about the police reporting process to ensure that victim-survivors are aware of their options and that proper procedures are followed.⁸³ Victim-survivors often have other related legal matters and should be linked into legal assistance with these issues, such as family violence, child protection, family law and tenancy. We have set out the important role the community legal sector can play in providing legal assistance to victim-survivors below.

While our submission focuses on independent legal representation during the criminal legal process, we also highlight the need for strengthening therapeutic and practical supports for victim-survivors. For example, the VLRC Report has recommended introducing ‘independent advocates’ who provide practical and emotional support to victim-survivors.⁸⁴ ‘Independent advocates’ are intended to act as a single point of contact from the time of disclosure to finalisation of the criminal process.⁸⁵ This support should not be contingent on the victim-survivor’s engagement with the criminal legal process.⁸⁶

Recommendation 8: The Commonwealth Government fund legal services to provide independent legal advice and representation to victim-survivors at key stages of the police reporting and criminal legal process, as well as to link victim-survivors into legal assistance with related legal matters.

⁸⁰ Ibid7.

⁸¹ Ibid, Recommendation 46, p.268.

⁸² Ibid.

⁸³ Ibid, p.266.

⁸⁴ Ibid, p. xxxvi.

⁸⁵ Ibid, p. 256.

⁸⁶ Ibid, p. 258.

Recommendation 9: The Commonwealth Government work with State and Territory Governments to ensure that victim-survivors have access to practical and therapeutic supports which are culturally safe and trauma informed.

Improving victim-survivors experiences at court

Key features of the criminal legal system can make it challenging for victim-survivors to engage in the criminal process.⁸⁷ The VLRC Report has made a number of recommendations on how the criminal legal system can be improved for victim-survivors, while balancing fundamental principles of the criminal legal system, including a right to a fair trial.⁸⁸ Some of the VLRC's recommendations have since been introduced into legislation in Victoria. We suggest that these recommendations are taken into account as part of this review. We have set out some of the key VLRC recommendations below which should be considered nationally.

Jury directions

Jury directions should be strengthened to counter misconceptions about sexual violence.⁸⁹ These directions must be given in a clear and understandable way to juries, early on in the process and consistently throughout the trial.⁹⁰

The VLRC recommended that jury directions should address the following misconceptions about sexual violence:

- the absence or presence of emotion or distress when reporting or giving evidence
- the person's appearance (what they were wearing)
- use of drug and alcohol
- conduct which is perceived to be sexual or flirtatious
- the various different circumstances where non-sexual activity can occur, including people who are married, know each other, are in a relationship, people of the same or different gender identities or sexual orientations and as part of the sex industry
- counterintuitive behaviours, such as having an ongoing relationship with the alleged perpetrator after the non-consensual sexual activity.⁹¹

As highlighted by WLSA, it is also important that juries understand that a lack of resistance in a relationship with an alleged perpetrator or any previous consensual sexual activity is

⁸⁷ Ibid, p.412.

⁸⁸ Ibid, p.xxviii.

⁸⁹ Ibid, p. 433.

⁹⁰ Sexual Assault Services Victoria submission to the *Inquiry into current proposed sexual consent laws: A submission to the Legal and Constitutional Affairs References Committee*, 16 March 2023, p. 14.

⁹¹ VLRC Report, p.441.

not relevant to the determination of whether consent was formed in the relevant circumstances.⁹²

The VLRC recommended that jury directions be given earlier in the trial. This includes by the judge at the earliest opportunity (e.g., before evidence is adduced), repeated during the trial and where requested by counsel before or during the trial (in addition to the judge's own motion).⁹³

Jury directions which are delivered in a clear and understandable way can have an important educative purpose during criminal trials for sexual offences. The Commonwealth should work with State and Territory Governments to ensure that jury directions are strengthened across Australia. We also suggest that the Committee consider other recommendations made by the VLRC regarding jury directions as part of this inquiry.

Reducing re-traumatisation of victim-survivors during cross-examination

For many victim-survivors, giving evidence and being cross-examined is one of the most difficult parts of the criminal trial process.⁹⁴ Victim-survivors are often fearful about how they may be treated by defence counsel during cross-examination, which can itself be a barrier to reporting and accessing the criminal legal system.⁹⁵ It is important that victim-survivors are protected from improper or traumatic questioning from defence counsel.

While there are currently limits (in the Victorian context) on improper questioning during cross-examination, the VLRC recommended further reforms to ensure that victim-survivors feel respected at trial.⁹⁶ For example, the VLRC recommended that a 'ground rules hearing' take place before a victim-survivor gives evidence. This involves the prosecutor, defence counsel and judge discussing what needs to happen at trial to ensure the proper and respectful treatment of the victim-survivor.⁹⁷ It was suggested that this cover the rules and tone of cross-examination, including the parameters of questioning so it is not improper or irrelevant and the scope of questions (particularly for sensitive topics to reduce re-traumatisation), as well as any other ways to establish a sensitive and respectful environment.⁹⁸ It was also considered that there should be a focus on the victim-survivor's needs and preferences.⁹⁹ The victim advocate or the victim-survivor's legal representative should be entitled to be involved in this discussion.¹⁰⁰ Having these discussions early will make it easier for judicial officers to stop inappropriate questions, and help ensure the respectful treatment of victim-survivors.¹⁰¹

⁹² Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p. 16.

⁹³ Ibid, p. 441.

⁹⁴ VLRC Report, p.456.

⁹⁵ Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p. 15.

⁹⁶ VLRC Report, p.456, 460.

⁹⁷ Ibid, p.461.

⁹⁸ Ibid, p.461, 463.

⁹⁹ Ibid, p.462.

¹⁰⁰ Ibid.

¹⁰¹ Ibid, p. 461.

While these recommendations have been made in the Victorian context, we suggest that the Commonwealth Government consider these VLRC recommendations as part of creating a more respectful court culture and reducing re-traumatisation of victim-survivors nationally.

Protecting the privacy of victim-survivors

Current laws do not adequately protect victim-survivors' confidential health and counselling records from being disclosed in sexual assault trials. As highlighted by WLSA, these protections are often overridden during trials which leads to the accused having access to victim-survivor's sensitive information.¹⁰² This can deter victim-survivors from accessing counselling and support which can have profound impacts on their wellbeing.¹⁰³

The VLRC recommended that protections for confidential communications should be strengthened. For example, the VLRC considered that procedural requirements should be strengthened to ensure that victim-survivors can participate in decisions about the use of communications made in confidence by a victim-survivor to a health practitioner or counsellor.¹⁰⁴ The VLRC also considered that victim-survivors should be entitled to participate in applications to introduce evidence of their sexual history.¹⁰⁵ It was recommended that victim-survivors have a right to independent legal advice and representation in these matters.

The Commonwealth Government should work with State and Territory Governments to ensure that the protection of victim-survivor's confidential health and counselling records are strengthened. Victim-survivors should have an opportunity to participate in these court proceedings and access legal representation to ensure that they can meaningfully intervene and express their views.

Other improvements

The VLRC recommended that courts are appropriately funded to design and install safe infrastructure for victim-survivors, including separate entrances and exits for victim-survivors, appropriate means to screen victim-survivors from the accused when giving evidence in court and improved technology to enable victim-survivors to give their best evidence.¹⁰⁶

It was also recommended that specialist interpreter services be available to victim-survivors who come from non-English speaking backgrounds, as well as Auslan interpreters, during the court process.¹⁰⁷ This requires further investment in training for

¹⁰² Women's Legal Service Australia submission to the *Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p. 14.

¹⁰³ Ibid.

¹⁰⁴ VLRC Report, p.475.

¹⁰⁵ Ibid, p.478.

¹⁰⁶ Ibid, p.468.

¹⁰⁷ VLRC Report, p.333; Also see InTouch Multicultural Centre Against Family Violence, *Submission to the VLRC Review: Improving the Response of the Justice System to Sexual Offences*, 22 January 2021, p. 3-4.

language services in family violence and sexual violence and extending the pool of trained interpreters.¹⁰⁸

We suggest that the Commonwealth Government work with State and Territory Governments to ensure that similar reforms are considered and rolled out nationally (as applicable to each jurisdiction).

Recommendation 10: The Commonwealth Government work with State and Territory Governments to improve the criminal legal system’s response to victim-survivors, including in the following areas:

- strengthening jury directions to ensure that they counter misconceptions about sexual violence and are made earlier in the proceedings.
- reducing the risk of re-traumatisation of victim-survivors during cross-examination and ensuring a respectful environment in court.
- strengthening protections of victim-survivor’s confidential health and counselling records. This includes providing victim-survivors with an opportunity to participate in these proceedings and have access to independent legal representation.
- ensuring that the design of court rooms and arrangements for giving evidence are safe and effective and that victim-survivors have access to specialised interpreting services.

Restorative justice processes

Many victim-survivors do not want to pursue formal court proceedings or this option may not be available to them.¹⁰⁹ Restorative justice approaches can offer an alternative to the traditional court system. These processes are not meant to replace other criminal or civil legal options, but are a way of expanding the options available for people who have experienced sexual violence.¹¹⁰ Restorative justice can take many forms including an exchange of letters, or a conference between the person harmed and the person responsible.¹¹¹

While restorative justice processes may not be possible or appropriate for all victim-survivors, it can support some victim survivors “to heal and put things as right as

¹⁰⁸ VLRC Report, p.333.

¹⁰⁹ See for example, the submission by Women’s Legal Service Victoria to the Victorian Law Reform Commission who stated that: A criminal justice response is seldom sought by and is often inappropriate to the needs of our clients who have experienced sexual assault in the context of family violence, p. 8.

¹¹⁰ VLRC Report, p.184.

¹¹¹ Ibid, p. 187.

possible”.¹¹² It can be a forum for people who have been harmed to be heard and acknowledged and where the perpetrator can be held accountable.¹¹³

Restorative justice can benefit the person harmed where the process is safe and responsive to the victim-survivors needs.¹¹⁴ Evaluations indicate that it was “viewed by many victims of crime as ‘fairer, more satisfying, more respectful and more legitimate’ than what the criminal justice system offers”.¹¹⁵ Evaluations also indicate that restorative justice processes can assist perpetrators responsible for violence to understand the impact of the crime and provide an opportunity for them to “take responsibility and make amends”.¹¹⁶ It also appears that restorative justice can reduce the likelihood of reoffending.¹¹⁷

The VLRC Report highlighted key risks involved in the restorative justice process. This includes the process repeating the dynamics of the violence resulting in the victim-survivor being retraumatised. It could also result in implications that sexual violence is unimportant and a private matter rather than a “public wrong that the state must redress”.¹¹⁸

Restorative justice processes must be guided by best practice principles. This includes that participation must be voluntary, the perpetrator must acknowledge responsibility for the violence, the process must prioritise safety and the needs of the victim-survivor.¹¹⁹ Any outcomes and agreements must be fair and reasonable in line with the focus on healing and respect.¹²⁰ Participants must be screened before participating in a restorative justice process to ensure it is suitable and proper safeguards are in place.¹²¹ Restorative justice processes must be adequately resourced to ensure that participants have access to independent legal advice, as well as other professional support throughout the process.¹²²

Restorative justice processes must be culturally safe, co-designed and developed in close consultation with people with lived experience of sexual violence, specialist sexual assault services and other experts (including, legal services). These processes should be integrated within the family violence response system given the high incidence of sexual violence that occurs in a family violence context.¹²³

The design and implementation of restorative justice processes involving Aboriginal and Torres Strait Islander communities must be community-led, victim-centred and responsive

¹¹² VLRC Report, p.184.

¹¹³ VLRC Report, p.191.

¹¹⁴ VLRC Report, p.190.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid, p.191.

¹¹⁸ VLRC Report, p.194, 196.

¹¹⁹ Ibid, p.197-202.

¹²⁰ Ibid, p.199.

¹²¹ Springvale Monash Legal Service Inc, *Submission to the Victorian Law Reform Commission, Improving the Response of the Justice System to Sexual Offences Review*, 29 January 2021, p. 17-18.

¹²² VLRC Report, p.211.

¹²³ Women’s Legal Service Victoria submission to the *Victorian Law Reform Commission, Improving the Response of the Justice System to Sexual Offences Review*, p. 8.

to that community.¹²⁴ The process must acknowledge the deep-seated trauma and complexities of sexual violence experienced by Aboriginal people to ensure accessibility and safety for Aboriginal women.¹²⁵

Recommendation 11: The Commonwealth, State and Territory Governments resource the expansion of best practice restorative justice processes across Australia.

The important role of integrated legal services in supporting victim-survivors

In the submission, we have highlighted the importance of independent legal advice and representation for victim-survivors prior to reporting to police and during the criminal legal process, as well as with intersecting legal issues, such as victim's compensation, civil options and family violence.

The need for a dedicated legal service for victims of crime (including, victim-survivors of sexual offences) has been recommended in a number of reviews.¹²⁶ The Centre for Innovative Justice at RMIT found that "victims of crime wanted, but had no source of, dedicated and comprehensive legal advice".¹²⁷ Evidence indicated that there is a strong correlation between victimisation arising from crime and legal need.¹²⁸ For example, studies have estimated that experiencing crimes multiple times can elevate the risk of having a civil legal issue by 192 per cent.¹²⁹ Research has shown that access to legal advice at an early stage can reduce escalation of legal issues and have a 'preventative effect' in terms of minimising compounding harms for people experiencing vulnerability.¹³⁰ The review identified that victims of crime often had a wide range of unmet legal needs beyond the criminal legal process, which can snowball if not addressed.¹³¹ This can include advice on the criminal legal process, family violence, child protection, family law and options for compensation and redress.¹³²

Community Legal Centres have considerable experience providing legal services to victim-survivors in a trauma informed and culturally safe way. Community Legal Centres are

¹²⁴ The Victorian Aboriginal Legal Service, *Submission to the Victorian Law Reform Commission Inquiry: Improving the Response of the Justice System to Sexual Offences*, March 2021, p. 5.

¹²⁵ Djirra, *Submission to the Victorian Law Reform Commission Inquiry: Improving the Response of the Justice System to Sexual Offences*, December 2020, p. 15.

¹²⁶ VLRC Report, p.263; Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Report No.34, August 2016, Recommendation 23; Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review*, Final Report, November 2020, p.147–155; Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Report No 36, July 2018, Recommendation 16; Sentencing Advisory Council (Vic), *Restitution and Compensation Orders*, October 2018, Recommendation 8.

¹²⁷ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review*, Final Report, November 2020, p.17.

¹²⁸ *Ibid*, p.149.

¹²⁹ *Ibid*.

¹³⁰ *Ibid*.

¹³¹ *Ibid*, p.17.

¹³² *Ibid*, p.149.

leaders in providing integrated service delivery models and health justice partnerships. Community Legal Centres work in partnerships with sexual assault services, family violence services, health centres, schools and community hubs. This helps people to understand and identify their legal need earlier, reach people before their legal issues escalate and provide more wrap-around support. This multi-disciplinary support model reduces the need for victim-survivors to re-tell their stories to multiple service providers, reducing the risk of re-traumatisation.

We welcome the Commonwealth Government's commitment to investing \$8.4 million to pilot specialised and trauma-informed legal services for victim-survivors of sexual assault.¹³³ We support ongoing investment in the community legal sector to assist victim-survivors with the criminal legal process, as well as other intersecting legal issues.

Case study: Integrated Services for Survivor Advocacy

SMLS and the South East Centre Against Sexual Assault's (SECASA) have a long-standing partnership: Integrated Services for Survivor Advocacy (ISSA). The ISSA supports victim survivors to recover from sexual assault and/ or family violence and navigate the legal system. Many of the women accessing the integrated program have faced profound challenges as a result of their traumatic experiences, including isolation, lack of support from family and psychological issues, such as complex trauma, anxiety and memory loss. Many of these women have not been able to talk about their traumatic experiences and have carried these stories with them for years; finding it hard to remain in stable work due to their trauma. The integrated approach is critical in supporting these women. While SMLS provides legal assistance with victims of crime financial assistance applications and other legal issues (such as fines, infringements and tenancy), SECASA supports women through therapeutic intervention, counselling and crisis response. Over the year in 2019/2020, SMLS successfully secured over \$550,000 in compensation for victims of family violence and sexual assault.¹³⁴

Recommendation 12: The Commonwealth Government, State and Territory Governments invest in the community legal sector to provide trauma-informed legal services to victim-survivors.

¹³³ Commonwealth Attorney-General, 'Investing in Integrity, Human Rights and Safety', 25 October 2022.

¹³⁴ South-East Monash Legal Service, *Annual Report 2019-2020*, p.30.