

ANROWS

AUSTRALIA'S NATIONAL RESEARCH
ORGANISATION FOR WOMEN'S SAFETY
to Reduce Violence against Women & their Children

Office of the Commissioner for Victims of Crime
GPO Box F317
WA 6841

By email: experiences@justice.wa.gov.au

Re: Review of criminal justice responses to sexual offending

Dear Commissioner

ANROWS thanks the Office of the Commissioner for Victims of Crime for the opportunity to respond to the review of criminal justice responses to sexual offending.

ANROWS is an independent, not-for-profit company established as an initiative under Australia's *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan). Our primary function is to build the evidence base that supports ending violence against women and children in Australia. ANROWS is embedded in the National Plan architecture and will continue to deliver and develop this function across the next decade under the *National Plan to End Violence against Women and Children 2022–2032*. Every aspect of our work is motivated by the right of women and children to live free from violence and in safe communities. We recognise, respect and respond to diversity among women and children, and we are committed to reconciliation with Aboriginal and Torres Strait Islander Australians.

Primary funding for ANROWS is jointly provided by the Commonwealth and all state and territory governments of Australia. ANROWS is also, from time to time, directly commissioned to undertake work for an individual jurisdiction, and successfully tenders for research and evaluation work. ANROWS is registered as a harm prevention charity and deductible gift recipient, governed by the Australian Charities and Not-for-profit Commission (ACNC).

ANROWS is pleased to make a submission that outlines proposed key principles to underpin the review of criminal justice processes for victims and survivors of sexual offences. This submission draws on evidence from rigorous peer-reviewed research, including relevant ANROWS research. We would be very pleased to assist the Commissioner further as required.

Yours sincerely



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20 October 2023

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Overall comments

ANROWS commends the Western Australian Office of the Commissioner for Victims of Crime (the Office) for conducting a review of criminal justice system responses to sexual offending (the Review). ANROWS has previously made submissions to jurisdictional inquiries and reviews on consent laws and sexual offences in New South Wales (ANROWS, 2018, 2019a, 2019b), Queensland (ANROWS, 2020), the Northern Territory (ANROWS, 2023b), and the Commonwealth (ANROWS, 2023a). ANROWS welcomes the opportunity to make a submission to the Review and would be pleased to assist the Office further as required.

This submission draws on the ANROWS evidence base and other relevant research to outline key principles that should underpin review efforts to support victims and survivors of sexual violence (SV) throughout their contact with the criminal justice system. Criminal justice processes should:

- be trauma informed
- challenge and reject victim-blaming attitudes, rape myths, and mistrust of women’s reports of sexual violence
- recognise and respond to the context in which sexual offences occur, in particular the use of coercive control in intimate partner violence (IPV).

These principles can be supported and enacted through a number of practical actions and strategies. ANROWS notes that the evidence base on the effectiveness of these actions and strategies is still developing. Where possible, ANROWS provides references to relevant evidence and highlights opportunities to learn from other jurisdictions. The implementation of any practical actions and strategies must be tailored to the Western Australian policy and practice context, underpinned by engagement with people with lived expertise, and subject to ongoing evaluation.

Victims and survivors benefit from a trauma-informed response

ANROWS supports the focus in the discussion papers on the importance of trauma-informed and “shame-sensitive” responses within the criminal justice system.

ANROWS research highlights that trauma-informed responses increase the likelihood of victims and survivors reporting and can help to mitigate the ongoing and serious health and psychological impacts of sexual violence (Blagg et al., 2018; Hegarty et al., 2017; Hegarty et al., 2022; Maher et al., 2018; Townsend et al., 2022; Vaughan et al., 2016). A trauma-informed response must be underpinned by an understanding of complex trauma, the impact of sexual violence, the dynamics and impacts of intimate partner sexual violence (IPSV), cultural competency and disability awareness (Blagg et al., 2018; Kaspiw et al., 2017; Maher et al., 2018, Salter et al., 2020). Trauma-informed responses within the criminal justice system could support the safety of victims and survivors and improve their experiences of the justice system.

Recent studies have suggested that shame creates an additional layer of harm for victims and survivors, and reducing it is critical in healing from violence (Salter & Hall, 2020). The concept of shame is contested but has been described as “strong negative emotions characterised by perceptions of the global devaluation of oneself” (Budiarto & Helmi, 2021, p. 132). Shame can also be a barrier to seeking help. A survey commissioned by ANROWS of 1,122 victims and survivors found that 63 per cent identified feeling ashamed as the reason that they did not seek help following violence (Hegarty et al., 2022). This

suggests there is value in ensuring that systems and DFSV services are shame sensitive (Dolezal & Gibson, 2022).

Existing research provides examples of potential actions to support trauma-informed criminal justice processes. For example, a recent integrative review by George et al. (2023) provides insights into best practice specialist measures that embody a trauma-informed approach to address victims' and survivors' needs in the criminal justice system. The Office may also benefit from consulting ANROWS's recently released Evidence Portal (ANROWS, 2023c), which is a living resource of interventions from high-income countries that aim to address and end violence against women.

There is also an opportunity to learn from reform in other jurisdictions. The Australian Government committed funding in the 2023–24 Budget to strengthening criminal justice responses to sexual assault while preventing further harm to victims and survivors. This includes funding to establish an Australian Law Reform Commission (ALRC) Inquiry into justice responses to sexual violence, due to commence in late 2023 (Attorney-General's Department, n.d.). Furthermore, three new pilot programs have also been funded under the October 2022–23 Budget to explore new ways to provide trauma-informed legal services for sexual violence victims and survivors (Attorney-General's Department, 2023). Dedicated funding has been allocated for evaluation to measure the pilot programs' impact and inform future legal services (Attorney-General's Department, n.d.). Other recent relevant inquiries include the Northern Territory Government's Inquiry into consent for sexual offences, the Commonwealth of Australia's Inquiry into current and proposed sexual consent laws in Australia, and the Queensland Commission of Inquiry into Queensland Police Service responses to domestic and family violence.

Victim-blaming attitudes, rape myths, and mistrust of women's reports of sexual violence must be addressed

Problematic attitudes and understandings persist

Victim-blaming attitudes, rape myths, and mistrust of women's reports of sexual violence persist in Australia. A recent ANROWS study investigated Australians' mistrust of women's reports of sexual assault and found that participants viewed allegations from a default position of mistrust, informed by an interplay of rape myths and problematic stereotypes about women (Minter et al., 2021). Findings from the 2021 National Community Attitudes towards Violence against Women Survey (NCAS) indicated that problematic attitudes towards, and misunderstandings about, sexual offending are evident across Australia, and this national trend is consistent with state-based findings in Western Australia (Coumarelos et al., 2023a; Coumarelos et al., 2023b). For example, the NCAS highlighted that, in Australia:

- 34 per cent of respondents agreed that sexual assault allegations were commonly used as a way of “getting back” at men.
- 24 per cent of respondents agreed that allegations were often made in response to a regretted sexual encounter.
- 14 per cent of respondents agreed that many sexual assault allegations made by women are false.
- 10 per cent of respondents agreed that an intoxicated woman is partly responsible if she is sexually assaulted.
- 10 per cent of respondents agreed that women often say “no” when they mean “yes” (Coumarelos et al., 2023a).

While the 2021 NCAS did highlight an overall increase in the attitudinal rejection of sexual violence by Australians, there is clearly a long way to go.

Problematic attitudes and understandings impact reporting and court processes

These victim-blaming narratives, rape myths, and mistrust of women have negative impacts on victims' and survivors' experiences with the criminal justice system. ANROWS commends the Review's discussion papers for recognising this impact. ANROWS evidence highlights that these myths, misconceptions and mistrust can undermine police, legal and juror perceptions about the credibility of sexual violence allegations (Coumarelos et al., 2023a; Salter et al., 2020) and can be further reinforced by criminal justice responses from police reporting through to court (see Hegarty et al., 2022; Salter et al., 2020; Tarrant et al., 2019).

A significant body of research has highlighted the impacts of these attitudes on reporting and police responses. In a recent ANROWS study with over 1,000 victims and survivors of IPV and/or SV, 35.6 per cent of women sought help from justice services (e.g. police or solicitors), and of those women, only 53.9 per cent found that support helpful (Hegarty et al., 2022, p. 58). In qualitative interviews with a further 30 victims and survivors, this research was able to explore in detail why some women found the justice system unhelpful. Their experiences support the evidence that victim-blaming narratives undermine justice responses, with one woman being advised by police to withdraw sexual assault charges against her ex-partner because she had shared intimate texts with him and "a barrister would rip [her] apart and the jury wouldn't believe [her]" (Hegarty et al., 2022, p. 75). In another study, a sexual assault sector employee recounted the ways police pre-judged the likelihood of conviction based on whether a woman's complaint would be believed and attempted to discourage women from pursuing a criminal charge as a result, even where police themselves believed the offence had occurred (Salter et al., 2020).

The impact of these myths, misconceptions and mistrust on criminal justice responses is also reflected in wider research. A recent set of reports published by the NSW Bureau of Crime Statistics and Research (BOCSAR) found that police responses were often "mired in concepts of 'real' rape" and victim-blaming narratives that influenced victim and survivor attrition (KPMG & RMIT University Centre for Innovative Justice, 2023, p. 42) and that these myths and misconceptions featured prominently in transcripts from sexual offence trials (Quilter & McNamara, 2023). The latter research highlighted that reforms over the past 40 years in NSW have not addressed the absence of substantive barriers to the evocation of rape myths and stereotypes in sexual offence trials (Quilter & McNamara, 2023). The research emphasised that these rape myths and stereotypes contribute to the traumatic nature of sexual offence trials for victims and survivors (Quilter & McNamara, 2023).

Victims and survivors would benefit from the presence and impact of victim-blaming attitudes, rape myths, and mistrust being addressed and challenged in criminal justice processes. At present, these problematic attitudes and understandings impact reporting, police responses and the court process, and are fundamentally at odds with delivering trauma-informed responses to those who are pursuing criminal justice responses to sexual offences.

ANROWS has consistently highlighted the need for education, training and resourcing for police and legal actors to address mistrust and victim-blaming attitudes (2018; 2023a; 2023b), which could take many forms. For example, the Australian Institute of Family Studies and Victoria Police (2017) developed an evidence-based reference booklet to support police and legal practitioners to identify and challenge misconceptions about sexual offending that arise during the criminal justice process. ANROWS suggests that training, education and resourcing should be complemented by additional effective strategies to

address victim-blaming attitudes, which could be determined through a comprehensive review of the literature, consultation, or conducting evaluations of trial strategies. This could include broader community education campaigns using the NCAS to identify priority areas to address.

Criminal justice processes must recognise and be responsive to the context in which sexual offences occur

It is important that criminal justice processes are responsive to the context in which sexual offences occur. Data from the Australian Bureau of Statistics' Personal Safety Survey 2021–22 indicated that 53 per cent of perpetrators in women's most recent incident of experiencing sexual assault by a male perpetrator were an intimate partner (Australian Bureau of Statistics [ABS], 2023). The dynamics of this relationship between victim and survivor and perpetrator can reduce the likelihood of reporting, signal increased risk to the safety of the victim and survivor from their partner and increase their experience of re-traumatisation through criminal justice processes (Cox, 2015).

The dynamics of intimate partner sexual violence (IPSV) can impact victim and survivor likelihood of reporting to police. As noted in the discussion papers, victims and survivors may not report due to believing the offence was not "serious" enough. This is supported by ANROWS research which found that women themselves may not label their partners' sexually aggressive actions as rape or sexual assault, even in extreme circumstances (Breckenridge et al., 2016).

IPSV is often enacted through coercion within the context of other forms of violence or part of a broader pattern of coercive control. Coercive control intends to leave victims in a state of limited agency and perpetual fear and does not necessarily indicate the use of physical violence (ANROWS, 2021). This dynamic can contribute to misunderstandings of what constitutes "real rape" (Cox, 2015). It is important that criminal justice processes recognise and respond to the fact that victims and survivors of IPSV may have difficulty recognising their experiences as constituting sexual offences.

ANROWS also notes that additional barriers to reporting and service access exist for victims and survivors from specific population groups including women with disability, people with diverse genders and sexualities, women from culturally and linguistically diverse backgrounds, and Aboriginal and Torres Strait Islander women (Mitra-Kahn et al., 2016; Ussher et al., 2020). These barriers include, but are not limited to, historical and cultural distrust of authorities, language barriers, geographical isolation, inaccessibility of services for women with disability, the cultural appropriateness of services (Mitra-Kahn et al., 2016), and blame and mistrust from police (Ussher et al., 2020). Criminal justice processes must recognise and be responsive to the different contexts in which victims and survivors of IPSV exist. This could be informed through engagement with people with lived expertise from specific population groups.

Criminal justice processes must also be embedded with an understanding of the broader risks associated with IPSV. IPSV typically occurs in the context of a larger pattern of coercive control and should be considered a tactic of domestic violence and not a separate phenomenon (Cox, 2015). IPSV is an indicator of escalating frequency and severity of DFSV, with victims and survivors of IPSV at a much higher risk of being killed, particularly if they are also experiencing physical violence (Toivonen & Backhouse, 2018). ANROWS's National Risk Assessment Principles for domestic and family violence emphasise that IPSV is a uniquely dangerous form of domestic and family violence which must be specifically considered in all risk assessment and safety management processes and practices (Toivonen & Backhouse, 2018). Criminal justice processes must recognise the risk of lethality inherent in IPSV and ensure that risk assessment and safety management processes are responsive to this in all justice settings.

Risk assessment is a dynamic and collaborative ongoing process and should be accompanied with effective risk and safety management measures (Backhouse & Toivonen, 2018). The *National Domestic and Family Violence Bench Book* provides an extensive, though not exhaustive, list of measures that can be enacted to support the safety and protection of victims and survivors and witnesses in DFV-related judicial proceedings (Australasian Institute of Judicial Administration, 2023). ANROWS suggests that the Office draw on the bench book as a valuable resource to consider evidence-based measures to support victims and survivors of sexual violence.

Concluding remarks

The evidence base discussed in this submission indicates that to protect and support victims and survivors of sexual offending, key principles should be embedded across the criminal justice system. To avoid retraumatising victims and survivors, focus should be given to employing trauma-informed approaches, including safety and risk management, countering problematic beliefs and being responsive to the contexts in which offences occur, in particular within relationships. When sexual violence occurs within intimate partner relationships, risk assessment and safety management should be prioritised.

Reform to criminal justice responses to sexual offending in Western Australia should be underpinned by ongoing rigorous evaluation to understand the effectiveness of this reform and to identify and mitigate unintended consequences. ANROWS also acknowledges that victims and survivors of sexual offending may want to seek alternative justice mechanisms, such as restorative justice, and urges the Office to consider how this could be supported alongside criminal justice responses in Western Australia.

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