

Subpoena Number: 2023/S/0009

Sections 18(c), 26(1) and 26(3) of the *Inquiries Act 1991*

SUBPOENA TO PROVIDE A WRITTEN STATEMENT

To: Mr Neville Shane Drumgold SC

Of: Office of the Director of Public Prosecutions
C/- Mr Ian Denham
Moray and Agnew Lawyers
27/477 Pitt Street
Sydney NSW 2000

I, WALTER SOFRONOFF KC, Chairperson of the Board of Inquiry established by the Inquiries (Board of Inquiry – Criminal Justice System) Appointment 2023 (NI2023-49)¹ dated 1 February 2023 order that:

1. subpoena 2023/S/0001 issued to Mr Neville Shane Drumgold SC and dated 8 March 2023 is discharged; and
2. you give a written statement to the Board of Inquiry pursuant to sections 18(c), 26(1)(b) and 26(3)(b) of the *Inquiries Act 1991* in regard to your knowledge of the matters set out in the Schedule annexed hereto.

YOU MUST COMPLY WITH THIS REQUIREMENT BY:

Giving a written statement signed and witnessed in accordance with section 7 of the *Oaths and Affirmations Act 1984* (ACT) to the Board of Inquiry on or before **5:00 pm AEDT on 17 March 2023**, by delivering it to Nara House, 3 Constitution Avenue, Canberra City ACT 2601.

A copy of the written statement must also be provided electronically by email at BOI.Notices@inquiry.act.gov.au with the subject line "Requirement for Written Statement".

If you believe that you have a reasonable excuse for not complying with this notice, you will need to satisfy me of this by the above date.

¹ The terms of reference of the Board of Inquiry, contained in NI2023-49 dated 1 February 2023 are set out as **Annexure A** to this subpoena.

Failure to comply with this notice without lawful excuse is a Contempt of Board and you may be dealt with accordingly.

Date: 14 March 2023

A handwritten signature in blue ink, appearing to be 'W. Sofronoff', written above a horizontal line.

Walter Sofronoff KC
Chairperson
Board of Inquiry

Subpoena 2023/S/0009**Schedule of Questions for Statement****Mr Neville Shane Drumgold SC****Background and Professional History**

1. State your current position within the ACT Office of the Director of Public Prosecutions (ODPP).
2. Outline your tertiary qualifications including when and where you obtained them.
3. Outline your diploma qualifications including when and where you obtained them.
4. What year were you admitted as a lawyer?
5. Have you undertaken a Bar Practice Course? If so, detail where you completed the Bar Practice Course and when you completed it.
6. What year were you called to the employed/private Bar.
7. Outline your current role, when you commenced this role and the job description for your current role. **Attach** the formal job description if one exists.
8. Outline your experience as a prosecutor both in the ODPP and elsewhere, including when you were appointed as a prosecutor at the ODPP and your roles at the ODPP.
9. Have you sat, or do you currently sit, on any boards, committees, working groups, or taskforces? If so, provide details of the name of the board, committee, working group, or taskforce, when you started (and finished if applicable) and what role you had/have on the board, committee, working group, or taskforce.
10. **Attach** a current CV.

Duties and Responsibilities – ACT Director of Public Prosecutions (ODPP)

11. Outline your role, duties and responsibilities as the ACT Director of Public Prosecutions. Include references to the relevant legislation, policies and guidelines. **Attach** a copy of

any relevant provisions from agreements, policies and/or guidelines.

ACT Office of the Director of Public Prosecutions (ODPP)

12. Outline the organisational structure of the ODPP as at February 2021. **Attach** a copy of the organisational structure diagram/chart for the ODPP as at February 2021.
13. Outline the current organisational structure of the ODPP. Include information about when the structure changed and why it changed. **Attach** a copy of the current organisational structure diagram/chart for the ODPP.
14. With reference to the organisational structure at the relevant time, list each employee involved in the prosecution of *R v Lehrmann* include the following information:
 - (a) the position each employee occupied in the organisational structure;
 - (b) the date(s) they were involved in the prosecution;
 - (c) their involvement in the prosecution; and
 - (d) whether their positions changed over their involvement, the date and details of the position changes.
15. With reference to the organisational structure at the relevant time, list each employee involved in the actioning of freedom of information requests received by the ODPP related to *R v Lehrmann* including the following information:
 - (a) the position each employee occupied in the organisational structure;
 - (b) the date(s) they were involved in the actioning of freedom of information requests;
 - (c) their involvement in the actioning the freedom of information requests; and
 - (d) whether their positions changed over their period of involvement, the date and details of these position changes.

Sex Offences Prosecutions

16. State the number (an estimate) of prosecutions related to sex offences you have personally prosecuted within the ACT jurisdiction to date and the years in which those prosecutions occurred (roughly).
17. Outline any specialist training you have undertaken in relation to the prosecution of sex offences.

Sexual Assault Prevention and Response Steering Committee

18. Describe the tasks/work undertaken by the Law Reform Working Group.
19. When were you appointed a Member of the Law Reform Working Group?
20. Outline the extent of your involvement in the Law Reform Working Group.
21. Describe your involvement (if any) in the compilation of the Sexual Assault Prevention and Response Steering Committee's report titled "Listen. Take Action to Prevent, Believe and Heal" published in December 2021 (the **Steering Committee's Report**).
22. Outline whether you have observed and/or driven a cultural shift within the ODPP in the prosecution of sexual assault offences since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views and/or actions.
23. Outline whether you have observed a cultural shift within the AFP/ACT Policing in their investigation and charging of sexual assault offences since the release of the Steering Committee's Report. Provide details of the extent of any cultural shift and the reasons for your views.

Australian Federal Police (AFP)/ACT Policing

24. From your perspective as a Prosecutor, outline the roles, responsibilities, and duties of the AFP/ACT Policing officers in relation to the investigation of and commencement of proceedings with respect to a sex offence matter. **Attach** any relevant agreements, policies and/or guidelines.
25. From your perspective as a Prosecutor, outline the roles, responsibilities, and duties of the AFP/ACT Policing officers in relation to the prosecution of accused people (if any). **Attach** a copy of the *Collaborative Agreement between Australian Federal Police (ACT Policing) and ACT Director of Public Prosecutions dated 26 September 2019 (Collaborative Agreement)* (**Collaborative Agreement**) and:
 - (a) outline the background to the Collaborative Agreement, including the reason and purpose for its development; and

- (b) outline your involvement (if any) in the development and drafting of the Collaborative Agreement.
26. Describe, from your perspective the working relationship between the ODPP and AFP/ACT Policing prior to the matter of *R v Lehrmann*. Include details about whether the relationship was positive or whether you held any concerns about the relationship and the nature of those concerns.
27. As at 2021, did the ODPP and AFP/ACT Policing hold regular meetings in relation to sex offence matters? If so, outline your involvement (if any) in those meetings. Include details about the general nature of those meetings, including who was required to attend, the purpose, how often the meetings occurred, whether any file notes are kept and by whom, and the extent of your involvement (if any).
28. For the period between your commencing at the ODPP and your first involvement in the matter of *R v Lehrmann*, describe your views in relation to the conduct of the AFP/ACT Policing officers' investigations of sexual assault offences. Include information about the quality of the investigations, whether your views changed over this period, and the reasons for your views. Include examples where possible.
29. Describe your relationship, generally, and the extent of your prior dealings and/or knowledge (if any) with the AFP/ACT Policing officers involved in the investigation of Ms Brittany Higgins' allegation of sexual assault against Mr Bruce Lehrmann (**Investigation**) prior to the commencement of *R v Lehrmann*, including but not limited to:
- (a) Detective Superintendent Scott Moller;
 - (b) Detective Inspector Marcus Boorman;
 - (c) Detective Sergeant Gareth Saunders;
 - (d) Detective Sergeant Jason McDevitt;
 - (e) Detective Sergeant Robert Rose;
 - (f) Detective Sergeant David Flemming;
 - (g) Detective Inspector Callum Hughes;
 - (h) Commander Joanne Cameron;

- (i) Acting Commander Hall O’Meagher;
- (j) Acting Sergeant James Brown;
- (k) Detective Leading Senior Constable Trent Madders; and
- (l) Senior Constable Emma Frizzell.

In answering this question outline your professional views (if any) about those officers and the basis of those views.

30. Prior to your knowledge of the Investigation, describe your relationship and the extent of your prior dealings (if any) with senior AFP/ACT Policing officers, including but not limited to:
- (a) Commissioner Reece Kershaw;
 - (b) Chief Police Officer of ACT Policing Neil Gaughan; and
 - (c) Deputy Chief Police Officer of ACT Policing Michael Chew.

Prosecutorial Guidelines

31. **Attach** a copy of the Prosecution Policy of the Australian Capital Territory dated 1 April 2021 (the **2021 Prosecution Policy**) and the Prosecution Policy of the Australian Capital Territory dated April 2015 (the **2015 Prosecution Policy**) and:
- (a) outline your involvement (if any) in the drafting of the 2015 or 2021 policies or amendments to the 2021 Prosecution Policy; and
 - (b) provide an explanation of clause 4.4 of the 2021 Prosecution Policy and its legal basis.
32. To the extent not addressed in your answer to questions 25 and 31 above, outline the roles, responsibilities, and duties of the ODPP with respect to the prosecution of a sexual offence. **Attach** any relevant agreements, policies and/or guidelines or, if already attached refer to the relevant parts

Victims of Crime Commissioner

33. Outline your professional dealings (if any) with the Victims of Crime Commissioner prior to the matter of *R v Lehrmann*.

34. Describe, based on your experience as of 31 March 2021, the role performed by the Victims of Crime Commissioner (or her staff) exercising statutory functions under the *Victims of Crime Act 1994* (ACT) in relation to a victim of a sexual offence. Provide examples and details where appropriate.
35. Prior to *R v Lehrmann* had you prosecuted any sexual offences where the Victims of Crime Commissioner (or her staff) had supported a complainant at court or acted as an intermediary between the police and the complainant or between the ODPP and the complainant? If so, provide case names if applicable.

Involvement in *R v Lehrmann*

36. When did you first become aware of Ms Higgins' allegation of sexual assault against Mr Lehrmann? Include details about how you became aware and what you were aware of. **Attach** a copy of relevant communications with staff of the ODPP, AFP/ACT Policing and/or the Victims of Crime Commissioner (or her staff), including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.
37. Describe the communications (if any) between the ODPP and the Commonwealth DPP regarding carriage of any prosecution of the allegations made by Ms Higgins with respect to Mr Lehrmann. Identify the relevant dates and to the extent those communications were verbal outline the parties to the communications and the effect of the words spoken (the **usual particulars**). **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.
38. Outline the actions you undertook as DPP to allocate a Prosecutor and/or team of Prosecutors in the matter of *R v Lehrmann*. Provide information about who was allocated to the matter and what they were informed of. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.

39. At the time of the allocation of Prosecutor/s in the matter of *R v Lehrmann*, list the AFP/ACT Policing officers whom, to your knowledge were involved in the Investigation.
40. State whether at the time you became Prosecutor in *R v Lehrmann* (or up until you received this subpoena), you held any professional concerns in relation to the AFP/ACT Policing officers involved in the Investigation? If so, provide details of your concerns, their basis and whether you expressed those concerns to any staff of the ODPP or any other person, if so, when and to whom. **Attach** a copy of relevant court decisions supporting the basis for your concerns and any communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
41. Outline whether you were informed by staff of the ODPP or any other person of any concerns in relation to the AFP/ACT Policing officers involved in the Investigations. If so, provide details of who advised you of those concerns, their basis and when those concerns were communicated to you. **Attach** a copy of relevant documents in relation to this communication including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
42. State whether you had any discussions with ODPP staff in relation to exercising your powers under the *Director of Public Prosecutions Act 1990* (ACT) to charge Mr Lehrmann if the AFP/ACT Policing did not charge him. If so, provide details of who you had those discussions with and your knowledge and involvement in those discussions. Include details of the relevant dates, what was discussed, with whom the discussions were with and your impressions of those discussions. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, the usual particulars.

Meeting with AFP/ACT Policing on 31 March 2021

43. State whether you attended a meeting/discussion with AFP/ACT Policing officers on 31 March 2021. If so, provide the usual particulars of the meeting. Include information

about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to, during or after the meeting/discussion;
- (g) the nature of the discussions (if any) in relation to the:
 - i. Investigation and the evidence obtained and yet to be obtained;
 - ii. decision-making in relation to commencing criminal proceedings against Mr Lehrmann;
 - iii. your views as to reasonable prospects of conviction and public interest considerations regarding any potential prosecution of the matter and the reasons for your views;
 - iv. views you held in relation to the conduct of the Investigation to date, including the reasons for your views.
- (h) whether there was a discussion regarding interviewing Mr Lehrmann during which you said words to the effect of "*It doesn't matter what Mr Lehrmann says*". If so, provide details about what you precisely recall saying, including the context and basis of this comment;
- (i) whether CCTV footage of Ms Higgins and Mr Lehrmann entering Parliament House was viewed during the meeting and, if so, you said words to the effect of "*that looks like a girl who really needs a sleep*" referring to Ms Higgins. If so, provide details about what you precisely recall saying, including the context and basis of this comment;
- (j) whether during the meeting AFP/ACT Policing officers questioned whether to obtain an expert evaluation of intoxication based upon the CCTV footage of Ms Higgins and Mr Lehrmann entering Parliament House. If so, did you say words to the effect of "*No, we don't need that*"? If so, provide details about what you precisely recall saying, including the context and basis of this comment;
- (k) whether you were involved in any discussions with ODPP staff following the

meeting/discussion with AFP/ACT Policing. If so, provide details of any discussions had and your impressions of these discussions; and

- (l) whether you were involved in any discussions with ODPP following the meeting/discussion with the AFP/ACT Policing. If so, provide the usual particulars of this discussion and your impressions of these discussions.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally provide usual particulars.

Dealings with AFP/ACT Policing on 12 April 2021

44. State whether you attended a meeting with AFP/ACT Policing officers on 12 April 2021. If so, provide the usual particulars of the meetings and/or discussions you were involved in with AFP/ACT Policing officers in relation to the Investigation. Include information about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) If there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to during or after the meeting/discussion;
 - i. the nature of the discussions (if any) in relation to the:
 - ii. the Investigation and the evidence obtained and yet to be obtained;
 - iii. concerns (if any) you held in relation to the officers involved in the Investigation;
 - iv. conducting a second evidence in chief interview with Ms Higgins;
 - v. decision-making in relation to commencing criminal proceedings against Mr Lehrmann;
 - vi. your views as to reasonable prospects of conviction and public interest considerations regarding any potential prosecution of the matter and the

- reasons for your views; and
- vii. views you held in relation to the conduct of the Investigation to date, including the reasons for your views.
- (g) whether you were involved in any discussions with ODPP staff following the meeting/discussion with AFP/ACT Policing. If so, provide the usual particulars of those discussions and your impressions of them.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.

Dealings with AFP/ACT Policing on 1 June 2021

45. State whether you attended a meeting with AFP/ACT Policing officers on 1 June 2021. If so, provide the usual particulars of the meeting in relation to the Investigation. Include information about:
- (a) the person who initiated the meeting/discussion;
 - (b) the purpose of the meeting/discussion;
 - (c) where the meeting/discussion took place;
 - (d) the people in attendance;
 - (e) if there were dominant speakers, who they were, the basis of that view and what they said;
 - (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to during or after the meeting/discussion;
 - (g) the nature of the discussions (if any) in relation to the:
 - i. Investigation of the matter and the evidence obtained and yet to be obtained;
 - ii. concerns (if any) you held in relation to the officers involved in the Investigation;
 - iii. the second evidence in chief interview conducted with Ms Higgins;
 - iv. decision-making in relation to commencing criminal proceedings against Mr Lehrmann;
 - v. your views as to reasonable prospects of conviction and public interest considerations regarding any potential prosecution of the matter and the

reasons for your views; and

- vi. views you held in relation to the conduct of the Investigation to date, including the reasons for your views.
- (h) whether during this meeting when AFP/ACT Policing officers raised concerns regarding the credibility of Ms Higgins and, if so, you recall saying words to the effect of “*credibility is not an element of the offence*” and “*the test is not if we believe the victim, the test is if the evidence is credible*”. If so, what precisely do you recall you said and what was the context and basis of this comment;
- (i) whether during this meeting when AFP/ACT Policing officers raised concerns that they could not prove that sex took place and, if so, you recall saying words to the effect of “*I don’t have to prove sex took place. I can prove it by the way she was found*”. If so, what precisely do you recall you said and what was the context and basis of this comment;
- (j) whether during this meeting you said words to the effect of “*I don’t care, we are going to trial*”. If so, what precisely do you recall you said and what was the context and basis of this comment; and
- (k) whether you were involved in any discussions with ODPP staff following the meeting/discussion with AFP/ACT Policing. If so, provide the usual particulars and your impressions of these discussions.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.

Any additional dealings with AFP/ACT Policing between 31 March and 1 June 2021

46. In chronological order, outline any meetings in addition to those meeting/discussions attended on 31 March 2021, 12 April 2021 and 1 June 2021 you were involved in with AFP/ACT Policing officers in relation to the Investigation. With reference to these additional meetings/discussions (if any) provide the usual particulars and include information about:
- (a) the person who initiated the meeting/discussion;
 - (b) the purpose of the meeting/discussion;
 - (c) where the meeting/discussion took place;
 - (d) the people in attendance;

- (e) If there were dominant speakers, who they were, the basis of that view and what they said;
- (f) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to during or after the meeting/discussion;
- (g) the nature of the discussions in relation to the:
 - i. Investigation of the matter and the evidence obtained and yet to be obtained;
 - ii. decision-making in relation to commencing criminal proceedings against Mr Lehrmann;
 - iii. your views as to reasonable prospects of conviction and public interest considerations regarding any potential prosecution of the matter and the reasons for your views;
 - iv. views you held in relation to the conduct of the Investigation to date, including the reasons for your views.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.

Record of file notes of meetings with the AFP/ACT Policing

47. State whether it is your ordinary practice to take file notes at meetings/discussions between the ACT ODPP and the AFP/ACT Policing. Provide details as to why or why not it is ordinary practice. If you normally have a note taker present identify the note taker at each meetings you attended that related to the Investigation or the matter of *R v Lehrmann*.
48. State whether you took file notes in relation to the Investigation and/or the matter of *R v Lehrmann*? If so, outline why you did so, who contributed to the file note(s) at what point in time (provide exact dates where possible) and where reflections are recorded, the basis of your reflections and the date you recorded those reflections. **Attach** a copy of the relevant file note retained by the ODPP in relation to the matter of *R v Lehrmann* and any communications attaching different versions of the file note including but not limited to

correspondence, emails, text messages, file notes and diary notes.

49. Please provide details of the creation and use of the document entitled “Timeline of Meeting with AFP where HIGGINS investigation was discussed” including but not limited to when the document was created, who created the document, who contributed to the document and an explanation of the basis of the matters raised in this document. **Attach** a copy of the document entitled “Timeline of Meeting with AFP where HIGGINS investigation was discussed”.

Briefing request from AFP/ACT Policing dated 18 June 2021 and Brief of Evidence

50. State whether you received correspondence from the AFP/ACT Policing to the DPP dated 18 June 2021 and relevant enclosures. Please provide details of your understanding of the purpose of this correspondence, what you understood to the scope of any request for advice, whether this request for advice was unusual in your experience and the basis for your views. **Attach** a copy of the correspondence from AFP/ACT Policing to the DPP dated 18 June 2021 and any further communications surrounding this correspondence including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
51. State whether you reviewed the brief of evidence provided by the AFP/ACT Policing to the ACT ODPD on or about 21 June 2021 (**21 June 2021 Brief of Evidence**). Provide details about when you reviewed the brief and why you reviewed the brief of evidence at this point in time. **Attach** a copy of the index to the brief of evidence provided by the AFP/ACT Policing on or about 21 June 2021.
52. To the extent not addressed in statement requests “Dealings with AFP/ACT Policing between 31 March 2021 and 1 June 2021” above, describe the circumstances leading to the provision of the 21 June 2021 Brief of Evidence and request for advice from the AFP/ACT Policing on 21 June 2021. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
53. State whether you reviewed the Executive Briefing by Detective Superintendent Scott Moller dated 7 June 2021 and/or the Minute prepared by Detective Inspector Marcus

Boorman dated 4 June 2021 (**21 June 2021 Supporting Documents**) provided by the AFP/ACT Policing to the ACT ODPP with the 21 June 2021 Brief of Evidence. Provide details about when you reviewed the documents, why you reviewed the documents at this point in time and your observations of these 21 June 2021 Supporting Documents. **Attach** a copy of the 21 June 2021 Supporting Documents and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes.

54. Outline your impressions (if any) of the quality of the 21 June 2021 Brief of Evidence. Provide details as to the whether the evidence obtained was sufficient to enable the ODPP to reach a view with respect to whether or not to discontinue the matter in accordance with the Prosecution Policy and basis for your views (if any).
55. State whether you had any discussions with AFP Commissioner Kershaw in the context of the 21 June 2021 Brief of Evidence and request for your advice. If so, **attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
56. Outline your view (if any) as at 28 June 2021, of the relevance of obtaining Ms Higgins' primary mobile phone to the decision whether to commence the prosecution in *R v Lehrmann*. Include details about the relevance of a complainant's primary mobile phone evidence in a sex offence prosecution generally (provide examples where possible) and whether you expressed your views (if any) in relation to this to the DPP and/or the AFP/ACT Policing officers on any occasion (include when you expressed your views and to whom). **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

28 June 2021 Advice

57. **Attach** a copy of the advice you provided to the AFP/ACT Policing dated 28 June 2021 in relation to allegations against Mr Lehrmann (**28 June 2021 advice**).
58. State whether received a response from the AFP/ACT Policing to request for clarification

and/or additional material contained on pages 9 and 10 of the 28 June 2021 advice. If so, please provide details of the date the clarification/additional material was provided and by whom. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

59. State whether, as of 28 June 2021, you were aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information, including, but not limited to any discussions you had at that time with the DPP and/or ACT/AFP regarding Ms Higgins mental health. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Reasonable Prospects and Public Interest (Subsequent to the 28 June 2021 Advice and until the end of the trial)

60. What arrangements did you put in place for the conduct of the prosecution in the matter of *R v Lehrmann*? For instance, job/task allocations, decision-making in relation to disclosure and whether regular meetings were initiated within the ODPP and any other persons involved, including the AFP/ACT Policing and the Victims of Crime Commissioner. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
61. Following provision of your advice to AFP/ACT Policing dating 28 June 2021 provide details of your considerations for the reasonable prospects of conviction as provided for in the 2021 Prosecution Policy. State whether there was any information, communications, actions undertaken or documents provided that caused you to reconsider the conclusion you had reached in your 28 June 2021 advice relation to reasonable prospects of a conviction in the matter. Without limiting your response include your considerations at the following stages:
- (a) following provision of response from the AFP/ACT Policing to requests for clarification and additional material requested in the 28 June 2021 advice;

- (b) upon completion of a review of the briefed material and specifically the Celebrite material by yourself or members of the ODPP; and
- (c) upon presentation of the indictment.

Attach a copy of the indictment you signed in the matter of *R v Lehrmann* and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, the usual particulars.

62. Detail your consideration of public interest considerations identified in clause 2.9 of the 2021 Prosecution Policy. Without limiting your response include details of your considerations at the following times:
- (a) at the time of the provision of the 28 June 2021 advice;
 - (b) the presentation of the indictment; and
 - (c) during the trial and specifically during the provision of Ms Higgins' evidence.

Attach a copy of relevant communications to your considerations including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.

Dealings with the AFP/ACT Policing after 1 June 2021

63. In chronological order, outline the meetings and/or discussions you were involved in with ACT Policing officers in relation to the matter of *R v Lehrmann* between 1 June 2021 and 16 September 2021. Provide the usual particulars of any such meetings and include information about:
- (a) the person who initiated the meetings/discussions;
 - (b) the purpose of the meetings/discussions;
 - (c) where the meetings/discussions took place;
 - (d) the people in attendance;
 - (e) the briefing material (if any) you were provided, including whether you reviewed the material prior to or following the meetings/discussions;
 - (f) if there were dominant speakers, who they were, the basis of that view and what

they said; and

- (g) the nature of the discussions in relation to the:
 - i. Investigation of the matter and the evidence obtained and to be obtained;
 - ii. decision-making in relation to laying charges against Mr Lehrmann;
 - iii. your views in relation to the prospects of the matter and the reasons for your views (in particular, in relation to the reasonable prospects of a conviction and whether a prosecution was in the public interest); and
 - iv. views you held in relation to the conduct of the Investigation to date, including the reasons for your views.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes.

64. State the basis for your view that CCTV footage had been omitted in the brief of evidence provided by the AFP/ACT Policing in relation to the Investigation and/or the matter of *R v Lehrmann*. Provide details as to:
- (a) how you became aware of the existence of the omitted CCTV footage;
 - (b) a description of the omitted CCTV footage;
 - (c) what you saw on the omitted CCTV footage;
 - (d) when you viewed the omitted CCTV footage;
 - (e) who were you with when you viewed the omitted CCTV footage; and
 - (f) what steps you took to obtain a copy of the omitted CCTV footage.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Disclosure (Pre-Trial)

65. Outline the respective responsibilities/roles of the ODPP and AFP/ACT Policing in relation to disclosure of material on the legal representatives for a defendant in a sex offence matter. Provide details of the usual process for the provision of the brief of

evidence to the ODPP and the defence team and relevant roles/responsibilities of the ODPP and AFP/ACT Policing in this process. Include information about the basis for the allocation of responsibilities/roles and whether you perceive there to be any issues, generally, in this allocation. Identify any relevant legislative provisions, **attach** any relevant agreements, policies and/or guidelines or, if already provided, identify the relevant provisions of any such agreements, policies and/or guidelines.

66. State whether you are aware of when the brief of evidence in the matter of *R v Lehrmann* was first served on the legal representatives for Mr Lehrmann (**Brief of Evidence**). Provide details of:

- (a) how you first became aware the Brief of Evidence was served directly on the legal representatives for Mr Lehrmann;
- (b) whether you are aware if the ODPP requested or accepted service in this manner; and
- (c) whether service in this manner was unusual.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

67. Outline any concerns you held (if any) regarding the Brief of Evidence served by AFP/ACT Policing on the legal representatives for Mr Lehrmann. Describe the steps you took (if any) in relation to those concerns and why you took those steps. Include information about your communications with AFP/ACT Policing, the legal representatives for Mr Lehrmann, Ms Higgins and/or the Victims of Crime Commissioner in relation to the service of the Brief of Evidence on the legal representatives for Mr Lehrmann. To the extent those communications were in writing, **attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages. To the extent those communications were verbal,

provide the usual particulars and outline:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
- (f) the nature of the discussions.

Attach a copy of any file note or diary note in relation to verbal discussions.

68. State whether '*protected confidence*' material within the meaning of s 79A of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* regarding Ms Higgins was provided to the ODPP (**Counselling Records**). If so, outline:
- (a) your knowledge (if any) as to circumstances in which the Counselling Records were obtained;
 - (b) when the Counselling Records were provided to the ODPP;
 - (c) whether you reviewed the Counselling Records and, if so, when and for what purpose; and
 - (d) whether the ODPP retained a copy of the Counselling Records and, if so, why.
69. Detail your involvement in communicating with the legal representatives for Mr Lehrmann in relation to the brief of evidence disclosed on 6 August 2021. Provide details of the date and time of the communication, who the communication was with, how it took place (for example by telephone) and the precise nature of the communication. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
70. Outline your involvement (if any) in communicating with Ms Higgins directly or the Victims of Crime Commissioner in relation to the brief disclosed on the legal representatives for Mr Lehrmann and, in particular, the disclosure of counselling records. Provide details of the date and time of the communication, how the communications took

place (for example by telephone) and the precise nature of the communication. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide details the usual particulars.

71. Outline your involvement (if any) in the preparation of any disclosure certificate prepared in the matter of *R v Lehrmann* (**Disclosure Certificates**). State when any Disclosure Certificates were provided to the ODPP. **Attach** a copy of any Disclosure Certificate(s) provided to the ODPP and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of the usual particulars.
72. State whether you were involved in any communications with, or the provision of any written or oral advice to the AFP/ACT Policing regarding the Disclosure Certificates. In providing your response, describe any communications regarding amendments to the Disclosure Certificates and/or claims of legal professional privilege regarding documents listed in the Disclosure Certificates. Include details about who was involved in those communications, the purpose of the communications, any advice provided and the basis for any advice provided. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.
73. State whether you were involved in any communications with the DPP/ODPP staff and AFP/ACT Policing regarding requests for advice and/or advice provided to the AFP/ACT Policing (in particular, to the ACT Policing officers involved in the investigation of the matter of *R v Lehrmann* and to AFP Legal) (if any) in relation to the “investigative review documents” and whether the AFP/ACT Policing could claim Legal Professional Privilege over these documents. Include details of the substance of that advice, the basis of the views expressed in any advice provided and whether it was provided orally or in writing. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details of the usual particulars.

74. State whether you were involved in any communications with the ODPP staff, AFP/ACT Policing and/or the legal representatives for Mr Lehrmann in relation to the disclosure of, all or part of Ms Higgins' and/or Mr Lehrmann's Celebrite records. Include details about who was involved in those communications, the purpose of the communications, what was discussed, and your impressions of any communications. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Interactions with Ms Higgins

75. In chronological order, outline your communications with Ms Higgins up to, and until 2 December 2022. To the extent those communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal, provide the usual particulars and include information about:
- (a) the person who initiated the meeting/discussion;
 - (b) the purpose of the meeting/discussion;
 - (c) where the meeting/discussion took place;
 - (d) the people in attendance;
 - (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
 - (f) the nature of the discussions.

Attach a copy of any file note or diary note in relation to verbal discussions.

76. To the extent not addressed in your answer to 75 above identify whether you were aware of any concerns and/or complaints Ms Higgins held about the conduct of AFP/ACT Policing with respect to the Investigation and their dealings with her. If so, provide details of the basis of that understanding and any steps you took in relation to those concerns/complaints. To the extent you were involved in any written communications with respect to any such concerns and/or complaints, **attach** a copy, any relevant

communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent you were involved in any verbal communications in relation to those concerns and/or complaints, provide the usual particulars and include information about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and
- (f) the nature of the discussions.

Attach a copy of any file note or diary note in relation to verbal discussions.

77. State whether, at any time between 29 June 2021 and 26 October 2022, you became aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide usual particulars.

Interactions with the Victims of Crimes Commissioner

78. Outline your observations of the Victims of Crime Commissioner's involvement in the matter of *R v Lehrmann* including but not limited to providing support to Ms Higgins and the evidence provided by the Victims of Crime Commissioner in relation to this matter. Provide details about whether the Victims of Crime Commissioner's involvement was unusual in those instances and the basis of your views. Provide examples where appropriate.
79. In chronological order, outline your communications with the Victims of Crime Commissioner in relation to the matter of *R v Lehrmann* up to, and until receipt of this

subpoena. To the extent those communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal, provide the usual particulars and include information about:

- (a) the person who initiated the meeting/discussion;
- (b) the purpose of the meeting/discussion;
- (c) where the meeting/discussion took place;
- (d) the people in attendance;
- (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the meeting/discussion; and,
- (f) the nature of the discussions.

Attach a copy of any file note or diary note in relation to verbal discussions.

Disclosure (Trial)

80. Outline whether you were made aware of any issues during the trial of *R v Lehrmann* in relation to witness, Ms Fiona Brown, who was called to give evidence or had given evidence. Provide details of when you became aware of these issues, how you became aware and what steps (if any) you took to rectify these issues. Include information about:
- (a) Whether you were provided, or made aware of the substance of, an email from Fiona Brown to the OPDD dated 14 October 2022 and or a telephone call from Fiona Brown to the ODPP on the same day, if so, when were you made aware of this communication;
 - (b) If you were made aware of either the telephone call or email from Ms Brown did you disclose the matters raised in Ms Brown's emails and or telephone call to the defence and if not, why not?

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred

verbally, provide the usual particulars.

81. Outline whether you were made aware of any issues during the trial of *R v Lehrmann* in relation to witness, Ms Linda Reynolds, who was called to give evidence or had given evidence. Provide details of when you became of these issues, how you became aware and what steps (if any) you took to rectify these issues. Include information about:
- (a) whether you were made aware of the substance of, an SMS message to Mr Whybrow on 6 October 2022. If so when and how did you become aware of this communication; and
 - (b) what concerns did you have (if any) regarding the contents of that SMS conversation, the basis of that concern and the steps (if any) you took in relation to any such concerns.

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Conduct of the AFP/ACT Policing Officers at the Trial of *R v Lehrmann*

82. Outline your views of the conduct of the AFP/ACT Policing officers during the trial of *R v Lehrmann* including:
- (a) in their dealings with the DPP in relation to his duty to decide whether to continue and to discontinue criminal proceedings against Mr Lehrmann;
 - (b) in their dealings with the legal representatives for Mr Lehrmann; and
 - (c) in their provision of information to any persons in relation to the matter of *R v Lehrmann*.

Provide details of the relevant officers' names, the basis for your views and provide examples, where appropriate. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

83. Outline your communications (if any) with AFP/ACT Policing during the trial. Include details about who was involved in those communications, the purpose of the

communications, what was discussed, and your impressions of any communications including but not limited to:

- (a) the emails from the AFP/ACT Policing in relation to enquiries regarding Ms Higgins' appointments with her General Practitioner;
- (b) interactions between the AFP/ACT Policing and the legal representatives for Mr Lehrmann during the trial; and
- (c) the provision of information by the AFP to any persons in relation to the matter of *R v Lehrmann*. Provide details about whether AFP/ACT Policing's communication and involvement with the ODPP during the trial was unusual and the basis of your views. Provide examples where appropriate.

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details the usual particulars.

Discharge of the Jury and the Retrial

84. State when and how you became aware of the circumstances giving rise to the discharge of the jury in the trial of *R v Lehrmann*. Include information about who informed you, what you were informed of, whether you were told to disclose the information to any persons and whether you disclosed the information to any persons. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes, calendar invitations, calendar appointments and diary notes. In the event discussions occurred verbally, provide the usual particulars.
85. Outline when and how you became aware of any persons, apart from the ODPP and the legal representatives for Mr Lehrmann, had become aware of the circumstances giving rise to and/or the decision to discharge the jury. **Attach** a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
86. Outline your involvement in relation to any application regarding bail conditions for Mr Lehrmann following the listing of the matter for retrial including:
- (a) information about your views in relation to the bail conditions for Mr Lehrmann at

this time including the reasons for your views and your views in relation to Mr Lehrmann surrendering his passport;

- (b) any discussions you had with Skye Jerome regarding bail conditions for Mr Lehrmann and the content of those discussions; and
- (c) whether you were aware of the AFP/ACT Policing's engagement with the legal representatives for Mr Lehrmann regarding Mr Lehrmann's bail conditions, including how you became aware, what you were aware of, and what your views in relation to this were.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details the usual particulars.

87. Outline your involvement in relation to the decision to discontinue the criminal proceedings against Mr Lehrmann including but not limited to:
- (a) details about your views in relation to the reasonable prospects and public interest considerations, including with respect to Ms Higgins' mental health;
 - (b) the basis for your impressions;
 - (c) whether you raised/discussed your views with the staff of the ODPP;

Attach a copy of relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details the usual particulars.

88. Outline whether you had any discussions with the legal representatives for Mr Lehrmann prior to the DPP's decision to discontinue the criminal proceedings against Mr Lehrmann. If so, include information about:
- (a) the person who initiated the discussion;
 - (b) the purpose of the discussion;
 - (c) where the discussion took place;
 - (d) the people in attendance; and
 - (e) the nature of the discussions.

Attach a copy of any relevant communications including but not limited to

correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide details the usual particulars.

1 November 2022 Correspondence

89. Outline the circumstances leading to your correspondence to the Chief Police Officer, Neil Gaughan dated 1 November 2022 regarding the conduct of the investigation and trial, including but not limited to:
- (a) the basis of your decision to write the letter; and
 - (b) the basis of your view that there had been investigator interference and/or political interference in the investigation and trial of *R v Lehrmann*.

Attach a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Interactions with Ms Higgins after the Trial in *R v Lehrmann*

90. In chronological order, outline your communications with Ms Higgins directly and/or her legal representatives, between 27 October and the date of this subpoena. To the extent those communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal, provide the usual particulars and include information about:
- (a) the person who initiated the meeting/discussion;
 - (b) the purpose of the meeting/discussion;
 - (c) where the meeting/discussion took place;
 - (d) the people in attendance;
 - (e) the material (if any) you were provided in relation to the meeting/discussion, including whether you reviewed the material prior to or after the

- meeting/discussion; and
- (f) the nature of the discussions.

Attach a copy of any file note in relation to verbal discussions.

91. State whether, at any time between 27 October and 2 December 2022, you became aware of any issues related to Ms Higgins' mental health. If so, provide details as to the information within your knowledge and outline any steps you took in relation to that information. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Discontinuance of Proceedings

92. Describe your decision-making process with respect to discontinuing the prosecution of Mr Lehrmann. Include details about the basis for your decision and whether you communicated with anyone regarding that decision-making process in prior to 2 December 2022. To the extent those communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal provide the usual particulars and include information about:
- (a) the person who initiated the discussion;
 - (b) the purpose of the discussion;
 - (c) where the discussion took place;
 - (d) the people in attendance;
 - (e) if there were dominant speakers, who they were and what they said; and
 - (f) the nature of the discussions.

Attach a copy of any file notes and diary notes.

93. Describe your decision-making process with respect to the public announcement made on 2 December 2022 regarding discontinuing the prosecution of Mr Lehrmann. Include details about whether you communicated with anyone about the public announcement (including its contents) in advance of 2 December 2022. To the extent those

communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal provide the usual particulars and include information about:

- (a) the person who initiated the discussion;
- (b) the purpose of the discussion;
- (c) where the discussion took place;
- (d) the people in attendance;
- (e) if there were dominant speakers, who they were and what they said; and
- (f) the nature of the discussions.

Attach a copy of any file notes and diary notes.

Freedom of Information

94. Outline your involvement, if any, in the circumstances leading to the public release of your correspondence to the Chief Police Officer of ACT Policing dated 1 November 2022. Include information about:

- (a) how the media became aware of the correspondence;
- (b) the details of any freedom of information requests made to the OPDD with respect to the correspondence; and
- (c) the steps (if any) taken by you and the ODPP with respect to the request.

Attach a copy of the relevant letter and any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

95. Outline any investigations undertaken in relation to the release of your 1 November 2022 letter. If in the possession of the ODPP, **attach** copies of any complaints made, and responses by the ODPP to such complaints, in relation to the release of your 1 November 2022 letter.

96. Have you arranged for ODPP staff training relevant to FOI applications? If so, detail the

training and detail when and who delivered the training?

Media

97. Outline your involvement (if any) in any communication between the ACT ODPP and the AFP/ACT Policing in relation to the preparation or implementation of the AFP media plan in relation to the matter of *R v Lehrmann*, including the plan shared on 5 August 2021. Include details about whether you perceived the AFP's media plan to be adequate (provide reasons and examples where appropriate). **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.
98. In chronological order, outline your communications (if any) with Ms Higgins and/or her legal representatives and/or Lisa Wilkinson with respect to making public comment about *R v Lehrmann*. To the extent those communications were in writing, **attach** a copy, any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar appointments/invitations. To the extent the communications were verbal provide the usual particulars and include information about:
- (a) the person who initiated the discussion;
 - (b) the purpose of the discussion;
 - (c) where the discussion took place;
 - (d) the people in attendance;
 - (e) if there were dominant speakers, who they were and what they said; and
 - (f) the nature of the discussions.

Attach a copy of any file notes and diary notes.

99. To the extent not addressed above, outline the communications (if any) you have received and/or had with the media in relation to the matter of *R v Lehrmann*. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, calendar invitations, calendar appointments, file notes and diary notes. In the event discussions occurred verbally, provide the usual particulars.

Miscellaneous

100. Outline how and when you become aware of Ms Higgins' pre-published book. Provide details as to how and when you/the ODPP obtained possession of the pre-published book.
101. State whether you or someone from the ODPP provided a copy of the pre-published book or any of its contents to the AFP/ACT Policing officers. If so, on what date and to whom was it provided. If not, provide the reasons as to why it was not provided to AFP/ACT Policing.
102. State whether you or someone from the ODPP provided a copy of the pre-published book or any of its contents to the legal representatives for Mr Lehrmann. If so, on what date and to whom was it provided? If no, provide the reasons as to why it was not provided to the legal representatives for Mr Lehrmann.

Board of Inquiry

103. State whether you have spoken to ODPP staff or any other persons (other than legal advisors you have engaged in relation to your involvement in the Board of Inquiry) in relation to the provision of evidence to the Board of Inquiry under s 26(1)(b) of the *Inquiries Act 1991*, including advice surrounding the provision of information to your legal representatives. **Attach** a copy of any relevant communications including but not limited to correspondence, emails, text messages, social media messages, file notes and diary notes. In the event discussions occurred verbally, provide details of any verbal discussions.
104. Outline any other matters you wish to raise with respect to the Terms of Reference of the Board of Inquiry.

Notes

Informal service

1. Even if this notice has not been served personally on you, you must, nevertheless, comply with its requirements, if you have actual knowledge of the notice and its requirements.

Where the addressee is a corporation or agency

2. If this notice is addressed to a corporation or agency, the corporation or agency must comply with the notice by its appropriate person or proper officer.

Objections

3. If you object to a document or thing produced in response to this notice being inspected by a party to the proceeding or anyone else, you must tell the Board of Inquiry about your objection and the grounds of your objection either orally on the return date for this notice or in writing before or after the return date.

Production of copy instead of original

5. If the notice requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
6. The copy of the document may be—
 - (a) a photocopy; or
 - (b) in PDF format; or
 - (c) in any other electronic form that the issuing party has indicated will be acceptable.

Contempt of Board of Inquiry

7. A person commits an offence if the person does something in the face, or within the hearing, of a board that would be contempt of court if the board were a court of record (see *Inquiries Act 1991*, s 36 (**Contempt of Board**)).
8. Failure to comply with a subpoena without lawful excuse is a Contempt of Board and may be dealt with accordingly.
9. Failure to comply with a subpoena may also be a criminal offence (see *Criminal Code*, s 719 (Failing to attend) and s 720 (Failing to produce document or other thing)).

Protections

10. Where a person is required to produce a document (or other thing) or answer a question to the Board of Inquiry, that person is not able to rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing or answer the question (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).
11. However, anything obtained because of the producing of the document or other thing, or the answering of the question, is not admissible in evidence against that person in a civil or criminal proceeding, except for an offence relating to the falsity or misleading nature

of the document or other thing or answer, and for an offence against chapter 7 of the *Criminal Code* (see *Inquiries Act 1991*, s 19 (Privileges against self-incrimination and exposure to civil penalty)).

ANNEXURE A
Terms of Reference

1. The Board will inquire into:
 - (a) Whether any police officers failed to act in accordance with their duties or acted in breach of their duties:
 - i. in their conduct of the investigation of the allegations of Ms Brittany Higgins concerning Mr Bruce Lehrmann;
 - ii. in their dealings with the Director of Public Prosecutions in relation to his duty to decide whether to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann in relation to those allegations;
 - iii. in their dealings with the legal representatives for Mr Lehrmann before, during or after the trial in the matter of *R v Lehrmann*;
 - iv. in their provision of information to any persons in relation to the matter of *R v Lehrmann*.
 - (b) If any police officers so acted, their reasons and motives for their actions.
 - (c) Whether the Director of Public Prosecutions failed to act in accordance with his duties or acted in breach of his duties in making his decisions to commence, to continue and to discontinue criminal proceedings against Mr Lehrmann.
 - (d) If the Director of Public Prosecutions so acted, his reasons and motives for his actions.
 - (e) The circumstances around, and decisions which led to the public release of the ACT Director of Public Prosecutions' letter to the Chief Police Officer of ACT Policing dated 1 November 2022.
 - (f) Whether the Victims of Crime Commissioner acted in accordance with the relevant statutory framework in terms of support provided to the complainant in the matter of *R v Lehrmann*.
 - (g) Any matter reasonably incidental to any of the above matters.
2. The Board will report to the Chief Minister by 30 June 2023.

Curriculum Vitae

Name: Shane Drumgold SC

Position: Director of Public Prosecutions for the Australian Capital Territory

Address:

Office of the Director of Public Prosecutions
GPO Box 595 Canberra City 2601.

Phone:

(Mob) REDACTED

(W) REDACTED

Email: REDACTED@act.gov.au

Qualifications:

2019	Appointed Senior Counsel
2003	Awarded the Churchill Fellowship to study restorative justice initiatives for indigenous offenders in the USA, Canada and New Zealand
2003	Master of Laws (International Law)
2000	Bachelor of Laws (Honours)
1999	Bachelor of Business (Economics)

Work history:

2019 - Present	Director of Public Prosecutions
2019 – 2021	ACT Bar Council
2017 – 2018	Deputy Director of Public Prosecutions
2002 – 2018	Australian National University, part time academic, tutor and guest lecturer in Criminal Law and Evidence Law
2014 – 2017	Assistant Director of Public Prosecutions
2009 – 2014	Grade 5 Senior Advocate / Practice Manager.
2007 – 2009	Grade 3 Senior Prosecutor
2006 – 2007	Public Solicitors Office, Honiara Solomon Islands - Public Defender
2004 – 2006	Grade 2 Prosecutor
2002 – 2004	Grade 1 Prosecutor
1999 – 2001	South Eastern Aboriginal Legal Service, Paralegal

Publications:

Sept 2018	<i>We need and ideological revolution in criminal justice</i>	ACT Bar Bulletin
Feb 2017	<i>Human Rights Balance</i>	ACT Bar Bulletin
Feb 2015	<i>800 Years of the First Great Charter</i>	ACT Bar Bulletin
2011	<i>Palm Tree Justice – Inside RAMSI</i> (Gold medallist 2011 eLit Publishing awards) [www.palmtreejustice.com]	Lightening Press ISBN 978-0-646-56772-3
2004	<i>Report on Restorative Justice Programs for Indigenous Offenders in the USA, Canada and New Zealand</i>	Winston Churchill Memorial Trust [www.churchilltrust.com.au]
2004	<i>Restorative Justice – A shift in paradigm</i>	9 th International Criminal Law Congress
2001	<i>The progress of Aboriginal custody rates on the 10th anniversary of the Royal Commission into Aboriginal Deaths in Custody</i>	Indigenous Law Bulletin Volume 5 Issue 8

Speeches of note

21 May 2019	Challenges ahead of a new Director	ACT Government Executive Speaker Series
21 Nov 2019	The law and the age of enlightenment	AFP McAulay Oration
3 Feb 2020	High Court of Australia Silks Address	High Court Silk Bows dinner

CDP presentations:

25 Aug 2018	Ethics Law and Technology – Giving expert evidence in court	Neuroscience and society
4 Mar 2017	Fitness to plead; expert evidence and the law	Australian and New Zealand Associations of Psychiatry, Psychology and Law conference
16 Jul 2016	Mental Impairment Defences under the Crimes Act 1900 and Criminal Code 2002	Australian and New Zealand Associations of Psychiatry, Psychology and Law conference
1 Jun 2016	Mental Impairment Defences under the Crimes Act 1900 and Criminal Code 2002	ACT Bar
8 Jul 2015	History of the Magna Carta	ACT Bar
27 Sep 2012	DPP Costs in criminal matters	ACT Law Society
14 Oct 2010	Expert provisions under the Evidence Act 1995 in Criminal Proceedings	ACT Bar
9 Nov 2004	Introduction of the Crimes (Restorative Justice) Act 2004	ACT Law Society

Court Matters**High Court**

Date	Matter Name	Coram	Crown	Contra	Issue
29 April 2020	UD v The Queen C6 of 2020	Gordon J	Drumgold SC leading McCann	Stellios leading Morrisroe	Constitutional challenge to s68BA Supreme Court Act 1933
17 May 2019	Thomson v Andrews C14 of 2018	per Court	Drumgold, instructed by McCann	Nekvapil, instructed by Hilly	Response to application for special leave to appeal to the High Court on the principle of legality vs implied right of entry in section 56A Bail Act 1992
10 Dec 2015	The Queen v GW [2016] HCA 6	French CJ, Bell, Gageler, Keane and Nettle JJ	Drumgold led by White SC	Odgers SC leading Baker	Status of sworn vs unsworn evidence under section 13 Evidence Act 2011, and relevant warnings under section 165 Evidence Act 2011

Supreme Court of the ACT

4 Mar – 22 Mar 2019	R v Ophel SCC 344 of 2017	Burns J	Drumgold leading Khazma instructed by Wei	Purnell SC instructed by Robertson	Attempt murder x 5 trial 2 by jury
17 Sep – 5 Oct 2018	R v Ophel SCC 344 of 2017	Murrell CJ	Drumgold leading	Purnell SC instructed by	Attempt murder x 5 trial 1 by jury

			Khazma instructed by Wei	Robertson	(hung jury)
28 May – 6 Jul 2018	R v Milan Urlich SCC 204 of 2016 (Murder) R v Marc Urlich SCC 60 of 2017 (Accessory after the fact)	Burns J	Drumgold leading Christensen instructed by Swan	Milan Urlich – Lawton instructed by Hointing Marc Urlich – Sabawhal instructed by Bowan	Murder trial by jury
6 Mar – 14 Apr 2017, and sentence 13 Jun 2017 and 4 Aug 2017	R v Al Harazi SCC 207 of 2015	Burns J	Drumgold leading Beljic instructed by Skvortsova	Archer instructed by De Bruin	Murder trial by jury
9 Oct 2017, 26 Oct 2017 and 28 Feb 2018	R v Woutersz SCC 73 of 2015	Penfold J	Drumgold instructed by Khazma	Archer instructed by Legal Aid	Manslaughter by diminished responsibility disputed facts and sentence
18-19 Jul 2016 and 5-8 Sept 2016	R v Rappel SCC 204 of 2016	Burns J	Drumgold instructed by Marson	Whybrow instructed by Aulich	Murder disputed facts and sentence
10 Aug 2016	R v Hagan SCC 155 of 2016	Burns J	Drumgold instructed by Concliffe	Lawton instructed by Saeedi	Disputed facts and sentence on traffic in large commercial quantity of methamphetamine

17 Aug 2016	R v Lee SCC 226 of 2015	Murrell CJ	Drumgold instructed by Swan	Archer instructed by Davies	Murder sentence
7 Nov 2016 – 20 Dec 2016	R v Woutersz SCC 73 of 2015	Murrell CJ	Drumgold instructed by Khazma	Collaery instructed by Rowe	Murder trial by jury (hung jury)

Older murder charges as lead counsel

Date	Matter name	Coram	Crown	Contra	Issue
23 Mar – 14 Apr 2015 and 3 Dec 2015	R v Costa SCC 240 of 2012	Murrell CJ	Drumgold instructed by Khazma	Van de wiel SC (Melbourne Bar) leading Bradfield instructed by Lynch	Murder trial by jury and sentence
29 Jul – 29 Aug 2014 and 30 Oct 2014	R v Vojneski SCC 27 of 2013	Burns J	Drumgold leading Hiscox, instructed by Likeman	Pappas instructed by Woodhouse	Murder trial by jury and sentence
2 – 24 Apr 2013 and 31 May 2013	R v Yuen SCC 109 of 2011	Penfold J	Drumgold instructed by Lee	Thomas with Warwick instructed by Jackson	Murder disputed facts hearing by judge, and sentence

Older inchoate murder matters as lead counsel

Date	Matter Name	Coram	Crown	Contra	Issue
14-22 Sep 2014 and 15 Apr 2015	R v Holliday SCC 10 of 2014	Burns J	Drumgold instructed by Khazma	Livingston instructed by Legal Aid	Incitement to murder, kidnap and attempt to pervert the course of justice trial by jury and sentence
23 Sep – 1 Oct 2013 and 17 Dec 2013	R v Duffy SCC 268 of 2009 R v Iacune SCC 295 of 2009 R v JR SCC 369 of 2009	Burns J	Drumgold leading Knibbs, instructed by Sweeney	Duffy – Sabharwal Iacune – Keith Chappel SC (Sydney Bar) JR – Lawton	Conspiracy to murder trial by jury and sentence
1 Mar 2011	R v Sewell SCC 28 of 2011	Teague AJ	Drumgold instructed by Lee	Hastings SC (Melbourne Bar) leading Sabharwal instructed by Sharman	Conspiracy to murder trial by judge

Sample of other matters in the Supreme Court of the ACT

Date	Matter Name	Coram	Crown	Contra	Issue
22-24 Jun 2015	R v Hibbert SCC 243 of 2015	Refshauge J	Drumgold instructed by Marson	Phillip Dunn QC (Melbourne Bar) instructed by Mckenna	Sexual intercourse without consent trial by jury
Trial 2: 7 – 14 Apr 2014	R v GZ SCC 377 of 2009	Penfold J	Drumgold instructed by Burgoyne-Scutts	Gill instructed by Hubert	Sexual intercourse without consent trial by jury (2 nd retrial)
Trial 3: 29 Jun – 3 Jul 2015	R v GZ SCC 377 of 2009	Burns J	Drumgold instructed by Skvortsova	Winston Terracini QC (Sydney Bar) leading Quilter (Sydney Bar)	Sexual intercourse without consent trial by jury 3 rd retrial)
3- 5 Dec 2012 and 15 Feb 2013	R v Miles SCC 395A of 2011	Burns J	Drumgold instructed by Judd	Gill instructed by Legal Aid	Conspiracy to commit aggravated robbery trial by jury and sentence
29 Apr – 20 May 2013 and 30 Jul 2013	R v Ashcroft SCC 405 of 2010 R v Elphick SCC 108 of 2011	Penfold J	Drumgold instructed by Lee	Ashcroft – Harris SC (ACT Bar) instructed by Legal Aid Elphick – Purnell SC (ACT Bar) instructed by Legal Aid	Conspiracy to inflict grievous bodily harm trial by jury (co-accused to R v Yuen) and sentence

ACT Court of Appeal

Date	Matter Name	Coram	Crown	Contra	Issues
13 Nov 2018	McLeod v R [2018] ACTCA 21	Elkaim, Mossop JJ, Robinson AJ	Drumgold instructed by McCann	McLachlan instructed by Edmonds	Sentencing error
12 Nov 2018	Parker v R [2018] ACTCA 6	Elkaim, Loukas- Karlsson J, Robinson AJ	Drumgold instructed by Lynch	McLachlan instructed by Ong	Sentencing error
13 Aug 2018	Marsh v R [2017] ACTCA 49	Burns J, Murrell CJ, North J	Drumgold instructed by Howe	Odgers SC leading Walsh	Admission of tendency evidence
14 -16 May 2018	Hoyle v R [2017] ACTCA 18	Burns J, Murrell CJ, North J	Drumgold instructed by McCann	Game SC leading Edwards SC instructed by Taylor	Admission of tendency (second limb of Hughes). Admission of psychiatric evidence. Admission of medical expert evidence.
15 Feb 2018	Walters v R [2017] ACTCA 17	Elkaim, Mossop, Wigney J	Drumgold instructed by Walker	Whybrow instructed by Kukules- Smith	Conviction and sentence appeal on conspiracy to traffic drugs conviction
13 Feb 2018	Williams v R [2017] ACTCA 8	Murrell CJ, Elkaim, Mossop J	Drumgold instructed by McCann	Self	Factual finding on sentence

5 Nov 2017	Leighton v R [2017] ACTCA 55	Mossop and Jagot JJ, and Robinson AJ	Drumgold	Self	Sentence severity
6 Nov 2017	Bartlett v R [2017] ACTCA 60	Mossop and Jagot JJ, and Robinson AJ	Drumgold	Bevan	Admission of tendency evidence. Conviction appeal.
17 Feb 2016 & 27 Apr 2016	Tully v R ACTCA 55 of 2014	Murell CJ, Penfold and North JJ	Drumgold instructed by Smith	Self	Proof of age in historic sex matters, and use of dismissed counts as tendency.
14 Oct 2016	Miles v R ACTCA 54	Penfold, Burns and Witney JJ	Drumgold	Self	Sentence severity
13 Aug 2015	Livas v R ACTCA 10 of 2015	Murell CJ, Perry J and Warlmsley AJ	Drumgold instructed by Marson	Gill	Severity of sex offences in the context of negation of consent provisions in section 67 Crimes Act 1900.
3 Nov 2015	Holliday v R ACTCA 53 of 2014	Murrell CJ, Refshauge and Wamsley JJ	Drumgold instructed by Marson	Lawton	The interaction between inchoate offences under the Criminal code 2002, specifically incitement to murder and common

					purpose.
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Defence work in the Solomon Islands (2006-2007)

Conventional murder trials

- Regina v Tonawane, Saeeni and Ors [2006] HCSI-CRC 231 of 2004
- Regina v Moru [2006] HCSI-CRC 574 of 2005
- Regina v Yamallo [2006] SBHC 85; HCSI-CRC 169 of 2005

Murder trial seeking stay of prosecution based on post-civil war amnesty

- Regina v Su'u, and Ors [2007] HCSI-CRC 333 of 2006

Judicial corruption trial (defence of Magistrate on 13 counts of abuse of office)

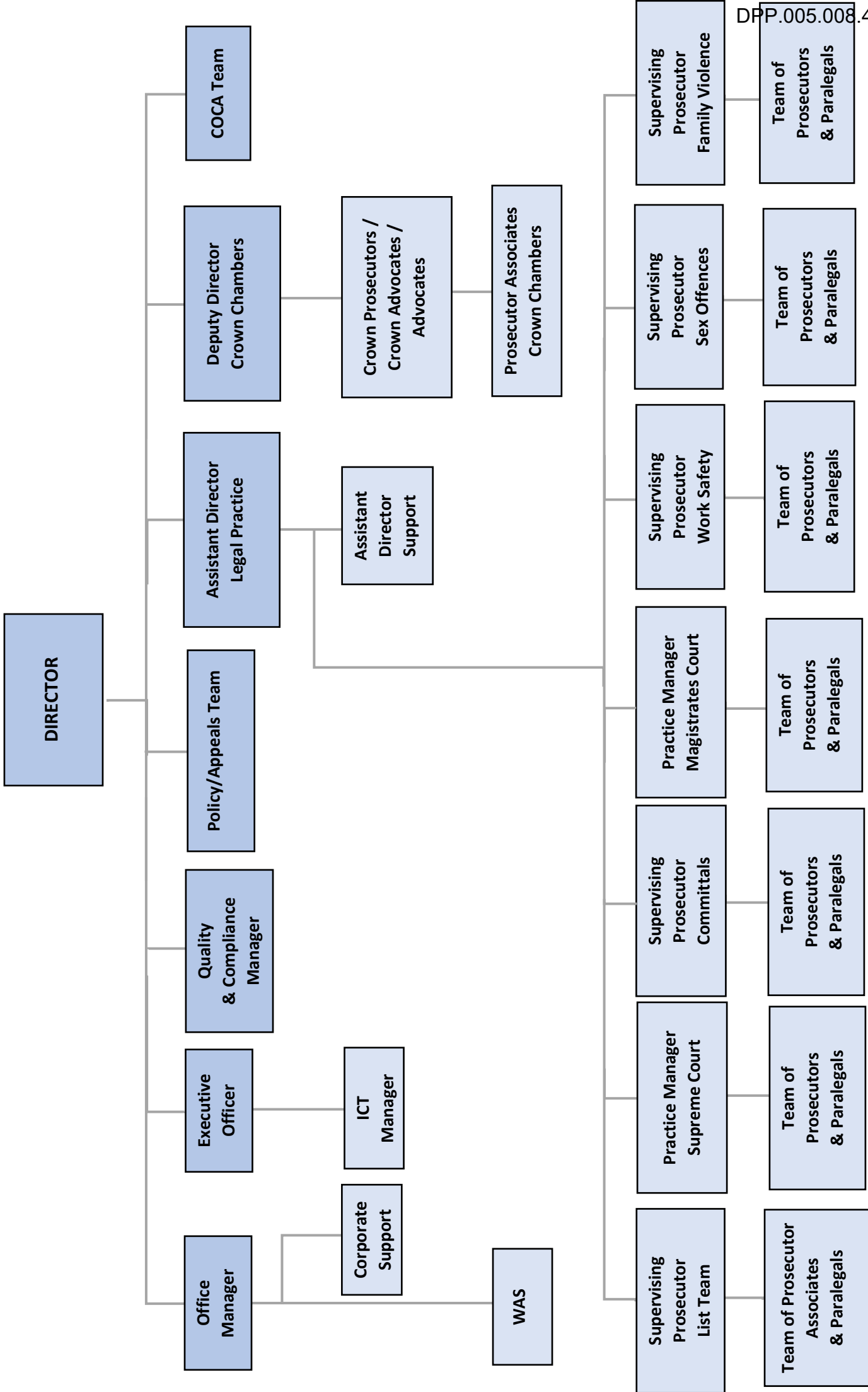
- Regina v Fasi [2006] SBHC 73; HCSI-CRC 489 of 2004

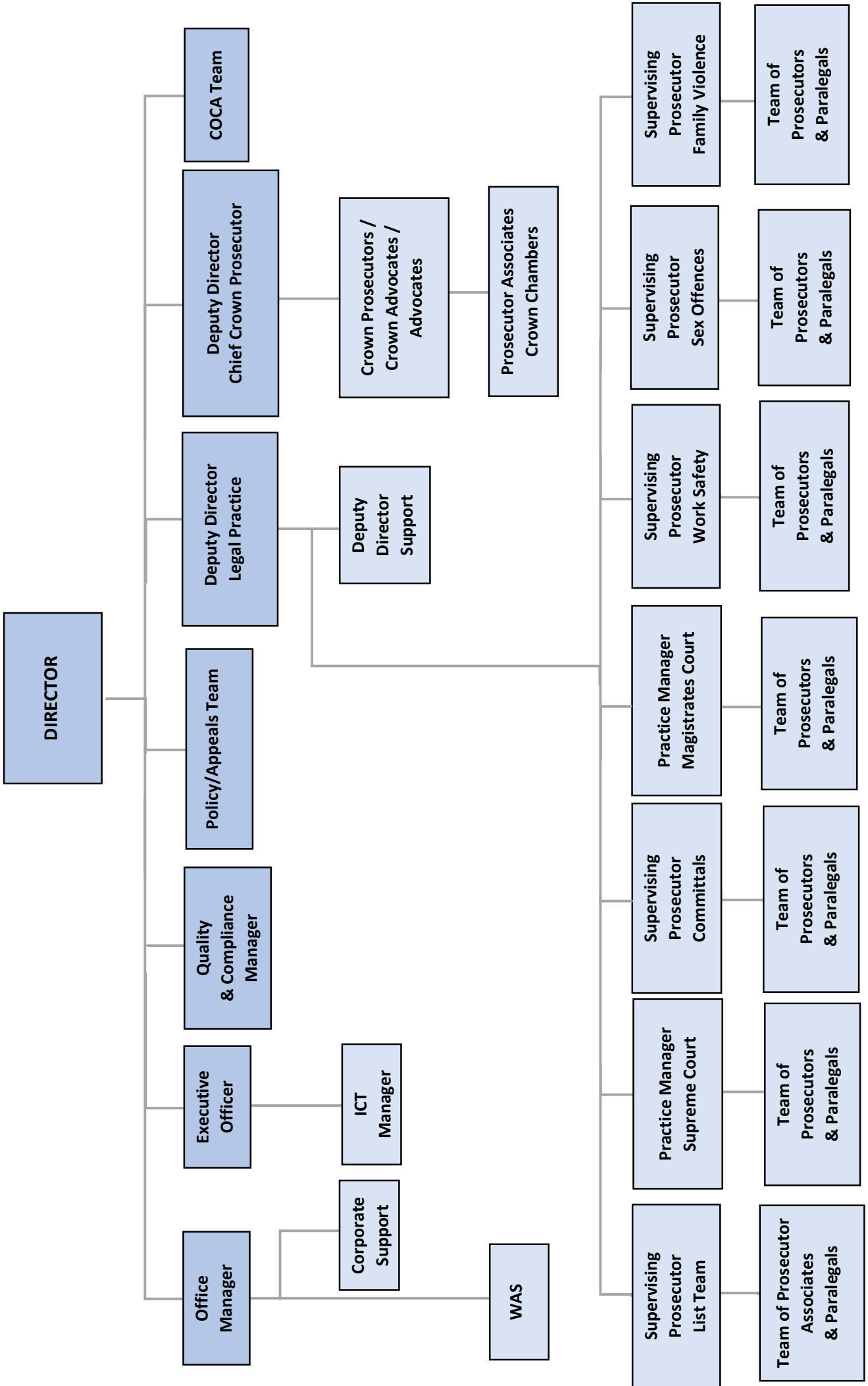
High Court declaration of unlawful conduct by Solomon Islands Dept of Corrective Services

- Ross and Ors v Attorney General [2006] SBHC 141; HCSI-CC 573 of 2005

High Court application for Mandamus and Certiorari

- Paul Eddie v Attorney General [2006] SBHC 104; HCSI-CC 72 of 2006







Director's Instruction No. 14.1

Review of a decision to discontinue a prosecution

Background

Under applicable instructions,¹ a decision to discontinue a prosecution or significantly amend a statement of facts must not be taken without first consulting the complainant (with child complainants, this includes the parent or guardian).

In relation to matters involving an identifiable victim, such consultations should take place unless there are compelling reasons not to do so.

It must be recognised that a decision to discontinue in particular a sexual offence is a matter of potentially great moment for a complainant. Specific rules apply therefore for discontinuing an entire proceeding involving an identifiable victim (as to which, see Director's Instruction 14.2 - Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing).

Procedure for review of a decision to discontinue

¹ Director's Instruction No. 1: Discontinuing Prosecutions and significantly amending Statements of Facts in the Supreme Court; and
Director's Instruction No. 2 - Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court.

In such cases, if a decision to discontinue is in prospect, the prosecutor must not only consult the complainant but also advise the complainant that if they are dissatisfied with a decision to discontinue a matter, they can ask that the decision be **reviewed** by the DPP.

The procedure is:

- The prosecutor consults the complainant and records their views.
- If the complainant is opposed to the discontinuation of the matter, the prosecutor is to inform the complainant that, if a decision is made to discontinue, they may ask that the decision be reconsidered by the DPP.
- The prosecutor prepares a recommendation on discontinuance to the Deputy Director or Assistant Director, which sets out all material matters including the views of the complainant.
- If a decision is made to discontinue the matter, then a record of the decision and the reason for it is made.
- If a complainant has indicated dissatisfaction with the decision, then the matter will be reviewed by the Director (this may be an automatic review or a review at request: see Director's Instruction 14.2 - Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing).
- In reviewing the decision, the Director will take into account the views of the complainant, the reason for the decision and any other material matters that are relevant including any matters relevant from the brief of evidence.

Audit of compliance

A record must be taken of each of the steps in the process on the Record of Reviewable Decisions form (RORD). At the completion of each financial year a RORD audit will be conducted in relation to each matter discontinued in that year, to establish whether the procedure set out in this instruction has been complied with.

The audit will be undertaken by an audit committee appointed by the Director. The results of the audit will be published in the annual report of the Director for the year in question.

ACT Bar Association – 5 March 2022



ACT Bar Association Conference

5 March 2022, Australian National University

Bounded discretions vs Arbitrary decisions

Applying the ACT Prosecution Policy

Shane Drumgold SC

ACT Bar Association – 5 March 2022

Greetings

I would like to acknowledge the Ngunnawal and Nambri people, the traditional custodians of the land we are meeting on today, and pay my respects to their past, present and emerging elders, and any other indigenous people here today.

History of the Director of Public Prosecutions:

The office of the Director of Public Prosecutions has its origins in the United Kingdom in the 19th Century. The Australian DPPs were created to remove prosecutorial decisions from the political process. By the 1980s, there was a recognition that Attorneys General were unmistakably political creatures, and it was considered in everybody's interest, including that of politicians, that the Executive appoint a person independent of the political process to make what are often very difficult and contentious decisions.

Tasmania introduced a *Crown Advocate Act 1973* (Tas) however the first Australian independent Office of the Director of Public Prosecutions was established in Victoria in 1982 (legislation later replaced) and other Australian jurisdictions soon followed suit. The Commonwealth in 1983, Queensland in 1984, New South Wales in 1986, both the ACT and Northern Territory in 1990, South Australia and Western Australia in 1991 and Victoria re-issued a new Act in 1994.

The population of the ACT were historically required to travel to NSW to attend court in either Queanbeyan, Goulburn or Cooma. This was until 1930 when the ACT Court of Petty Sessions was established, where visiting NSW Magistrates would travel to the ACT. The Supreme Court of the Federal Capital Territory was established on 1 January 1934 by the *Seat of Government Supreme Court Act 1933* (Cth); with the first resident judge, Lionel Lukin appointed in 1934. Prosecution services were provided by the Commonwealth Deputy Crown Solicitor's Office.

In 1974 the ACT's first Chief Magistrate Charles Kilduff was appointed, however Police Prosecutors continued to appear in the ACT Court of Petty Sessions until the late 1970s. From the late 1970s, prosecutions in the ACT Court of Petty Session were taken over by the Commonwealth Deputy Crown Solicitor's Office and then from 1983 the newly formed Commonwealth DPP. On 1 February 1986, the Court of Petty Sessions changed name to the ACT Magistrates Court.

Self-government in the ACT commenced on 4 March 1989 and necessitated the shifting of prosecutorial functions from the Commonwealth to the Territory. The *Director of Public Prosecutions Act 1990* (ACT) had unanimous support in the new Legislative Assembly, with both sides emphasising the independence of the newly created role. The then Attorney General noted in introducing the Bill: 'The Director of Public Prosecutions is an independent statutory office responsible for prosecuting criminal offences in the name of the Crown. The director's statutory independence ensures that prosecution decisions are perceived to be and are, in fact, made according to legal considerations and are free from political influence.' [Hansard 31 May 1990].

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The ACT Office of the Director of Public Prosecutions commenced operation on 1 July 1991, with the appointment of the first Director Ken Crispin QC. I am the ACT's 5th Director of Public Prosecutions. I was appointed on 1 January 2019.

Distinct roles of Police and DPP

It is important to note that the tests for charging differ significantly from the tests for continuing a charge through to trial or hearing. In *Latoudis v Casey* (1990) 170 CLR 534, 549 Dawson J cited (at 549) with approval the comments of Darley CJ in *Ex parte Jones* (1906) 6 SR (NSW) 313:

It is said that police should make careful inquiry into the circumstances before instituting proceedings. I think it would be dangerous to the public welfare if we laid upon the police any such duty, and held that they were bound to make inquiries before commencing prosecution. In making such inquiries they might easily be deceived. The proper course for police to pursue, is, if they see that a prima facie case exists, to bring it before the court which has jurisdiction to decide it. It is the duty of the magistrate to decide the case upon the evidence, and not the police to determine whether the accused is guilty or not. In some countries the police have this duty charged upon them of making inquiries, and exercising quasi-judicial functions, but that is not our system. Our system is that **if there is apparently good ground to suspect that an offence has been committed, it is the duty of the police to lay a complaint and bring the accused before a magistrate.**

Laying an information?

The test of "good ground to suspect" finds its way into ACT law in section 26 of the *Magistrates Court Act 1930* (ACT), which states: 'An information may be laid before a magistrate in any case where a person has committed or **is suspected of having committed**, in the ACT, an indictable offence or an offence that may be dealt with summarily...'

How do police get the defendant before the court to answer an information?

There are four options:

- 1) The laying of an information is accompanied by a summons for the defendant to appear.
- 2) Police can issue a court attendance notice to answer the information.
- 3) Pursuant to section 42 of the *Magistrates Court Act 1930* (ACT), the AFP may apply for a warrant of arrest, however pursuant to section 42(3) the Magistrate may issue a summons instead 'if the magistrate considers it appropriate.'
- 4) Pursuant to section 212 of the *Crimes Act 1900* (ACT), the police may arrest without a warrant. In order to lawfully exercise this power, police are required to reasonably suspect that proceeding via summons would not achieve a purpose in subsection 212(1)(b), namely, ensuring the appearance in respect of the offence, preventing the continuation of the offence, preventing concealment or loss of evidence, preventing

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harassment or interference with a person who may be required to give evidence, preventing the fabrication of evidence, or preserving the safety or welfare of the person. Police then have power to charge the defendant and either deny or grant bail by the “authorised officer” being the watchhouse Sergeant.

Broad power of the DPP:

My functions and powers are both provided for, and limited to section 6 of the *Director of Public Prosecutions Act 1990* (ACT), and include:

- In relation to indictable offences - Instituting and/or conducting prosecutions (s6(1)(a));
- In relation to summary offences – instituting and/or conducting prosecution on behalf of someone – in most cases, the AFP (s6(1)(c));
- Doing anything incidental or conducive of the performance of another function (s6(1)(r)).

In *Dix v Attorney-General*¹ the court reminded us that the DPP is not simply a lawyer for the police.

When a single judicial officer acquits an accused, there are significant checks and balances, including a written decision and several levels of appeal of those decisions. It is important to remember that prima facie, a decision to discontinue a prosecution has none of those checks and balances. This has been subject to much academic and judicial comment.

As has been said in UK courts, the primary decision to prosecute or not to prosecute is entrusted by Parliament to the Director as head of an independent, professional prosecuting service.²

It has been said that where law ends, discretion begins and the exercise of discretion may mean beneficence or tyranny, justice or injustice, reasonable or arbitrariness.³

Further, as outlined in *R v Maxwell*⁴ the discretions that are afforded a Director of Public Prosecution are insusceptible of judicial review.

It has been commented that prosecutorial discretion is one of the most important but least understood aspects in the administration of criminal justice. Given the extent of this power and the considerable discretionary powers vested in the Director, they must be exercised in strict accordance with transparent published prosecution policies and guidelines. This is

¹ [2002] AJ No 784.

² *R v DPP, ex parte Manning* [2001] QB 330, 343-44 (Lord Bingham CJ).

³ K Davis, *Police Discretion* (West Publishing, 1975) 12.

⁴ (1996) 184 CLR 501.

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particularly so because the decision-making process is rarely, if ever subjected to external scrutiny.⁵

As pointed out by Kirby P, a decision to commence, not to commence or to terminate a prosecution is made independently of the courts, yet they can have the greatest consequences for the application of the criminal law.⁶ We walk a fine line between allowing the DPP sufficient independence, whilst ensuring that there is at least some oversight of the Director's duties, given the Office is an unelected one, unanswerable to any constituents.⁷

It has been warned that the Director's discretion can dangerously be synonymous with unchecked power, and it is accepted that public accountability of the branches of government play a role in the criminal law process,⁸ so such discretion needs to be exercised with extreme caution, in a transparent, principled and of high-quality way, so it promotes public confidence in the power rather than detracts from it.

The process of prosecutions in Australia at both State and Federal level has historically been one of the most secretive, and poorly documented aspects of the administration of criminal justice.⁹ This is changing somewhat with things such as the broad adoption of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Assault, as I will get to shortly, further assisted in the ACT by the recently amended *Victims of Crime Act 1994* (ACT), and with the commencement of the Victims Charter on 1 January 2021.

This is all in line with the United Nations Guidelines on the role of Prosecutors, requiring Prosecutors vested with discretionary functions to provide guidelines for the exercise of such powers so as to ensure consistency and fairness in the exercise of the discretion.¹⁰

However, courts have also cautioned that the discretion must not be exercised in blind adherence to policy¹¹ and requires individualised judgment.¹²

The prosecution policy:

Section 12 of the *Director of Public Prosecution Act 1990* (ACT) provides for me to give direction or furnish guidelines, which I have done in the form of the 'ACT Prosecution

⁵ Dr Denise Lievore, Victim Credibility in Adult Sexual Assault Cases [2004] (288) AIC Trends and Issues in Crime and Criminal Justice 1

⁶ *Price v Ferris* (1994) 34 NSWLR 704, 708 (Kirby P).

⁷ Public Accountability of Public Prosecutions, Yang K – Murdoch University Law Review (2013) 20(1).

⁸ Public Accountability of Public Prosecutions, Yang K – Murdoch University Law Review (2013) 20(1).

⁹ Australian Law Reform Commission, Sentencing of Federal Offenders, Report No 15 (1980).

¹⁰ Office of the United Nations High Commissioner for Human Rights, Guidelines on the Role of Prosecutors (1990).

¹¹ *R v Moore; Ex parte Australian Telephone and Phonogram Officers Association* (1982) 148 CLR 600, 403.

¹² *Cumbairux v Minister for Immigration and Ethnic Affairs* (1986) 74 ALR 480,493.

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Policy’. Pursuant to section 12(4) I am required to give a copy of each direction or guideline to the Attorney-General, which thereafter bind my decision making. The principal considerations in whether or not to continue a prosecution are outlined at section 2 of the published ACT Prosecutions Policy.

At 2.1, the policy states: ‘The decision to prosecute should not be made lightly or automatically but only after due consideration.’

Broadly there are two considerations as outlined at 2.4: ‘The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?’

Reasonable prospect of conviction

To provide the transparency in our considerations, 2.7 outlines a non-exhaustive list of factors for consideration:

2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:

- (a) Are the witnesses available and competent to give evidence?
- (b) Do they appear to be honest and reliable?
- (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?
- (d) Do any have a motive for being less than candid?
- (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
- (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?
- (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?
- (i) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- (j) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?

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(k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?

(l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

The application of these tests requires reliance on experience in the prosecution of such matters. For example, 2.7(e) requires consideration of potential attacks on the credibility of witnesses, which itself requires a detailed and nuanced understanding of Part 3.7 of the *Evidence Act* 2011 (ACT). Further considerations such as those set out in 2.7(i) traverse complex questions of admissibility of evidence spanning the entire *Evidence Act* and knowledge of weighty jurisprudence interpreting the various provisions. Moreover 2.7 (j) requires a complex analysis of the evidence and of both statute law and jurisprudence surrounding Part 3.4 of the *Evidence Act*. Likewise with 2.7(k) consideration must be given to Part 3.9 of the *Evidence Act* and so on.

As outlined at 2.4.2 of the Office of the Director of Public Prosecutions Business Plan 2021-2025, we monitor conviction rates. If the percentage of not guilty is too high or too low, it may suggest the application of the reasonable prospects test in 2.7 of the Prosecution Policy is either too optimistic or too pessimistic, and we work on a ballpark of 30%.

In *Miazaga v Kvello Estate* [1986] 1 SCR 802 the Canadian Supreme Court cautioned at [66] that:

... the Crown prosecutor who harbours personal doubt about the guilt of the accused cannot substitute his or her own views for those of the judge or jury in making the threshold decision to go forward with a prosecution. The Martin Report explains as follows, at pp 71-72:

Crown counsel need not and ought not to be substituting his or her own views for those of the trial judge or jury, who are the community's decision makers. It cannot be forgotten that much of the public's confidence in the administration of justice is attributable to the trial court process that ensures that justice is not only done, but is seen to be done...

This is an important cautionary reminder.

Public interest

In relation to this discretion methodology, in the UK Sir Hartley Shawcross QC's statement as Attorney-General to the House of Commons, in January 1951, pointed out that, 'It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecutions.'

In launching the UK Crown Prosecution Service on the 1 October 1986, then Director of Public Prosecutions for England and Wales Sir Thomas Hetherington (1977-1987) summarised its main objectives to include to continue prosecutions **while, and only while, they are in the public interest.**

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To give these considerations transparency and consistency, 2.9 of the Prosecution Policy acknowledges the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. As noted in the Prosecution Policy many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive however, under the existing Prosecution Policy, those factors may include the following:

- (a) the seriousness or, conversely, the triviality of the alleged offence;
- (b) whether it is of a "technical" nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
- (e) the antecedents and background of the accused;
- (f) the staleness of the alleged offence;
- (g) the degree of culpability of the accused in relation to the offence;
- (h) the effect on public order and morale;
- (i) the obsolescence or obscurity of the law;
- (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- (k) the availability and efficacy of any alternatives to prosecution;
- (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
- (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (n) whether the alleged offence is of considerable public concern; ...

It has been said that the cases envisaged are often ones where the harmfulness of the conduct was relatively low, or where the offender's culpability was low and given the proportionality it is considered not in the public interest to institute full prosecution against these individuals,¹³ however these are not exhaustive considerations.

Victim's rights of review

As I noted earlier the Royal Commission into Institutional Responses to Child Sexual Abuse has made important recommendations. Recommendations 40-43 of the Royal Commission

¹³ Avon Hirsch and A Ashworth, *Principled Sentencing* (Hart 2nd ed, 1998) Ch 4.

into Institutional Responses to Child Sexual Abuse (Criminal Justice Report, Parts III to VI, 2017) has recommended the implementation of DPP complaints and oversight mechanisms:

40. Each Australian Director of Public Prosecutions should:

- a. have comprehensive written policies for decision-making and consultation with victims and police
- b. publish all policies online and ensure that they are publicly available
- c. provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.

41. Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.

42. Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.

43. Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports

Pursuant to these recommendations, in 2019 I launched our 'Victim Review Policy' supported by:

- 1) Victims' Right of Review Director's Guideline (published on ACT DPP website);
- 2) The ACT DPP Prosecution Policy;
- 3) Director's Instruction No. 1: Discontinuing prosecutions and significantly amending Statements of Facts in the Supreme Court;
- 4) Director's Instruction No. 2: Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court and Children's Court;
- 5) Director's Instruction No.7: Charge negotiations in the Supreme Court;
- 6) Director's Instruction No. 13: Guidelines for contact with complainants in sexual offence matters;
- 7) Director's Instruction No.14.1: Review of a decisions to discontinue a prosecution; and
- 8) Director's Instruction No 14.2: Reviewable decisions to discontinue – contact with complainants, review processes and auditing.

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In summary, all homicide, sexual offences and serious violence offences are subject to an automatic review. Less serious violence offences and any other offence against an identifiable victim named in the information are subject to review on request of the victim. There are now processes where a victim may request written reasons for a decision to discontinue a prosecution.

Within the office, the original decision is recorded on a RORD (Record of Reviewable Decision) which also documents any review of the decision. Compliance with the policy is subject to an annual audit by an audit committee, and the results are published in the Annual Report.

Representations to discontinue or significantly amend a case

Representations from defence are much more likely to be successful if they are conscious that I am legally obliged to also consider the complainant's rights, and they address our documented considerations, including:

- 1) Are the representations based on a) there being no reasonable prospect of conviction, b) it not being in the public interest, or c) a mixture of both;
- 2) Do the representations clearly address the criteria in 2.7 or 2.9 of the Prosecution Policy;
- 3) Provide supporting evidence for the submissions;
- 4) Be courteous and professional – whilst unprofessional representations are still closely considered, discourteous tones often obscure the more valid substance of a representation.

What are not relevant considerations:

- 1) Issues of costs or offers to not apply for costs do not feature in the published considerations. We start with the assumption that costs generally follow the event in any event: *Latoudis v Casey* (1990) 170 CLR 534
- 2) Emotional pleas do not assist the application of the published considerations.
- 3) Threats of media publicity or complaints to government etc do not feature in the published considerations and appear ignorant of the independence of the office.
- 4) Personal attacks do not assist the representations.
- 5) External commentary from other cases, or extra-judicial comment on views on a case do not feature in the published considerations.

The most successful representations are those that present logical argument, addressing the published test.

Shane Drumgold SC



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Fears over drop in sexual assault trial numbers



By [Lucy Bladen](#)
March 29 2021 - 4:30am



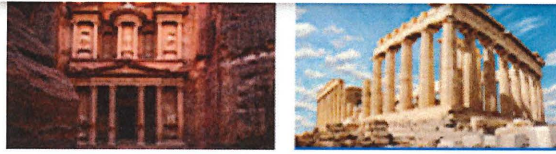
Victims' advocates have expressed fears over a drop in the number of sexual assault trials, despite rising complaints. Picture: Shutterstock

Sexual assault trials and conviction rates in the ACT have plummeted over the past five years, despite an increase in reports to victim services and police.

Victim advocates are increasingly worried about the lower number of trials, which they say shows an urgent need for sexual assault law

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ACT Attorney-General Shane Rattenbury has promised work will start on reforms to offer better support to victim-survivors.

There were 230 sexual offence trials in the ACT in the five years from 2010-11 to 2014-15, according to figures in ACT Director of Public Prosecutions annual reports.

But in the following five years there were just 105 trials. This was despite 2667 reports of sexual offences to police during this period, according to figures from the recent ACT Policing annual report.

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The conviction rate has also fallen in that time. In the first five-year period there was a guilty verdict in 59 per cent of trials, whereas in the past five years there was a guilty verdict in 55 per cent of cases.

Calls to the Canberra Rape Crisis Centre crisis line have soared. In 2011-12 the centre received 8911 crisis calls, but in 2019-20 it fielded 25,848 calls.

At Victim Support ACT there has been a 304 per cent increase in the provision of hours needed for sexual assault counselling, from 486 hours in 2016-17 to 1964 hours in 2020-21.

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- [Victims of Crime Commissioner calls for sexual assault reforms](#)
- [ACT government looking at criminalising coercive control](#)

As well, ACT Policing crime statistics show a 57 per cent increase in the number of sex offences reported over five years, from 384 reports in 2014 to 606 reports in 2019. However, the number of reports did drop in 2020 to 449.

Canberra Rape Crisis Centre chief executive Chrystina Stanford said the burden of proof needed for victims was too high.

"If a matter is not proceeding, that doesn't mean something didn't happen, that doesn't mean that the person wasn't sexually assaulted," she said.

"But if the evidence needed is ... at a really high level it does automatically mean that a number of people couldn't proceed."

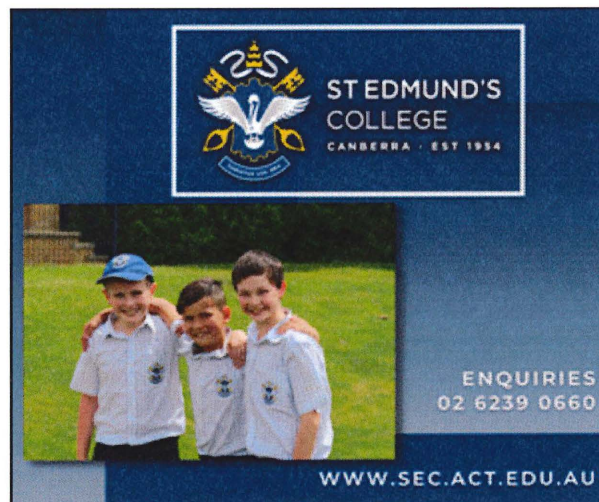
Mr Rattenbury said the data reinforced what the government had heard from advocates, and the government would work to restart its sexual assault law reform program.

where survivors don't proceed with a formal charge or where they withdraw partway through," he said. "It is important for us to understand exactly why that is, so we can ensure those who come forward to report their lived experience of sexual assault, harassment or abuse are supported."

ACT Director of Public Prosecutions Shane Drumgold was cautious in his assessment of the trial data.

"There will always be variations in both the number of trials and conviction rates from year to year, so one needs to approach randomly selected years with caution," he said.

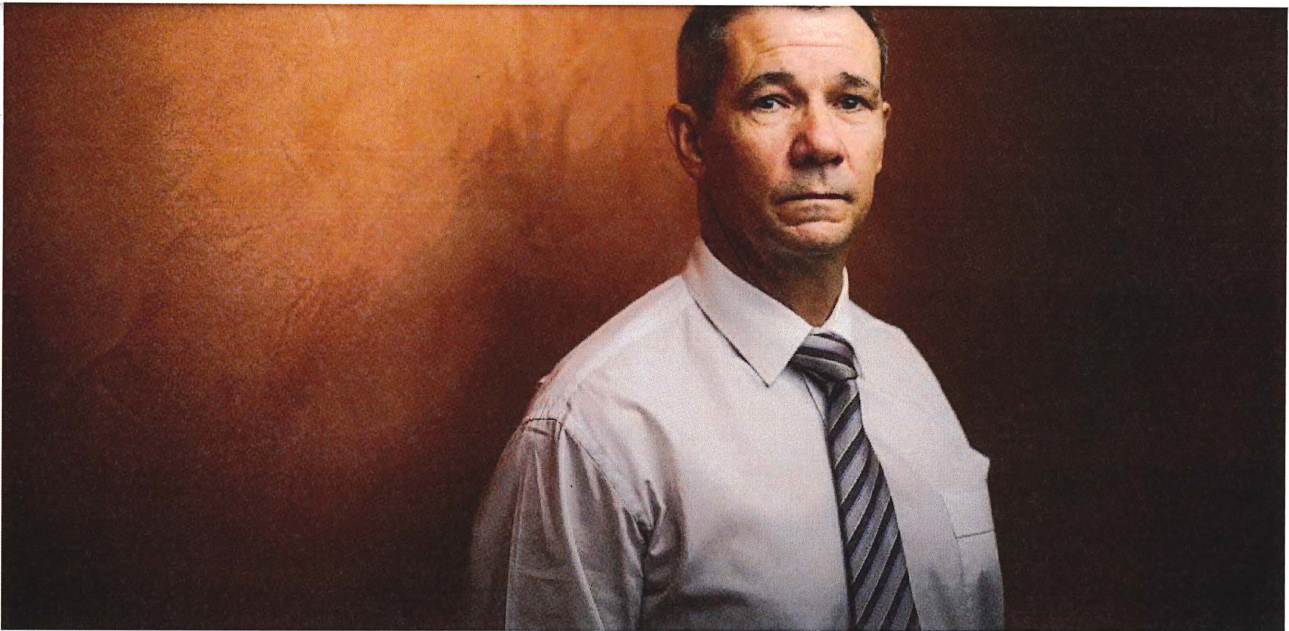
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 ACT Director of Public Prosecutions Shane Drumgold. Picture: Dion Georgopoulos

Mr Drumgold said the average conviction rate for sexual assaults in the ACT over the past 10 years is 57.3 per cent and the average number of yearly trials is 33.

He said from year to year there may be a lower number of trials, and the coronavirus pandemic had impacted the number of trials in 2019-20.

The ACT government's sexual assault law reform program will work with experts and stakeholders who will help to identify and implement reforms to sexual assault processes.

Victims of crime commissioner Heidi Yates will be among those to play a role in the program.

"We need to understand where matters are dropping out of the system, from initial report to failure to proceed to prosecution," she said. "There's a very high number of matters where legal action isn't taken, because the matter is considered unfounded. We actually

to proceed and why.

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Mr Drumgold said he considered the flagged reform work by the ACT government as a continuation of reforms that began in 2005.

"In my view, 15 years of sexual assault law reform in the ACT and around Australia has largely focused on the protection of sexual assault victims, particularly focusing on their interaction with the criminal justice system, and has been very successful," he said.

- **Canberra Rape Crisis Centre: (02) 6247 2525**
- **Lifeline: 13 11 14**

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Lucy Bladen
Reporter Canberra Times



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Lucy Bladen has been a journalist at The Canberra Times since 2019. She is an ACT politics and health reporter. Email: l.bladen@canberratimes.com.au

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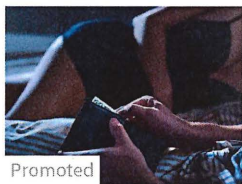


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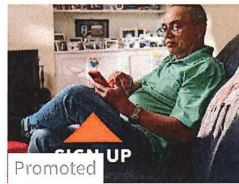
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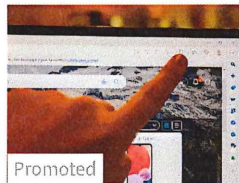
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SUBMIT



From: Chatterton, Andrew
Sent: Fri, 3 Sep 2021 15:50:10 +1000
To: Drumgold, Shane
Subject: Current SACAT issues

OFFICIAL

Dear Shane,

Please find below a short summary of the issues that currently concern Skye and I following our meeting with SACAT team leaders yesterday afternoon:

1. Mick Woodburn stated that 95% of sexual assault complaints made to SACAT, do not result in a charge. Woodburn stated that this is because of a combination of reasons including a large percentage of victims simply not understanding the definition of consent.

(we believe it more likely that the investigating officers don't understand the law on consent)

He then gave an example of a

disclosure to the mother.

After some questions from us about why there wouldn't be a reasonable suspicion that the father committed a sexual offence, Woodburn stated he would have to review the EICI and come back to us.

2. Woodburn also stated that there needs to be recognition of SACAT's workload which is taken up by the 95% of people who complain but do not go on to be victims in the criminal jurisdiction.
3. Woodburn asked Skye how many of our sex offence trials resulted in convictions. Skye confirmed a figure of 55% for the latest year statistics are available. Seeing this as a low conviction rate, Woodburn appeared to justify this as a reason not to put more effort into putting matters before the courts.
4. It is both of our experience with SACAT that there is a misconception that an allegation of sexual assault requires corroboration in order to be able to charge. They also appear not to understand the value of complaint evidence.
5. It is also both of our experience with SACAT that there is a misconception that prior family violence is strictly not admissible in sexual assault trials. Police stated that they often do not investigate these matters because they don't know how to write it up in the summary of facts and that it can cause confusion with which police unit ultimately carries out the investigation.

In Andrew's recent sentence matter of PAGE (202011486, *R v Page* [2021] ACTSC 207 – currently being considered by Anthony as to the merits of a Crown appeal), the victim revealed in a post-sentence conference that prior to her EICI she had shown police photos of

injuries in the form of bruising to her chest area inflicted by the offender. She was told they were not relevant and could not be used in any proceedings as they were child abuse material (even though the victim told me she was wearing a top in the photos). The existence of the photos was never disclosed to the DPP.

The victim additionally revealed that she told police before her EICI that the offender gave her marijuana plants in the lead up to them starting a relationship. Again she was told this wasn't relevant (despite being a highly relevant aggravating factor in sentencing s56 Crimes Act offences), and it wasn't discussed in the EICI nor disclosed to the DPP. Andrew followed up these revelations with the informant Jude [REDACTED] – he denied such disclosures by the victim.

6. There is also a misunderstanding or lack of knowledge of what the AFP test is to be applied in order to charge a suspect with a sexual offence. We often hear from police that they think the test is one of 'a reasonable prospect of conviction'.

Following the meeting Andrew emailed a copy of the AFP DPP Collaborative Agreement to the SACAT team leaders, highlighting para 2.2 and our respective pre-charge roles. This was in response to a number of recent examples where officers have been seeking pre-charge advice on appropriate charges from Andrew and his team members.

In one notable example, Andrew has been dealing with D/Sgt Branko ('Brian') [REDACTED] from City Response Team 1 regarding his investigation of an allegation of acts of indecency by an ANU student against her boyfriend. He initially contacted Anthony one weekend seeking his endorsement that no charges should result from the evidence by then gathered. Anthony referred the matter to Andrew. The evidence consisted of a short victim statement setting out at least three acts of indecency (but no EICI), emails sent to the victim from the suspect making admissions, evidence of immediate complaint, and statements from the suspect's friends in which they stated he had made admissions to them about his conduct.

Concerned that the matter was not being investigated by SACAT, I advised D/Sgt [REDACTED] to refer the matter to SACAT, in particular for an EICI to be conducted. He later came back to me to confirm that SACAT had provided an officer to conduct an EICI but would not take over the investigation. I understand from D/Sgt [REDACTED] that charges are about to be laid. In probing the officer as to why he had thought it to be a weak case, he replied that it was his belief that the suspect's drunkenness at the time of the alleged offences provided him with a cast iron defence to any sex offence charges.

7. We offered to give a training lesson (as previously discussed with previous leaders of SACAT). We also agreed to combine a 'reading list' of useful cases to help address the general lack of understanding about the admissibility of certain evidence, including relationship evidence.

Regards,

Andrew Chatterton

Supervising Prosecutor

Sexual Offences Unit

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: [REDACTED]



From: Chatterton, Andrew
Sent: Mon, 6 Sep 2021 10:58:18 +1000
To: Drumgold, Shane
Cc: Jerome, Skye
Subject: RE: Current SACAT issues
Attachments: Sexual Assault Reform Stats and demographics.xlsx

OFFICIAL

Dear Shane,

Please find attached stats provided to us by Mick Woodburn today following our meeting with SACAT last week.

The 5% charging rate must come from Table 5: 26 matters charged before the court in 2020 out of a total of 493 matters reported.

Previous years are even worse:

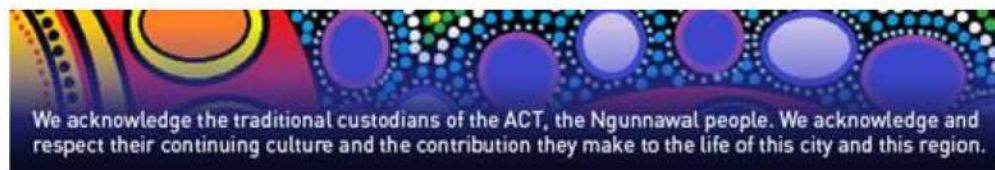
2019 – 19 out of 614 (3%)

2018 – 12 out of 522 (2%)

Regards,

Andrew

Andrew Chatterton
Supervising Prosecutor
Sexual Offences Unit
Office of the Director of Public Prosecutions (ACT)
GPO Box 595, Canberra ACT 2601 (DX 5725)
T: REDACTED



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Sent: Friday, 3 September 2021 3:50 PM
To: Drumgold, Shane <REDACTED@act.gov.au>
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[REDACTED]

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Andrew Chatterton
Supervising Prosecutor
Sexual Offences Unit
Office of the Director of Public Prosecutions (ACT)
GPO Box 595, Canberra ACT 2601 (DX 5725)
T: **REDACTED**

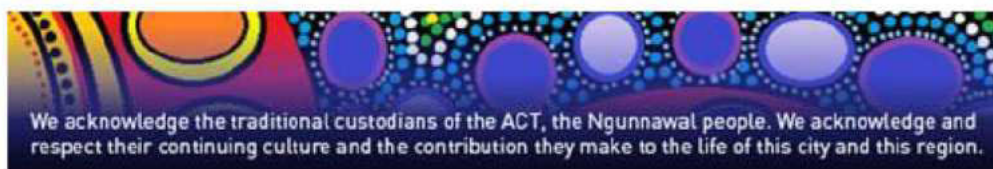


Table 1. Number of sexual assault offences reported to ACT Policing - by offence type
Date reported between 01 January 2017 - 30 June 2021
Source: PROMIS as at 1 July 2021, Performance Statistics Team

Offence Type	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18	Mar-18	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19
Sexual Assault	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	3	0	0	1	1
Sexual assault 1st 2nd 3rd degree	0	0	4	1	1	0	2	0	2	0	1	1	0	0	1	1	0	0	3	1	1	0	1	0	0	0	1	2	2	
Sexual intercourse, no consent	13	9	16	19	18	13	8	21	8	13	8	15	19	11	13	10	13	13	12	14	12	12	16	6	24	11	29	6	14	
Indecent act, assault	8	7	3	2	4	0	1	6	5	5	5	1	9	2	5	4	2	7	5	3	4	10	6	5	5	2	6	2	3	
Sexual intercourse, person < 16 yrs	7	3	15	2	4	11	7	3	6	5	4	0	6	7	14	4	9	3	3	16	3	12	5	0	8	3	17	4	5	
Indecent act, person < 16 yrs	3	3	10	5	8	19	14	8	10	4	10	4	5	2	3	4	1	5	2	8	17	8	11	4	10	4	8	1	10	
Incest	1	1	1	0	0	0	0	0	0	0	2	0	0	0	0	1	0	0	1	0	1	0	3	0	0	1	3	0	3	
Indecent act, no consent	13	4	8	7	12	13	6	19	3	9	10	12	14	14	6	8	7	4	9	8	12	9	18	4	9	9	49	2	7	
Indecent Exposure	4	3	2	3	3	0	1	10	4	0	5	5	3	4	1	3	2	1	0	3	4	3	2	2	3	2	4	3	2	
Total	49	30	59	39	50	56	39	67	38	36	45	38	56	40	43	35	35	33	35	54	54	54	62	21	62	33	118	21	48	

Does not include Jervis Bay

Table 2. Number of sexual assault offences reported to ACT Policing - Historical Reporting
Date reported between 01 January 2017 - 30 June 2021
Source: PROMIS as at 1 July 2021, Performance Statistics Team

Historical?	Jan-17		Feb-17		Mar-17		Apr-17		May-17		Jun-17		Jul-17		Aug-17		Sep-17		Oct-17		Nov-17		Dec-17		Jan-18		Feb-18		Mar-18	
	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%
Recent	40	81.6	26	86.7	48	81.4	35	89.7	38	76	52	92.9	33	84.6	59	88.1	33	86.8	30	83.3	34	75.6	36	94.7	49	87.5	37	92.5	38	88.4
Not Stated	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical	9	18.4	4	13.3	11	18.6	4	10.3	12	24	4	7.1	6	15.4	8	11.9	5	13.2	6	16.7	11	24.4	2	5.3	7	12.5	3	7.5	5	11.6

A sexual assault case is deemed "Historical" if the first offence occurred more than 365 days prior to the report being lodged with ACT Police
Does not include Jervis Bay

Table 3. Victims of sexual assault - by gender
Date reported between 1 June 2021 - 30 June 2021
Source: PROMIS as at 1 July 2021, Performance Statistics Team

Sex	Jun-21
Not Stated	2
Female	20
Male	2
Total	24

Victim counts may not match offence counts as victims of multiple occurrences of the same offence are only counted once
Does not include Jervis Bay

Table 4. Victims of sexual assault - by age*
Date reported between 1 June 2021 - 30 June 2021
Source: PROMIS as at 1 July 2021, Performance Statistics Team

Age	Jun-21
Not Stated	2
Less than 10	2
10 - 14	4
15 - 17	5
18 - 21	1
22 - 29	4
30 - 39	6
40 - 49	0
50 - 59	0
60 - 69	0
70+	0
Total	24

*Victims age when the first offence occurred, not at time of reporting
Victim counts may not match offence counts as victims of multiple occurrences of the same offence are only counted once

Does not include Jervis Bay

Table 5. Number of sexual assault offences reported to ACT Policing - by clearance type
Date reported between 01 January 2010 - 30 June 2021
Source: PROMIS as at 1 July 2021, Performance Statistics Team

Clearance Type	2010	2011	2012	2013	2014	2015	2016	2017		2018	2019	2020	2021
ARREST	53	67	45	86	60	96	70	62	11%	41	37	46	11
ASSAULT - UNABLE TO DIFFERENTIATE VICTIM	0	1	0	0	0	0	0	2	0%	0	23	1	0
ASSAULT -INADEQUATE EVIDENCE TO SUPPOF	3	10	31	39	28	28	28	28	5%	42	52	63	3
CAUTION	2	1	0	1	1	2	0	3	1%	0	1	2	0
CHARGE WITHDRAWN	0	1	1	0	5	2	0	1	0%	2	7	0	0
CHARGED BEFORE COURT	10	7	8	15	5	23	9	32	6%	12	19	26	2
CIVIL RECONCILIATION BETWEEN OFFENDER/N	0	0	0	0	0	1	1	1	0%	1	0	1	0
CLEARED OTHERWISE	7	6	0	0	0	0	0	0	0%	0	0	0	0
COMPLAINT WITHDRAWN BY VICTIM	52	59	99	58	56	62	88	98	18%	87	84	55	39
COURT ATTENDANCE NOTICE	0	0	0	0	0	0	0	1	0%	0	0	0	0
DIVERSIONARY CONFERENCE	0	0	1	0	0	0	0	0	0%	0	2	0	0
FV - NOT ENOUGH EVIDENCE TO PROCEED	0	0	0	0	0	1	2	7	1%	6	10	6	16
INSUFFICIENT EVIDENCE TO PROCEED	80	79	0	0	0	0	0	0	0%	0	0	0	0
NOT CLEARED	68	95	85	144	141	136	178	143	26%	167	245	201	127
OFFENCE PASSED TO ANOTHER AGENCY	3	23	75	71	15	7	9	22	4%	18	7	8	4
OFFENDER IDENTIFIED - CHILD UNDER 10 YRS	0	1	3	1	2	0	5	3	1%	10	3	3	0
OFFENDER IDENTIFIED - DECEASED	0	1	1	4	3	5	0	8	1%	6	6	6	2
OFFENDER IDENTIFIED - DIPLOMATIC IMMUNIT	0	0	0	0	0	1	0	0	0%	0	11	0	0
SUMMONS	24	10	59	55	42	94	68	21	4%	19	38	6	4
UNFOUNDED	8	27	32	25	32	26	49	115	21%	109	69	69	26
WARRANT	0	0	0	4	1	0	1	0	0%	2	0	0	0
Total	310	388	440	503	391	484	508	546		522	614	493	234

Does not include Jervis Bay

Table 6: Age and Sex of victims on sexual assault offences reported cleared as unfounded
Date reported between 1 July 2015 - 30 June 2021

Sex	Age	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Female	Under 9	9	8	13	14	11	4
	10 - 14	10	9	24	15	17	13
	15 - 17	7	10	17	13	15	13
	18 - 24	8	35	30	22	17	14
	25 - 34	6	13	15	16	11	13
	35 - 44	3	3	6	9	10	5
	45 - 54	1	5	4	5	3	4
	55 - 64	0	2	2	0	1	0
	65+	0	3	1	2	3	0
	Subtotal	44	88	112	96	88	66
Male	Under 9	1	6	14	9	6	4
	10 - 14	1	3	4	4	4	3
	15 - 17	0	3	1	1	2	1
	18 - 24	3	2	0	3	2	2
	25 - 34	0	1	1	1	3	2
	35 - 44	1	1	5	1	1	1
	45 - 54	1	0	1	3	2	0
	55 - 64	1	0	0	0	0	0
	65+	0	0	0	0	0	0
	Subtotal	8	16	26	22	20	13
Total		52	104	138	118	108	79

Source: PROMIS as at 15 July 2021

Includes victims of offences cleared by Assault - unable to differentiate victim/offender, Assault -inadequate evidence to support allegation, Unfounded

Table 7: Age and Sex of victims on sexual assault offences reported not proceed to prosecution
Date reported between 1 July 2015 - 30 June 2021

Sex	Age	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Female	Under 9	15	12	10	26	19	17
	10 - 14	26	34	34	39	33	39

	15 - 17	19	38	34	40	42	46
	18 - 24	44	61	63	62	62	79
	25 - 34	33	33	39	62	41	58
	35 - 44	23	16	18	16	27	20
	45 - 54	9	9	7	15	12	18
	55 - 64	2	3	2	6	4	4
	65+	0	4	2	10	1	3
	Subtotal	171	210	209	276	241	284
Male	Under 9	6	8	8	11	6	4
	10 - 14	4	15	7	6	5	6
	15 - 17	6	6	3	4	6	3
	18 - 24	7	3	6	6	5	5
	25 - 34	2	5	4	2	6	4
	35 - 44	1	3	6	1	5	3
	45 - 54	3	1	0	1	4	2
	55 - 64	0	0	1	0	3	3
	65+	0	0	0	0	1	1
	Subtotal	29	41	35	31	41	31
Total		200	251	244	307	282	315

Source: PROMIS as at 15 July 2021

Includes victims of offences cleared by Caution, Charge withdrawn, Civil reconciliation between offender/victim, Complaint withdrawn by victim, Diversionary conference, FV - not enough evidence to proceed, Not cleared, Offence passed to another agency, Offender identified - child under 10 yrs old, Offender identified - deceased, Offender identified - diplomatic immunity

Table 8: Age and Sex of victims on sexual assault offences reported cleared by arrest, summons or charged before court
Date reported between 1 July 2015 - 30 June 2021

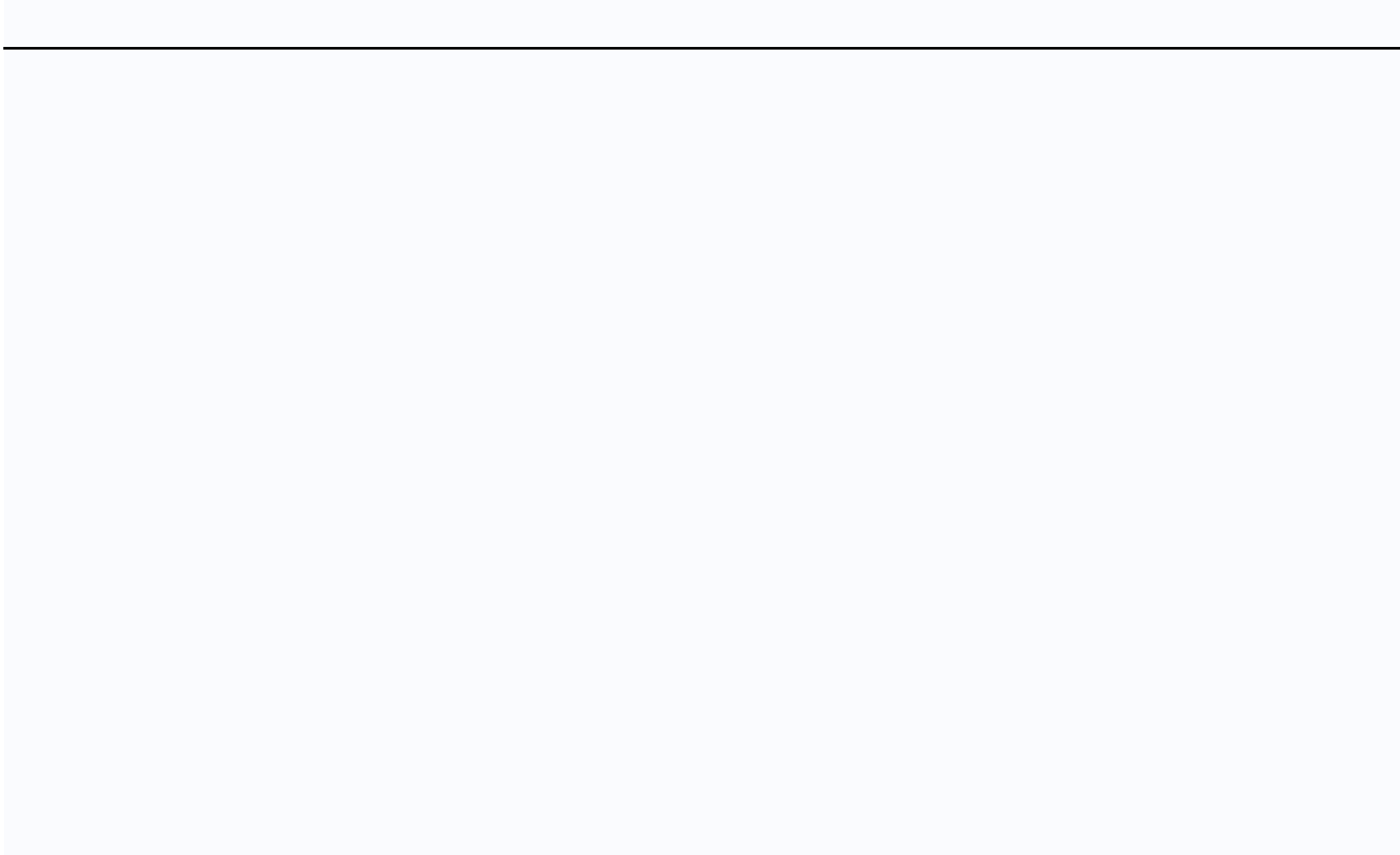
Sex	Age	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21
Female	Under 9	3	3	1	1	0	3
	10 - 14	9	15	7	4	6	3
	15 - 17	3	11	2	6	7	3
	18 - 24	5	12	8	10	7	16
	25 - 34	10	6	4	8	6	7
	35 - 44	5	4	3	3	3	6
	45 - 54	1	2	2	0	2	2
	55 - 64	0	3	1	3	0	1
	65+	0	1	0	1	1	0
	Subtotal	36	57	28	36	32	41
Male	Under 9	1	0	0	1	2	0
	10 - 14	3	4	1	2	2	0
	15 - 17	2	4	0	3	0	1
	18 - 24	1	0	2	0	0	0
	25 - 34	3	0	0	0	0	1
	35 - 44	0	1	1	1	0	0
	45 - 54	0	0	1	0	0	0
	55 - 64	0	0	0	0	0	0
	65+	0	0	1	0	0	0
	Subtotal	10	9	6	7	4	2
Total		46	66	34	43	36	43

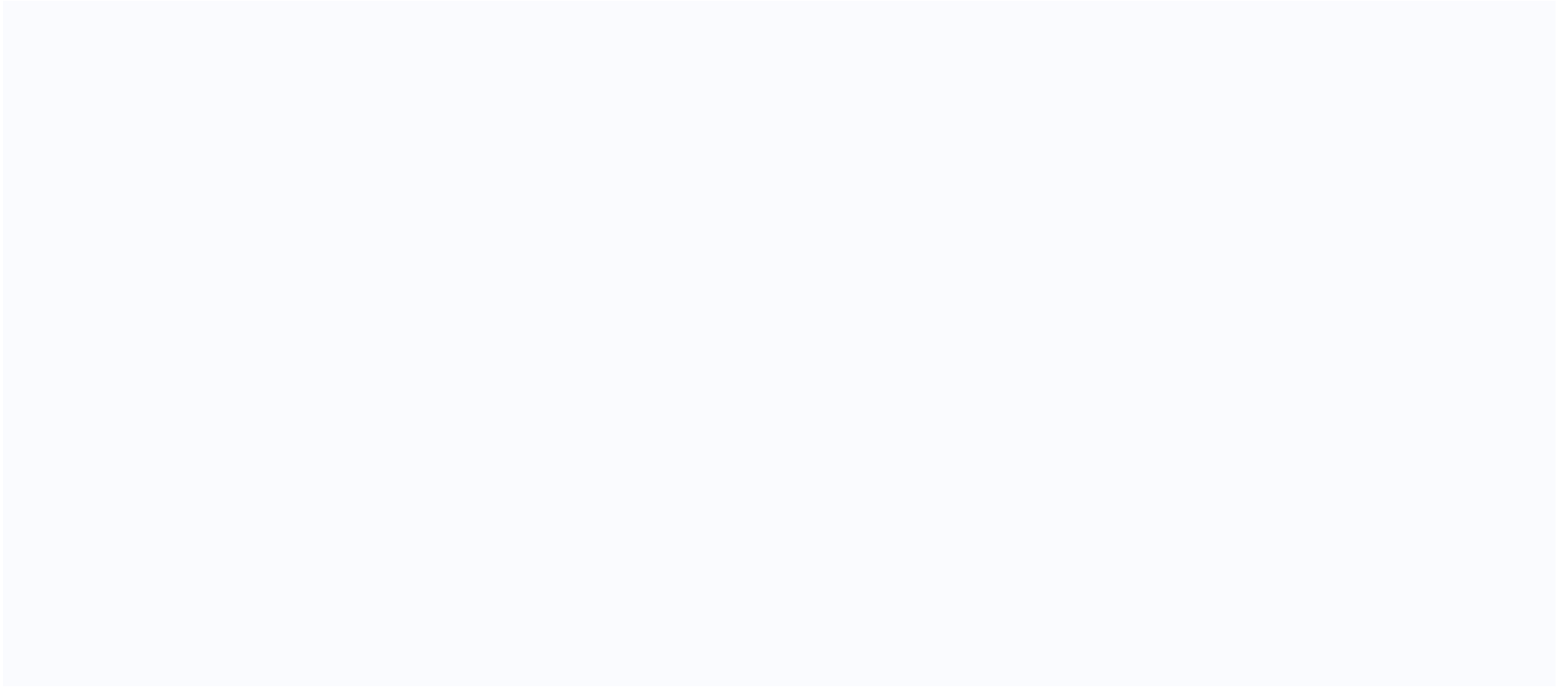
Source: PROMIS as at 15 July 2021

Includes victims of offences cleared by Arrest, Charged before court, Court attendance notice, Summons, Warrant

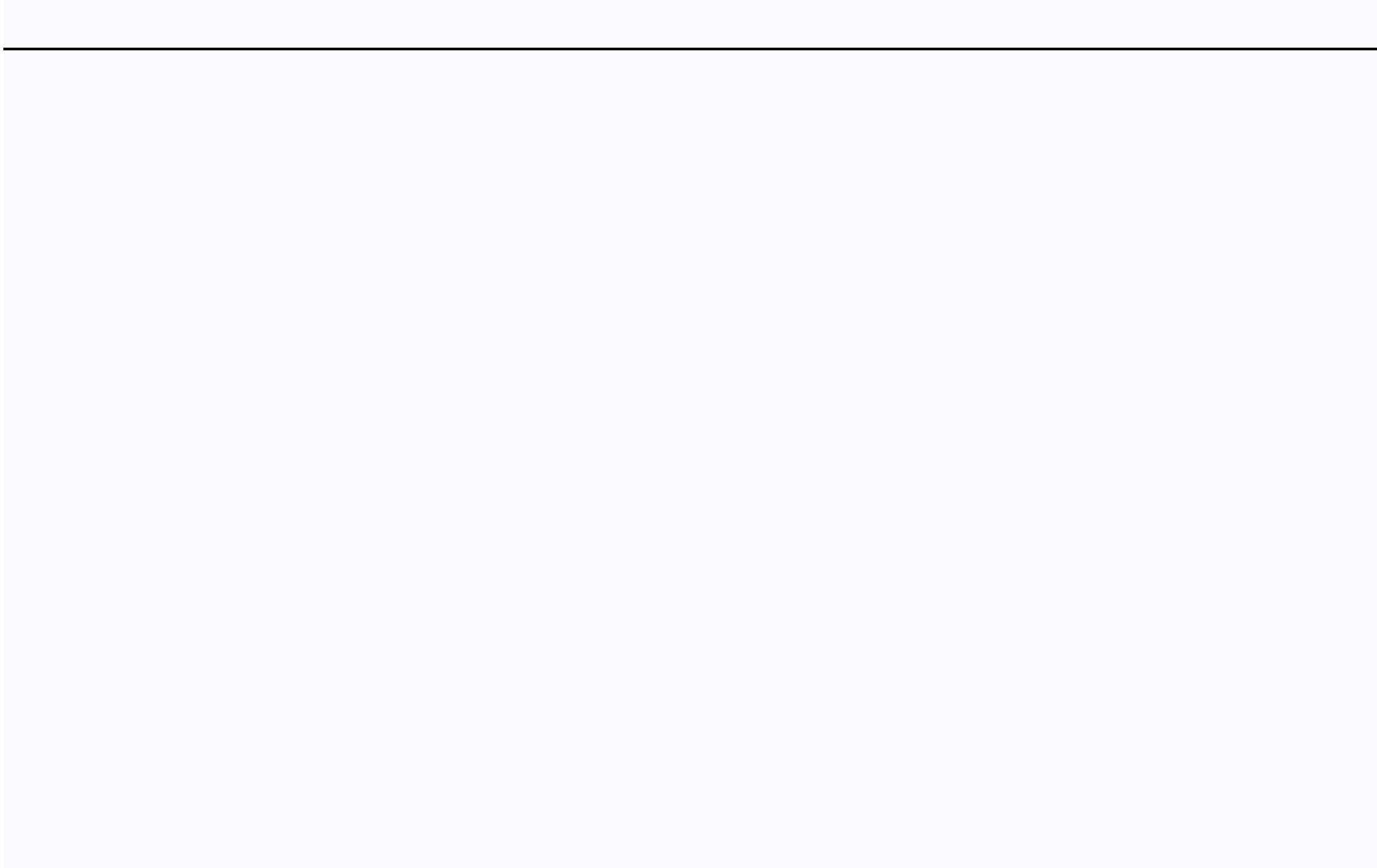
Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21	Jun-21
0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0
2	0	0	0	1	2	0	3	0	1	0	1	0	0	4	1	0	0	0	0	0	0	0	0
18	20	13	22	8	9	5	14	13	9	7	14	12	17	18	7	5	14	14	15	20	9	6	12
7	4	3	1	2	4	4	8	4	1	6	7	3	4	1	8	7	2	5	5	6	3	1	0
9	4	7	8	1	1	5	6	3	2	5	7	5	6	2	3	10	1	10	1	5	8	2	2
7	4	11	2	3	4	3	6	7	7	6	3	6	2	4	6	7	3	7	6	5	5	8	2
1	1	0	1	1	1	0	2	2	0	2	0	0	0	0	1	0	0	1	0	0	2	0	0
14	16	15	17	10	8	6	15	12	11	3	11	24	5	7	6	25	3	9	11	14	11	6	4
1	1	2	2	3	0	7	2	3	4	4	2	5	5	3	1	3	3	3	5	4	2	0	4
59	50	51	55	29	29	30	56	44	35	33	45	55	39	39	33	58	26	50	43	54	40	23	24

Apr-18		May-18		Jun-18		Jul-18		Aug-18		Sep-18		Oct-18		Nov-18		Dec-18		Jan-19		Feb-19		Mar-19		Apr-19		May-19		Jun-19		Jul-19		Aug-19		Sep-19		Oct-19	
Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%
33	94.3	30	85.7	28	84.8	32	91.4	38	70.4	39	72.2	35	64.8	46	74.2	18	85.7	58	93.5	27	81.8	75	63.8	18	85.7	36	75	53	89.8	46	78	37	74	42	82.4	41	74.5
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
2	5.7	5	14.3	5	15.2	3	8.6	16	29.6	15	27.8	19	35.2	16	25.8	3	14.3	4	6.5	6	18.2	43	36.4	3	14.3	12	25	6	10.2	13	22	13	26	9	17.6	14	25.5





Nov-19		Dec-19		Jan-20		Feb-20		Mar-20		Apr-20		May-20		Jun-20		Jul-20		Aug-20		Sep-20		Oct-20		Nov-20		Dec-20		Jan-21		Feb-21		Mar-21		Apr-21		May-21		Jun-21	
Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%	Offences	%
26	89.7	26	89.7	26	86.7	50	89.3	39	88.6	32	91.4	30	90.9	31	68.9	48	87.3	26	66.7	36	92.3	26	78.8	50	86.2	20	76.9	32	64	37	86	39	72.2	28	70	18	78.3	18	75
0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	2.6	1	3	0	0	0	0	0	0	0	0	0	0	0	0	2	8.7	3	12.5
3	10.3	3	10.3	4	13.3	6	10.7	5	11.4	3	8.6	3	9.1	14	31.1	7	12.7	13	33.3	2	5.1	6	18.2	8	13.8	6	23.1	18	36	6	14	15	27.8	12	30	3	13	3	12.5

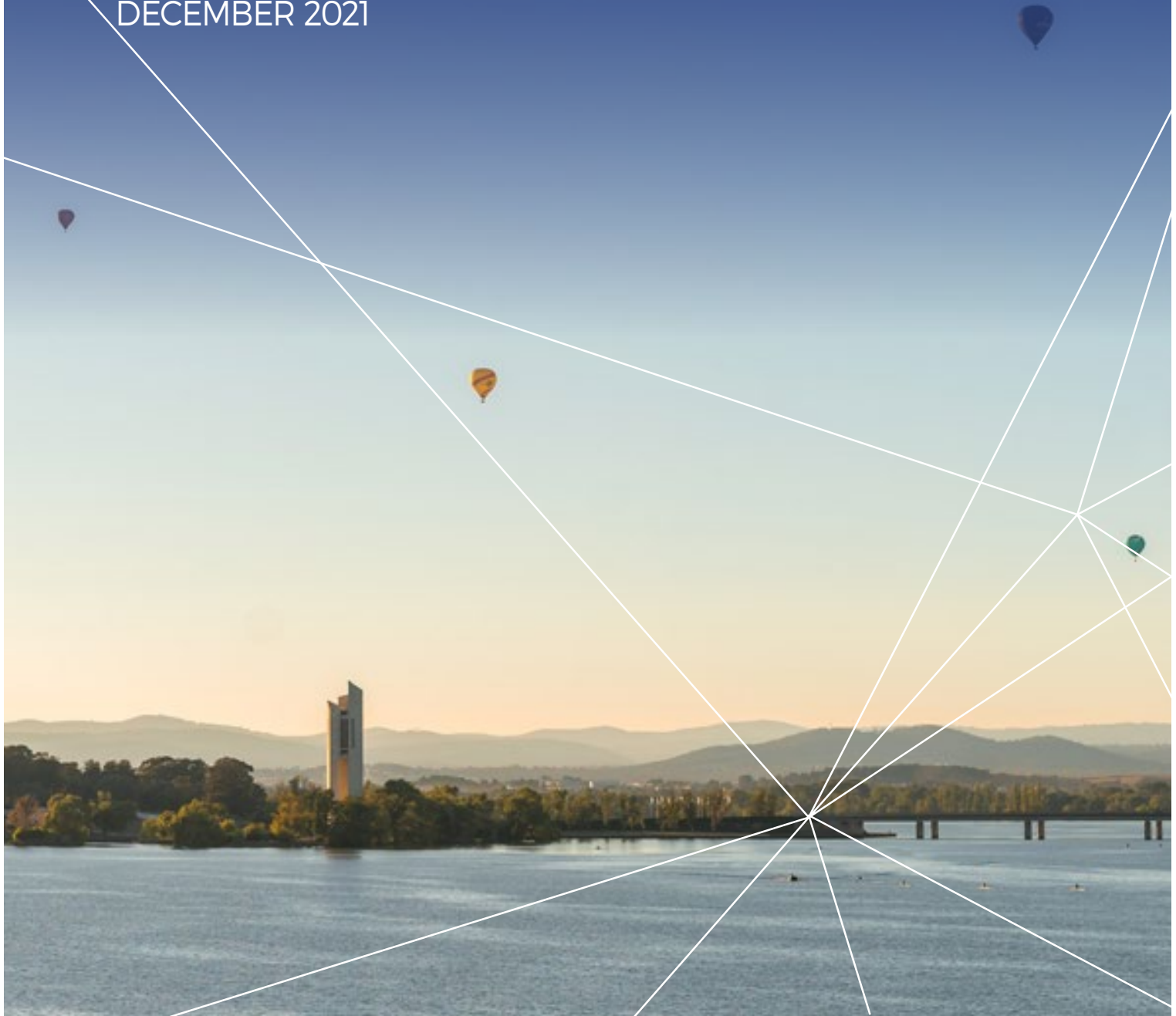




LISTEN. TAKE ACTION TO PREVENT, BELIEVE AND HEAL.

PRESENTED TO THE ACT GOVERNMENT BY
THE SEXUAL ASSAULT PREVENTION AND
RESPONSE STEERING COMMITTEE

DECEMBER 2021



ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the traditional custodians of the land on which this report was prepared, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We recognise and value the ongoing contribution of Aboriginal and Torres Strait Islander peoples and communities to Australian life. We embrace the spirit of reconciliation, working towards equality of outcomes and ensuring an equal voice.



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SUPPORT SERVICES

NATIONAL 24/7

1800RESPECT

Who	Anyone impacted by sexual, domestic or family violence
When	24-hours a day, 7 days a week
Phone	1800 737 732
Website	1800respect.org.au

RAPE AND DOMESTIC VIOLENCE SERVICES AUSTRALIA

Who	Anyone impacted by sexual, domestic or family violence
When	24-hours a day, 7 days a week
Phone	1800 211 028 Sexual Assault Counselling Australia
Website	rape-dvservices.org.au

LIFELINE

Who	Anyone who are feeling suicidal, overwhelmed or having difficulty coping or staying safe
When	24-hours a day, 7 days a week
Phone	13 11 14
Website	www.lifeline.org.au

KIDS HELP LINE

Who	Anyone aged 5–25 years old. For any reason.
When	24-hours a day, 7 days a week
Phone	1800 55 1800
Website	kidshelpline.com.au

LOCAL

CANBERRA RAPE CRISIS CENTRE (CRCC)

Who	Anyone impacted by sexual violence
When	7am–11pm, 7 days a week.
Phone	02 6247 2525
Website	crcc.org.au

DOMESTIC VIOLENCE CRISIS SERVICE (DVCS)

Who	Anyone impacted by domestic and family violence
When	24-hours a day, 7 days a week
Phone	02 6280 0900
Website	dvcs.org.au

VICTIM SUPPORT ACT (VSACT)

Who	Anyone who is a victim of a crime committed in the ACT is eligible for some support or information from Victim Support ACT
When	Business hours, Monday – Friday
Phone	1800 8222 72 or 02 6205 2022
Website	victimsupport.act.gov.au

CONTENT WARNING

Sexual assault is a confronting issue that can be triggering for many people. Parts of this report speak to first-hand experiences of sexual violence. Please take care while reading this report and reach for support if needed.

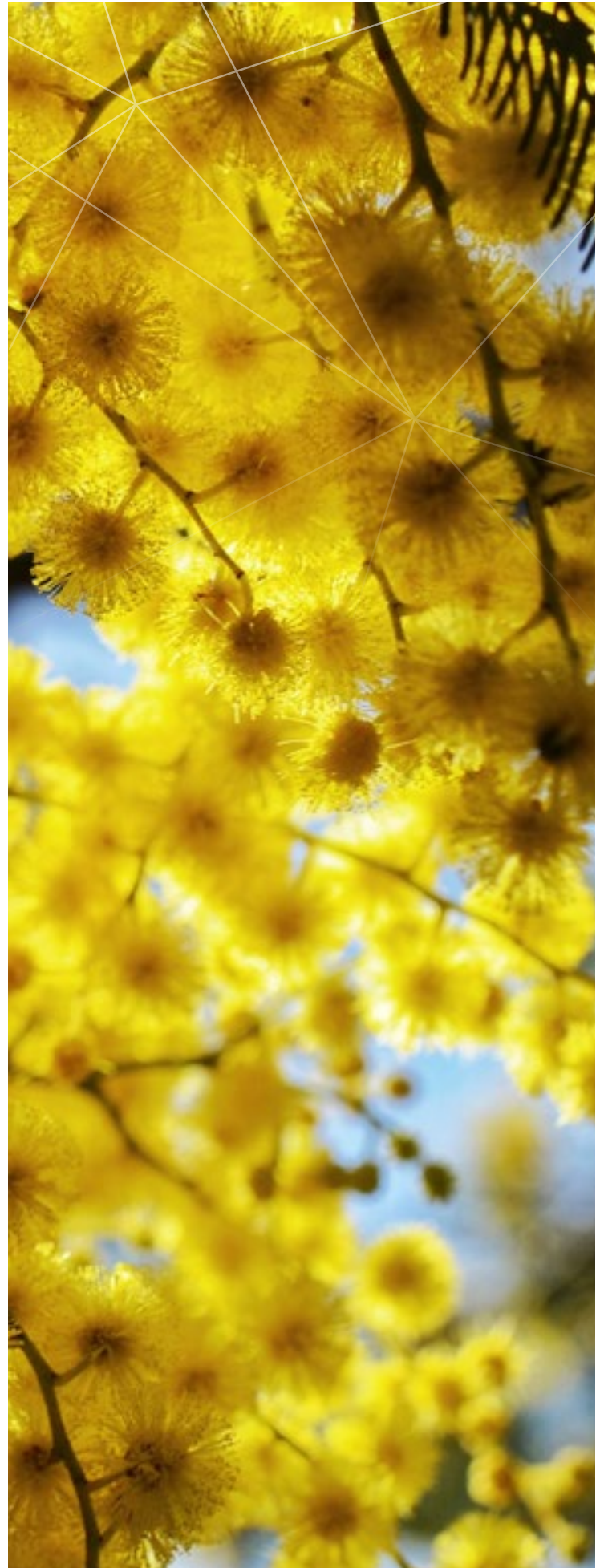
DEDICATION

We dedicate this report to the victim survivors who shared their experiences of seeking therapeutic assistance and justice following sexual violence. Their stories of the pain and hurt they experienced from the system will guide us in our reform work.

We recognise the tremendous and lifelong toll sexual violence can have on a person's life. We thank you for your bravery and strength in coming forward.

We also acknowledge that trauma relating to sexual violence has a ripple effect, and can impact family, friends and a community as a whole.

We, the ACT community, need to do better. Victim survivors deserve this. We are hopeful this report is a catalyst for long-term change.



LETTER OF TRANSMITTAL

Minister Yvette Berry
Deputy Chief Minister
Minister for the Prevention of Domestic and Family Violence
Legislative Assembly
Canberra ACT 2601

Dear Minister Berry

**Report of the Sexual Assault Prevention and Response Reform Program
Steering Committee**

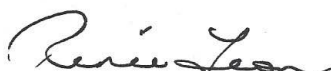
I am pleased to present to you the Report, *Listen: Take Action to Prevent, Believe and Heal*, the Final Report of the Steering Committee established to commence the Sexual Assault Prevention and Response Reform Program.

The Steering Committee was appointed in May 2021 to make recommendations to the ACT Government on key priorities for future work to improve the ACT's response to sexual assault. The recommendations now made in this Report span a broad arc of action from the need to prevent sexual assault in our community, through supporting survivors in their recovery, and enabling recourse to justice and accountability.

The Steering Committee was comprised of people who, both as individuals and as representatives of organisations, brought long and close engagement with the impact of sexual violence. These included community educators, specialist response services, community-based organisations, health professionals, police and legal system participants, representatives of the Aboriginal and Torres Strait Islander community and diverse groups in our community

Government is to be commended for its courage in commissioning this far-reaching independent report with tri-partisan support across the ACT Legislative Assembly.

Yours sincerely



Renée Leon
Chair
Sexual Assault Prevention and Response Reform Program Steering Committee

6 December 2021

Renée Leon, Strategic Advice and Facilitation, Canberra ACT

EXECUTIVE SUMMARY

Sexual violence is a pervasive and unacceptable problem in Australia and in the ACT. Nearly a quarter of all Australian women and 5 per cent of Australian men have experienced sexual violence in their lifetime. For almost half of these men, their experience of sexual violence was as a child; for women sexual violence continues to be a threat throughout their lives. The overwhelming majority of perpetrators of sexual violence—against women, men and children—are male.

Sexual violence has profound negative impacts on people’s physical, mental and social wellbeing. As a community, we cannot accept this harm.

Not only is there an unacceptable prevalence of sexual violence, particularly towards women and children, but the supports and responses available to victim survivors are inadequate. Too often, the response by community, government agencies and the justice system in the ACT fails to meet survivors’ needs for healing and justice and can be retraumatising rather than supportive.

For decades, many community, government and justice agencies have worked to hear and respond to the needs of sexual assault survivors. Many Canberrans have dedicated their careers and professional expertise to assisting survivors to understand their options, access therapeutic supports, and navigate justice processes. Despite this, survivors continue to report that the ACT’s support and response framework is inadequate. Too often, this framework leaves individuals and their families feeling disbelieved, disrespected, and isolated. We can and must do better. The high prevalence of sexual violence, and the inadequacy of system responses for victim survivors, are exacerbated by other marginalising factors for sectors of our community, including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse communities, children and young people, people with disability, and LGBTIQ+ people.

This review calls on the ACT Government to commit to a wide-ranging, long-term strategy aimed at preventing sexual violence: calling out and seeking to change attitudes and behaviours that enable and perpetuate sexual violence, investing in life long relationship and sexuality education, and working with government agencies, the private sector and the community to implement concrete actions that will reduce the risk and occurrence of sexual violence in all places where people in the ACT live, work and play. These actions need to be tailored to the range of situations where sexual violence can occur in both public and private settings. Employers should ensure policies and practices are in place that maintain workplaces free of sexual harassment and violence; businesses and community organisations and education facilities should be educated about and take action to reduce the risks of sexual violence on their premises or in their operations; and people across the community should learn how to be effective and active bystanders who know how and when to intervene to lessen the risk of sexual violence.

Eliminating sexual violence will require our community to address the underlying attitudes that normalise abuse of power in the form of sexual violence. Most predominantly, these are attitudes that entrench gender stereotypes and perpetuate disrespect for women and girls, and cultural values that promote male entitlement and power over both women and children. While much has happened in the past half century to reduce gender inequality in public life, there is still a great need for change in the gendered attitudes that underpin sexual violence.

This Review has heard the voices of victim survivors, both directly in their evidence to the review, and through the data and experience of agencies that provide services to them. The network of community and government agencies in the ACT designed to provide support and services to people who have experienced sexual violence is struggling to do so effectively. People in need of support often cannot find the help they need across multiple agencies because specialist services are not always available when needed or are not well coordinated. Waiting times for counselling are long, and those pursuing a civil or criminal outcome report find the justice process protracted and retraumatising, with little chance of a successful outcome.

The ACT has adopted a wellbeing framework intended to ensure that Canberrans have the opportunity and ability to lead lives of personal and community value, and to feel that progress continues to be made to enable us to live our lives well. This commitment needs to be enlivened in relation to the adverse impacts of sexual violence on wellbeing, with determination by the government to reduce the occurrence of sexual violence; to provide timely, effective and integrated support to those who experience sexual violence; and to impose justice and accountability for those who commit sexual violence.

The recommendations in this report have been developed by people and organisations with long and close engagement with the impact of sexual violence including community educators, sexual assault crisis services, health professionals, police and legal system participants, and representatives of the Aboriginal and Torres Strait Islander community and diverse groups in our community. The report calls for improved collaboration in service responses, including the establishment or piloting of new ways to ensure victim survivors can access the medical, forensic, health, counselling, and justice

responses they need in an integrated and supportive way, such as through co-location of services and through the establishment of independent advisers to help people navigate the response system. The report also calls for a comprehensive review of service effectiveness, structures, and funding, to ensure that the support responses survivors receive are timely and of high quality.

Many survivors of sexual violence do not report to police or do not pursue their matter through the legal process, citing harmful and hurtful experiences of delay, failures in communication, and being disbelieved or disrespected. All people in the justice system that interact with survivors of sexual violence need to have improved understanding of the dynamics and impact of sexual violence. This understanding will aid supportive, respectful engagement with victim survivors, and contribute to justice processes that are trauma-informed and uphold victim survivor rights. Police, who are a key gateway to the legal system for survivors who wish to pursue justice, need to ensure that all officers are adequately trained and that specialist services maintain a high level of training and capability, including better gender diversity and cultural competency.

It is imperative to ensure the needs of all parts of our community are taken into account to reform the ACT's response to sexual violence. Many Aboriginal and Torres Strait Islander people have long-standing distrust of the police and the legal system arising from a colonial history of dispossession, discrimination and mistreatment. The reform of the response system must be more culturally responsive and culturally safe, providing the additional supports Aboriginal and Torres Strait Islander victim survivors are telling us they need to seek justice. All response services need to be responsive to the cultural needs of the Aboriginal and Torres Strait Islander community in addition to the needs of those from culturally and linguistically diverse backgrounds and people from LGBTIQ+ communities.

For children and young people especially, the current system is not working well. Children are at higher risk of sexual violence. In preparing this report it has become clear that the current response system is fragmented, under-resourced and failing to meet the needs of children and young people for timely therapeutic support and effective justice responses. Urgent attention is needed to address these deficiencies.

There needs to be serious examination of reasons for the disturbingly low level of sexual assault prosecutions in the ACT including a cross-agency review of police decisions to discontinue investigations and to not refer matters for prosecution.

Where matters do proceed to prosecution, they are decided against a legal standard that does not properly uphold an expectation that sexual activity should only proceed with full and active consent. This report recommends the ACT should reform the law to require that consent to sexual activity be affirmatively communicated. It should not be enough to assume consent from silence or a ‘freeze’ response. Law reform and community education must ensure there is active consent before and during any sexual activity. This approach is crucial to upholding each person’s right to bodily and sexual autonomy. It will also help the ACT to shift community attitudes towards respectful and equal sexual relationships. A range of other legal changes are also recommended to address the ways in which the legal framework does not work well for survivors or does not appropriately hold perpetrators to account.

The ACT should not accept that sexual violence is inevitable in our community. This is a wide-ranging program of reform. It seeks to tackle the underlying drivers of sexual violence and to greatly improve the support our community and government agencies give to survivors of sexual assault including recourse to effective justice responses. Nor should we accept that people who have had the devastating impact of sexual violence cannot get an appropriate response from the justice system and that they are not able to access the supports they need. Our community deserves much better. A determined commitment by government, the private sector, and the community sector can make a difference. The ACT community can be one that prioritises safety and wellbeing, provides a support system that facilitates healing and recovery, and a justice system that upholds accountability.

RECOMMENDATIONS

The reforms recommended by this review will need to be implemented in phases across multiple sectors over an extended period of time. The ACT Government should establish mechanisms within government to coordinate reform and work with the community and justice agencies to ensure oversight of implementation and ongoing expert input into policy and service design. During this process, additional or revised recommendations may be made. This report is only the start of an evolving process. The phased implementation of the recommendations in this report includes identifying where the immediate priorities lie—the first step.

RECOMMENDATION 1

The ACT Government establish and appropriately resource an ongoing structured consultation program with victim survivors to continue to drive and inform change in the prevention of and response to sexual violence in the ACT.

RECOMMENDATION 2

The ACT Government fund training to relevant government and community settings on the dynamics of sexual violence, responding to sexual violence disclosures, and sexual violence active bystander training.

Training to be provided to:

- frontline workers in health, education, child protection, and housing
- primary health care and allied health professionals in collaboration with professional bodies
- culturally and linguistically diverse community and cultural leaders, drawing on culturally and linguistically diverse expertise
- targeted community organisations
- tertiary education settings
- other workplaces including staff in the relevant service sector.

RECOMMENDATION 3

Integration, collaboration and case coordination between the response services must be immediately improved along with assistance to victim survivors to navigate the system.

- a The response services should, at a minimum, be resourced to take immediate action to improve case coordination and collaboration when providing services to victim survivors. This should include reinstating the wraparound model with regular face-to-face meetings to coordinate addressing the needs of victim survivors, including children and young people, and to ensure provision of coordinated support whether or not the matter is, or is likely to be, proceeding through the criminal justice system.
- b The ACT Government should immediately scope and pilot new mechanisms to further improve system coordination from the point of disclosure onwards while also increasing the ease of system navigation for victim survivors. This should include the establishment of a Multi-Disciplinary Centre (MDC) where specialist sexual violence response services, including police, would be co-located and able to collaborate immediately and as intensively as required when addressing sexual violence cases (especially children's cases, high risk and complex cases). It should also include the engagement of one or more Independent Sexual Violence Advisers who would support and assist victim survivors to navigate the system. There should be a specific service for Aboriginal and Torres Strait Islander women established to seek advice and support either separately or co-located with the MDC. Finally, a Centre for Healing should be established within the MDC to provide dedicated therapeutic pathways for victim survivors to recover and heal.

RECOMMENDATION 4

The ACT Government undertake a specialist services review of all agencies and statutory bodies, funded either wholly or partly by ACT Government, that provide services related to sexual violence with a view to identifying current system strengths requiring further investment to address survivors' needs, as well as changes needed in services' operating practices, performance measures and standards, training, cultural capacities, structures, coordination systems and current funding arrangements, with a view to informing future investments in necessary system improvements to enable victim survivors to receive highly effective, timely support in an integrated way.

RECOMMENDATION 5

The ACT Government, ACT Policing and non-government service providers take action to improve the cultural competency of workers and the cultural responsiveness of specialist services in relation to Aboriginal and Torres Strait Islander people.

RECOMMENDATION 6

The ACT Government establish a service to provide mentoring and training to the current and next generation of Aboriginal and Torres Strait Islander workers currently employed or hoping to be employed in the specialist response service sector.

RECOMMENDATION 7

The ACT Government:

- a resource ACT Policing Sexual Assault and Child Abuse Team (SACAT), Child at Risk Health Unit (CAHRU) and Child and Youth Protective Services (CYPS) to initially conduct a feasibility study of how joint investigations of child sexual abuse could be carried out in the ACT and thereafter implement a (minimum) 12-month pilot of joint investigations of child sexual abuse based on learnings from the NSW Joint Child Protection Response Program ('JCPRP', previously referred to as JIRT).
- b review of the role and mandate of the Liaison Officers from other directorates, such a Police and Canberra Health Services that are located within CYPS.

RECOMMENDATION 8

The ACT Government fund specialist children's services to provide additional training on effectively responding to children who have experienced sexual abuse and to increase collaboration and integrated responses across the system responding to child sexual abuse.

RECOMMENDATION 9

The ACT Government consult with ACT Courts for the purposes of undertaking a review and investigation of the NSW specialist court program to hear the matters of adults, children and young people who have experienced sexual violence.

RECOMMENDATION 10

The ACT Government commission a Sexual Violence Data Collection Framework and embed a requirement for compliance with this framework in service funding agreements.

RECOMMENDATION 11

The ACT Government research and consider measures to improve victim survivors' experiences of the criminal justice process and ensure they are acknowledged and recognised throughout the process.

RECOMMENDATION 12

Justice agencies (Department of Public Prosecution, Police, Corrections and Courts) review their internal procedures with a view to ensuring that they comply with their obligations to victim survivors pursuant to the *Victims of Crime Act 1994 (ACT)*.

RECOMMENDATION 13

The ACT Government research and pilot additional mechanisms to hold perpetrators to account including by:

- a expanding restorative justice processes for victim survivors
- b alternative civil justice regimes.

RECOMMENDATION 14

The ACT Government consider development of a Ministerial Direction to ACT Policing to focus specifically on the priority of effectively responding to sexual violence against children and adults as a strategic crime type, and that this be reflected in the Australian Federal Police (AFP) Corporate Plan.

Whether or not the proposed direction is made, ACT Policing should:

- a review its communications strategy to ensure all relevant information to victim survivors is provided in a more accessible, responsive and streamlined way.
- b support SACAT to conduct a review of the current training framework for both specialist SACAT investigators and all other community-facing ACT Policing capabilities as they apply to sexual assault and child abuse investigations.
- c review its policies for recruitment of SACAT officers, to address the lack of diversity and particularly to allow a victim survivor's right to elect the gender of the interviewing officer, by:
 - i increasing the number of women employed in SACAT including women in senior positions
 - ii employing Aboriginal and Torres Strait Islander officers to work in SACAT.
- d fund the design and delivery of externally provided specialist training to SACAT officers on an annual basis in relation to the conduct of effective Evidence in Chief (EIC) Interviews with vulnerable witnesses including children, young people, people with disabilities, Aboriginal and Torres Strait Islander people, and ensure that new officers to SACAT do not undertake EIC Interviews with vulnerable witnesses until they have undertaken the specialist training.
- e in conjunction with ACT Government, consider a 12-month pilot engaging forensic psychologists to advise on the preparation for and conduct of EIC Interviews with witnesses reporting sexual assault, adopting a suitable forensic investigative model compliant with ACT law and suitably tailored for the presenting witness.

- f immediately implement clear procedures to be followed when a decision is made not to charge. These procedures are to address:
 - i the requirement that a senior designated officer with oversight of the case must review and approve the decision not to charge
 - ii written reasons to be recorded on the file setting out the basis of the decision and the victim survivor is notified of the decision not to charge and the reasons
 - iii decisions not to charge are reviewable by a representative of the DPP upon the request of a victim survivor or their representative
- g collaborate with the DPP to provide training to all officers on an annual basis, addressing the legislative test to decide whether or not to charge
- h direct and support priority being given to examining forensic samples in sexual assault cases within a specific timeframe.

RECOMMENDATION 15

The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.

The initial phase of the review to focus on reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review is to be extended to all reports made since 1 January 2015 that have not progressed to charge.

Further any victim survivor whose matter has not progressed to charge outside of this stated review period may also request a review of their matter.

RECOMMENDATION 16

That there be ongoing education of all stakeholders working in the criminal justice system, including the judiciary, lawyers, law enforcement personnel, and persons who work with victim survivors to understand and appreciate the nature and extent of sexual violence in society; misconceptions and myths about sexual violence including in relation to child related offences; the social context of sexual violence including modern sexual practices and communication methods surrounding sexual interactions among young people; grooming behaviours; and the ongoing effects of sexual violence on victim survivors, particularly regarding how this impacts their capacity to engage with criminal justice processes.

RECOMMENDATION 17

The ACT Government, ACT Policing and non-government service providers undertake training that improves cultural competency and the ability of staff to deliver inclusive and respectful practices to diverse groups. This training should be designed and delivered in collaboration with representatives of the culturally and linguistically diverse community, the LGBTIQ+ community, the disability community and other relevant stakeholders.

RECOMMENDATION 18

The ACT Courts should develop a Sexual Assault Bench Book.¹

RECOMMENDATION 19

The ACT Government design, implement and fund a long-term 10-year strategy for the prevention of sexual violence.

The strategy should aim to change the attitudes and behaviours that perpetuate sexual violence and implement tailored actions to reduce the risk and occurrence of sexual violence in all settings where ACT residents live, work and play.

1 A bench book provides an overview of legal procedure for judicial officers and legal professionals and are used as a guide to legal and court procedures that relate to a specific area of law.

RECOMMENDATION 20

The ACT Government fund and make accessible evidence-based lifelong comprehensive relationships and sexuality education (RSE) to all members of the community.

For RSE in the Aboriginal and Torres Strait Islander community it is recommended that RSE be co-designed and delivered in collaboration with the representatives of the Aboriginal and Torres Strait Islander community to ensure it is culturally-appropriate, respectful and safe within the community.

RECOMMENDATION 21

The following workplace reforms are recommended:

- a The ACT Government review enterprise bargaining agreements (EBAs) in the ACT Public Service (ACTPS) in consultation with affected trade unions to:
 - i ensure workplaces can respond effectively to allegations of sexual harassment and assault, and
 - ii to develop appropriate EBA clauses to give effect to the *Respect@Work* recommendations of the Australian Human Rights Commission, to the extent possible in the ACT context.
- b The ACT Government use legislative, policy and funding mechanisms to place a positive duty on organisations to prevent sexual harassment and sexual violence, including to add provisions to the Secure Local Jobs Code (SLJC) to require employers to institute policies which prevent sexual harassment and assault in the workplace.
- c WorkSafe ACT to adequately regulate the prevention of and responses to sexual harassment and sexual assault in ACT workplaces.

RECOMMENDATION 22

The ACT Government should amend the law in relation to consent by establishing an affirmative communicative model of consent.

This reform to the law should be accompanied by community education measures.

RECOMMENDATION 23

The ACT Government review and reform the laws and procedures set out in detail in Appendix 6 of this report.

RECOMMENDATION 24

The ACT Government:

- a make an annual ministerial statement to the Legislative Assembly to report on these reforms.
- b create (or combine) a single role in the ACT Government for the coordination of reforms at the level of Coordinator-General to ensure a sufficient level of responsibility and power to hold all directorates to account for reforms
- c establish a Community Reference Group with a focus on policy advice to government and monitoring the performance of government and the community sector in the implementation of the recommendations.

ACRONYMS

Acronym	Full term
ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACSSA	Australian Centre for the Study of Sexual Assault
ACTPS	Australian Capital Territory Public Service
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
ALO	Aboriginal and Torres Strait Islander Liaison Officer
ALRC	Australian Law Reform Commission
ANROWS	Australia's National Research Organisation for Women's Safety
CAHRU	Child at Risk Health Unit
CALD	Culturally and Linguistically Diverse
CFCA	Child Family Community Australia
CRCC	Canberra Rape Crisis Centre
CREDH	Centre of Research Excellence in Disability and Health
CYPS	Child and Youth Protective Services
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
EBA	Enterprise Bargaining Agreement
EIC	Evidence in Chief
FAMSAC	Forensic and Medical Sexual Assault Care
IOC	Intensive Corrections Order
ISVA	Independent Sexual Violence Advisers

Acronym	Full term
JACS	Justice and Community Safety Directorate
JIRT	Joint Investigation Response Team (now Joint Child Protection Response Program)
JCPRP	Joint Child Protection Response Program (previously referred to as Joint Child Protection Response Program, JIRT)
LGBTIQ+	lesbian, gay, bisexual, transgender, intersex, queer plus all other gender and sexual orientations that don't fit under the category of heteronormative
MDC	Multi-Disciplinary Centre
NGO	Non-Government Organisation
NSW	New South Wales
NSVRC	National Sexual Violence Resource Centre
NSWLRC	New South Wales Law Reform Commission
PROMIS	Police Real-Time Management Information System
PTSD	Post-Traumatic Stress Disorder
RSE	Relationships and Sexuality Education
SACAT	Sexual Assault and Child Abuse Team
SAPRP	Sexual Assault Prevention and Response Program
SARP	Sexual Assault Reform Program
SLJC	Secure Local Jobs Code
UNCRPD	United Nations Convention on the Rights of Persons with Disability
VIS	Victim Impact Statements
VSACT	Victim Support ACT
WHM	Women's Health Matters
WHO	World Health Organization
WPO	Workplace Protection Order

DEFINITION OF SEXUAL VIOLENCE

The term **sexual violence** is used throughout this report and encompasses sexual assault and sexual harassment as well as broader forms of sexual violence such as technology-facilitated or image-based abuse.

Sexual assault is a type of sexual violence that involves any physical contact, or intent of contact, of a sexual nature against a person's will, using physical force, intimidation or coercion.²

The terms **sexual assault** and **sexual offence** are used in this report when referring to specific data or research as defined by the agency providing the information and where relevant in a legal setting.

² Australian Institute of Health and Welfare (AIHWa) 2020, *Sexual Assault in Australia*.

CHAPTER 1

INTRODUCTION

This report and its recommendations present an opportunity for the ACT Government to ensure victim survivors know that when they disclose sexual violence, they will be believed and that their chosen pathway to recovery and healing is timely, respectful and responsive.

It further provides recommendations to better ensure that perpetrators of sexual violence are held to account.

Most importantly, this report proposes reforms necessary to prevent sexual violence by stopping unacceptable behaviour and protecting the safety of individuals while at the same time promoting the values our community considers important in embracing an individual's positive sense of their identity.

Sexual violence is a significant and serious issue in the ACT and across Australia. When listening to victim survivors it is clear that the system is failing them. It is failing to provide trauma-informed, timely and high-quality service responses that meet their needs and expectations. Victim survivors experienced and identified: stigmatisation and disbelief; long wait times to access therapeutic and justice outcomes; confusing and overwhelming processes; poor quality responses; and a lack of cultural awareness and competency.

Navigating the specialist response system and the justice system can be just as or sometimes even more challenging or significant for a victim survivor than the sexual violence they had experienced:

The hardest part ended up not being the rape, but the way the system responded.

Victim survivor consultation participant 2021

This report is a call to action. The recommendations seek to address the cultural issues that drive sexual harassment, normalise the prevalence of sexual violence, and ignore the role of gendered power imbalances. The report also makes recommendations to improve how the ACT responds to disclosures from victim survivors including the nature and availability of support options, and ways for the justice system to better uphold victim rights and deliver offender accountability. An integrated service response to victim survivors must respect their decision to disclose and provide multiple alternative gateways for response and healing and respect the timeline for healing identified by the victim survivor.

Sexual violence has a devastating impact on individuals, their families and communities. It can have long lasting negative health, social and economic impacts for many years after the violence takes place.³ It can impact long-term physical and emotional health, the capacity to undertake education, contribute to society and otherwise lead a fulfilling life,⁴ and increase the incidence of premature death.⁵

3 Australia's National Research Organisation for Women's Safety (ANROWSa), *Are we there yet? Australia's attitudes towards violence against women and gender equality: Summary findings from the 2017 national community attitudes towards violence against women survey (NCAS)*, p. 2.

4 Cameron Boyd 2011, *The impacts of sexual assault on women*, Australian Centre for the Study of Sexual Assault Resource Sheet 2.

5 Taylor et al. 2012, 'Sexual trauma in women: The importance of identifying a history of sexual violence', *Australian Family Practitioner*, vol. 41, no. 7, 534–41.

Despite the significance of this issue, current policy settings are failing to prevent sexual violence and failing to protect the more than 200,000 people in Australia who report experiencing sexual violence every year.⁶

Due to the lack of consistent and clear data collection across the sector and the under reporting of sexual violence, we are still striving to properly understand the prevalence of sexual violence and the experiences of victim survivors.⁷ We do know that the majority of reported sexual violence incidents are committed in residential settings and are typically perpetrated by someone who is known to the victim survivor.

We do know that victim survivors tend to first disclose their experiences to someone who is known to them and they feel they can trust, rather than through formal channels. For those sexual assaults that are reported to the police, only a very small number of offences result in charges being laid — and of these, even fewer reach a conviction. There is considerable room for improvement in preventing sexual violence and responding effectively to victim survivors — adults, children, and young people.

Gender inequality and accompanying rigid stereotypes about gender (masculinity and femininity), gendered social roles, sexuality and relationships sit at the core of all sexual violence.

VICTIM SURVIVOR EXPERIENCES IN THE ACT

Improving the experience of victim survivors when they choose to access support is a central focus of this reform work. While gathering evidence to inform this report, we heard directly from victim survivors about the impact of sexual violence on their lives. Overwhelmingly what we heard is that they want to be believed when they disclose, they wish for the services available to them to be person-centred, and they want justice for the violence perpetrated against them.

All victim survivors who participated in this engagement process did so hoping to improve experiences of the specialist response system and the criminal justice system for victim survivors in the future. They further hoped by their contribution to this Review that they may safeguard against future victims of sexual violence.

THE CONSULTATIONS

The Women's Health Matters (WHM) survey of 218 participants provides a detailed analysis of women's experiences of seeking help following a sexual assault in the ACT.⁸

In partnership with Victim Support ACT, the Office for Family Safety also conducted one-on-one interviews with 17 victim survivors of sexual violence. A case study was drafted following each interview and these have been approved by the victim survivor. Each case study is provided at Appendix 2, with the express approval of the victim survivor. They provide powerful insights into the lasting impact sexual violence has had on their life.

One in five women have experienced sexual violence since the age of 15, and one in two women have experienced sexual harassment in their lifetime.

ABS 2017

⁶ AIHWa 2020, *Sexual assault in Australia*.

⁷ ABS, *Recorded Crime – Victims, 2020*, Table 17 Victims, Relationship of offender to victim by offence, ACT, 2010–20.

⁸ Findings from the survey by Women's Health Matters of ACT women's experiences of seeking help following sexual assault, 2021 (see Appendix 9).

THE FINDINGS

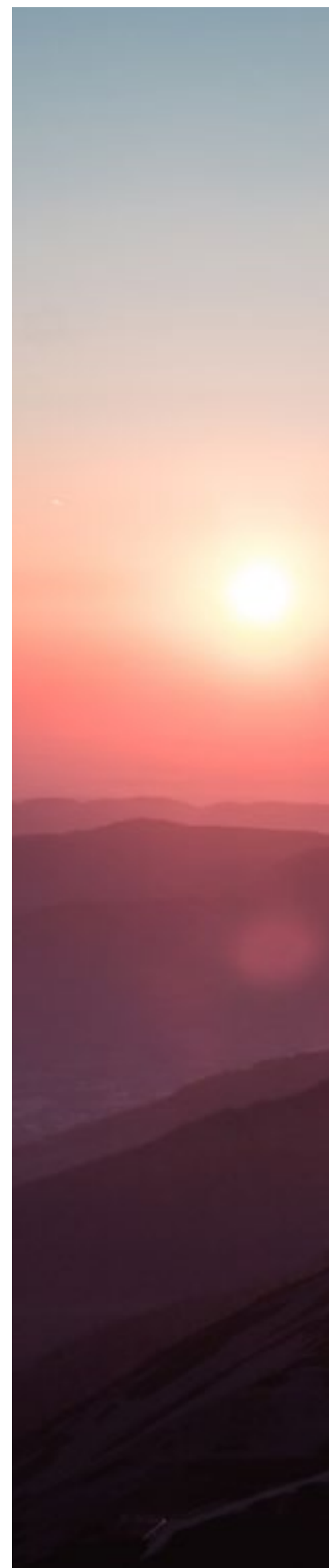
The consultation with victim survivors highlighted a number of issues with the current system that need to be addressed. This included the need for community education to dispels myths around sexual violence and education on how to respond to disclosures of sexual violence in a respectful and trauma-informed way. Victim survivors also spoke to the need for consent to be taught in educational settings and education about how victim survivors can seek support and what options they have for pursuing justice.

The consultation also found there is an urgent need to improve the support service response with particular reference to reducing the wait times for counselling and creating greater access to trauma specialist support. It is imperative that the response victim survivors experience from ACT Policing is improved because many victim survivors spoke of feeling disrespected or judged by officers. Several victim survivors reflected that these interactions almost deterred them from reporting and pursuing an investigation altogether. Collectively, victim survivors spoke of the need for specialist training on the nature of sexual violence and trauma-informed practice in responding to disclosures. The consultation found that many victim survivors experienced lengthy timeframes with police investigation and criminal prosecution and these delays compounded the trauma they had experienced.

Victim survivors lamented their lack of faith in the current criminal justice system, noting that the current criminal justice system causes further harm and is not trauma-informed. They spoke to an urgent need for judges, police, and lawyers to have a deep and nuanced understanding of these crimes and what it is like for victim survivors to go through a legal process. There needs to be a better understanding of the impacts of violence, and the impacts of going through a criminal proceeding in a sexual violence matter.

The consultation also highlighted the importance of having established supports and safe avenues to report within the workplace, with particular focus required to ensure workplaces undertake training about the nature of sexual harassment and sexual violence and create safe future working environments for victim survivors that do not disadvantage their career prospects.

A summary of some of the major themes (in conjunction with the findings from the WHM survey) can be found in Chapter 2 and the entire analysis of themes that emerged from the consultation can be found at Appendix 3.



HOW DID THIS REPORT COME TOGETHER?

The ACT Government's Sexual Assault Prevention and Response Program was established by Minister for Women and the Minister for the Prevention of Domestic and Family Violence, Yvette Berry. The reform program was initiated and founded with tripartisan support from the political parties represented in the ACT Legislative Assembly.

The Sexual Assault Prevention and Response Steering Committee was appointed in May 2021 to make recommendations to the ACT Government regarding key priorities for future work to improve the ACT's response to sexual assault. The Steering Committee was supported by:

- the **Prevention Working Group**, which focused on approaches to drive systemic and cultural change across the Canberra community;
- the **Response Working Group**, which focused on service provision and police response, informed by victim survivor experience of accessing support, advocacy, counselling, and justice
- the **Law Reform Working Group**, which focused on the Parliamentary Agreement's commitment⁹ to reform consent laws and ensure best practice legal frameworks in the ACT.

The **Workplace Reference Group** provided advice and input to the working groups and regularly reviewed their priorities and agendas, to ensure the perspective of workers was captured.

The **Aboriginal and Torres Strait Islander Consultation Committee** made recommendations regarding systemic reform and reviewed the recommendations of each Working Group to ensure they had accounted for the needs of Aboriginal and Torres Strait peoples.

Figure 1: Structure of ACT Government's Sexual Assault Reform process, 2021



All rape is an exercise in power... rapists may operate within an emotional setting or within a dependent relationship that provides a hierarchical, authoritarian structure of its own that weakens a victim's resistance, distorts her perspective and confounds her will.

Susan Brownmiller,
*Against Our Will:
Men, Women and Rape*

⁹ The ACT Labor and ACT Greens Parliamentary and Governing Agreement for the 10th Australian Capital Territory Legislative Assembly represents the parties' shared commitment to serve the people of the ACT.

GENDER AND SEXUAL VIOLENCE

Sexual violence is highly gendered in nature—both in terms of who is more likely to experience sexual violence and who is more likely to commit it.

While research indicates that most of sexual violence is never reported to Police, 97 per cent of sexual assault offenders recorded by Police in Australia in 2018–19 were male.¹⁰ Allowing for population growth, Australia’s sexual assault victimisation rate increased from 69 victim survivors per 100,000 persons in 1993 to 107 victim survivors per 100,000 persons in 2020.¹¹ Eighty-four per cent of victim survivors of sexual assaults reported to Police in 2020 nationally were female¹² and one in three women since the age of 15 have reported experiencing sexual and/or physical violence perpetrated by a man.¹³

There are a number of drivers which create an environment where the prevalence of sexual violence is normalised and condoned.¹⁴ These include gender inequality, the value placed on exercising power over others,¹⁵ the value placed on privacy which may foster secrecy and silence,¹⁶ and the normalisation of violence in personal relationships and communities.¹⁷

Gender inequality in particular fosters specific drivers of violence against women. *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*¹⁸ produced by Our Watch, lists four primary drivers of violence:

- Condoning violence against women — including the idea that in some circumstances men’s violence towards women is excusable or that some violence is not serious (e.g. sexual harassment) or that it was the victim survivor’s fault
- Men’s control of decision-making and limits to women’s independence – including understandings of masculinity which encourage assumptions of control, leadership, and dominance
- Stereotypical ideas of men’s and women’s roles and identities, rigid ideas about acceptable male and female behaviour
- Dynamics of male peer relationships or ‘male bonding’ which may cause men to be unlikely to stand up to their peers to call out sexist, objectifying or violent behaviours towards women for fear of losing status and respect.

For many in the community, gender inequality intersects with other forms of discrimination to create additional drivers of sexual violence.¹⁹ Recognising that many people experience multiple and overlapping forms of disadvantage (referred to as intersectionality) assists in understanding the causes of sexual violence for different population groups.

Men don’t abuse women because society tells them it’s ok. Men abuse women because society tells them they are entitled to be in control. In fact, society says that if they are not in control they won’t succeed.

Jess Hill,
See What You Made Me Do

10 AIHW 2020, *Sexual Assault in Australia*.

11 ABS, *Recorded Crime—Victims 2020*, Table—Victimisation rates, Australia 2020.

12 ABS, *Recorded Crime—Victims 2020*, Table—Sexual assault, Australia.

13 Our Watch, ANROWS and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Melbourne Australia, ABS, Personal Safety Survey, 2016: ABS cat.no. 4906.

14 Our Watch, ANROWS and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Melbourne, Australia, p.5.

15 National Sexual Violence Resource Centre (NSVRC) 2006, *Sexual violence and the spectrum of prevention: Towards a community solution*, 4.

16 NSVRC 2006, *Sexual violence and the spectrum of prevention: Towards a community solution*, 4.

17 NSVRC 2006, *Sexual violence and the spectrum of prevention: Towards a community solution*, 4.

18 Our Watch, ANROWS and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, p. 5, Melbourne Australia.

19 Department of Child Safety, Youth and Women 2019, *Prevent. Support. Believe. Queensland’s framework to address sexual violence*, pp. 12, Brisbane: The State of Queensland.

Eighty-seven per cent of women who experienced sexual assault by a male since the age of 15 did not report their most recent incident to Police.

ABS Personal Safety Survey, 2016

For example, gender inequality intersects with racism, intergenerational trauma and other impacts of dispossession and colonisation causing a greater prevalence of sexual violence against Aboriginal and Torres Strait Islander women.

Understanding the varied experiences of our diverse community will lead towards identifying solutions that will seek to end violence no matter where people are positioned in society based on their gender, sexual orientation, age, race, class, and ability.

Women and girls

Sexual violence is one form of violence on a broader spectrum of violence that is typically perpetrated against women. Nearly a quarter of all women in Australia have been the victim survivors of sexual violence.²⁰ In the domestic and family violence setting, sexual violence rarely occurs in isolation and commonly occurs alongside other forms of violence, including physical and emotional violence. However, only 37 per cent of all sexual assaults reported to Police nationally were domestic and family violence related.²¹ At the same time women are most likely to experience sexual assault by a male that they knew (87%).²² Women are also more likely to experience sexual harassment in their lifetime than men. Approximately 53 per cent of women had experienced sexual harassment by a male or female perpetrator during their lifetime, however the statistics show that women are more likely to be sexually harassed by a man (one in two) than a woman (one in ten).²³

The impact of sexual violence against women on their health and wellbeing is profound and may lead to adverse long-term physical, mental, sexual and reproductive health outcomes.²⁴ It is a major health and welfare issue in Australia. Alongside the personal cost, the cost to the community addressing violence is estimated to be \$21.7 billion each year.²⁵

For women and girls, gender inequality is evidenced by the fact that Australia's full-time gender pay gap is 13 per cent with women earning \$242.20 less per week than men,²⁶ that on average women spend 32 hours a week on household labour and caring for children as compared with nearly 19 hours by men,²⁷ and that while women comprise almost half (47%) of all employed persons in the workforce, women continue to be underrepresented in traditionally more highly-paid male-dominated industries and managerial positions across industries.²⁸

The gendered nature of sexual violence has significant broader impacts on all women and girls. While not all women will have had a direct and personal experience of sexual violence the ever-present threat of sexual violence impacts the full and equal participation of women in society, limiting women's ability to safely travel alone, be out in public spaces at night, use ride-share services, or even accept a lift home, to name but a few instances. For example, women report being four to five times more afraid for their personal safety than men in walking in their local area after dark, being home alone at night, or using public transport at night.²⁹

20 ABS 2021, *Sexual violence – Victimization, 2021*, <www.abs.gov.au/articles/sexual-violence-victimisation>.

21 ABS, *Recorded Crime – Victims 2020*, Sexual Assault, Australia.

22 ABS, *Personal Safety Survey, 2016*.

23 ABS, *Personal Safety Survey, 2016*.

24 AIHW 2020, *Sexual assault in Australia*.

25 PwC 2015, *A high price to pay: the economic case for preventing violence against women*, Melbourne.

26 ABS, *Survey of average weekly earnings containing estimates of earnings classified by industry, sector and state/territory 2020*; Our Watch.

27 Our Watch, *Key stats on gender inequality and other forms of discrimination and disadvantage*, <www.ourwatch.org.au/quick-facts>.

28 Workplace Gender Equality Agency 2019, *Australia's gender equality scorecard. Key findings from the Workplace Gender Equality Agency's 2018–19 reporting data*.

29 ABS, *Personal Safety Australia 2016*, Table 39.

Men and boys

Men and boys are critical to any analysis of people involved in and impacted by sexual violence. Men are overwhelmingly the perpetrators of sexual violence. It is their behaviour that needs to change. However, men should also be a significant focus as participants in primary prevention initiatives. Men and boys can and should be allies and active participants in the prevention of violence against women, children, and other men. Men and boys who are victim survivors of sexual violence need to be supported to access and achieve healing and recovery.

As a community we will not make changes to the drivers of sexual violence without effective engagement of men and boys.

While the majority of sexual violence reported in our community is directed against women and girls by adolescent and adult men, men and boys also experience sexual violence. One in 20 men have experienced sexual violence and one in four men have experienced sexual harassment since the age of 15.³⁰ In 2018, of those sexual assaults reported against males, 48 per cent related to reports of sexual assault of boys aged 15 years and under.³¹ Their perpetrators are overwhelmingly other men. The experience of sexual assault in men and boys can conflict with dominant notions of masculinity characterised by sexism and homophobia and contribute to fear of disclosure for male victim survivors of sexual assault. Like all underreporting, this results in inadequate data to enhance our understanding of the crime. Inadequate legal definitions of the crime and a scarcity of support services further mask the real extent and impact of male sexual assault in our community.³²

One barrier that can significantly affect male survivors' willingness to disclose and seek assistance is a poor understanding of the cycle of sexual violence. This can happen both in the helping professions and across our community broadly. Prior sexual victimisation may be a contributing factor to some offenders' use of sexual violence against others but does not mean that the majority of male survivors will offend. It is a common concern or fear that contributes to additional shame, stigma and silencing for male survivors. There is strong evidence that boys' experience of physical abuse and neglect and witnessing family/domestic violence between adults at home as a child is more predictive of adult sexual offending than prior sexual victimisation.³³

All survivors of sexual violence deserve support. The impact of the trauma on male survivors, while having some distinct characteristics that reflect gender assumptions and expectations about men in our society, are similar to those for women and girls, and for gender diverse/non-binary survivors.

Given that the majority of sexual offending is committed by men, it is imperative that a prevention strategy includes actively engaging men and boys who are likely to be or are already sexually aggressive, harassing, abusive/violent to others.

Such a prevention strategy not only contributes to preventing sexual violence against people of all genders, it also enhances men and boys' lives by challenging rigid limiting notions about expression and masculinity, offering meaningful opportunities for self-reflection and valuing what non-violent men and boys bring to respectful relationships.

30 ABS, *Personal Safety Survey 2016*, Australian Institute of Health and Welfare 2019, *Family, domestic and sexual violence in Australia: continuing the national story*.

31 ABS, *Recorded Crime- Victims, Australia, 2018*.

32 Australian Institute of Family Studies (AIFS), ACCSSA Wrap 'Male survivors of sexual assault and rape', Sept 2006

33 Prevention Working Group 2021, *Framing our work with men and boys*, SAPRP.

People with gender diverse identities

Gender diverse people are subjected to discrimination and violence that compounds gender-based discrimination. Research in this space is emerging (particularly in the Australian context), as the awareness of, and support for, gender diversity increases.

International research indicates that:

- Almost half of all transgender people (47%) have been sexually assaulted at some point in their lives and one in ten were sexually assaulted in the past year because of their transgender identity.³⁴ These rates are significantly higher for respondents from communities of colour, for those who have done sex work, for those who have experienced homelessness, and for those who have a disability.
- Transgender and non-binary teenagers have a greater risk of sexual assault when they cannot choose the bathroom or changing room that they can use, with a particular risk among non-binary teens assigned female at birth and transgender boys.³⁵
- 57 per cent of transgender and gender non-binary people said they feel uncomfortable asking the police for help.³⁶
- 58 per cent who interacted with law enforcement experienced mistreatment, such as verbal harassment, repeated misgendering, physical assault, or sexual assault.

NORMALISATION OF VIOLENCE AGAINST WOMEN

Coercive and non-consensual sex and/or sexually and physically violent interactions are often normalised in sexually explicit media (pornography), in social media, popular culture and media reporting. Furthermore, in popular culture and the media, rigid and stereotyped gender roles and expectations are reproduced and glamorised, reinforcing the gender inequality drivers of sexual violence. This glamorisation of sexual violence and the portrayal of stereotypical role models leads to a culture where it is acceptable to objectify women's bodies and use misogynistic language to disregard women's rights and safety. This normalisation is often referred to as 'rape culture' and creates a society where violence against women is accepted. This leaves aside other forms of violence against women.

In Australia there is a significant community distrust of women who report sexual violence.³⁷ This distrust contributes to stigma, rape myths, gender inequality and community attitudes about women.³⁸ The most recent Research Report published by Australia's National Research Organisation for Women's Safety (ANROWS), *Chuck her on a lie detector*³⁹ found that four in ten respondents mistrusted women's reports of sexual violence. Such distrust informs a victim survivor's preparedness to disclose, whether they in fact recognise what occurred to them was a sexual assault, and their preparedness to proceed through the criminal justice system. Understanding the underlying societal reasons for this distrust is fundamental to improving the system's response to sexual violence and informing policy and prevention strategies.

34 James et al. 2016, *The report of the 2015 US Transgender Survey*, National Centre for Transgender Equality (US).

35 Murchison G, Agénor M, Reisner S and Watson R 2019, 'School restroom and locker room restrictions and sexual assault risk among transgender youth', *Pediatrics*, June, 143:6.

36 National Sexual Violence Resource Centre 2019, *Sexual Violence and Transgender / Non-Binary communities..*

37 Minter K, Carlisle E and Coumarelos C 2021, *Chuck her on a lie detector—Investigating Australians' mistrust in women's reports of sexual assault* (Research report, 04/2021). ANROWS, p. 6.

38 Minter K, Carlisle E and Coumarelos C 2021, *Chuck her on a lie detector—Investigating Australians' mistrust in women's reports of sexual assault* (Research report, 04/2021). ANROWS, p. 6.

39 Minter K, Carlisle E and Coumarelos C 2021, *Chuck her on a lie detector—Investigating Australians' mistrust in women's reports of sexual assault* (Research report, 04/2021). ANROWS, p. 6.

SEXUAL VIOLENCE IN THE ACT

In the ACT, there is no single data source that provides a comprehensive lens into the victim survivor experience and their journey through the system from the moment they first disclose, the therapeutic response to the disclosure and, if sought, the justice response.

From the data available, we know that the incidence of sexual assault in the ACT broadly reflects reported national sexual assault statistics. In 2020 in the ACT, 87 per cent of victims who reported sexual assault were women and 71 per cent of victim survivors knew the perpetrator.⁴⁰

PREVALENCE AND DEMOGRAPHICS

How many people experience sexual assault?

Current available datasets do not provide a sufficiently detailed understanding of the prevalence of sexual violence in the ACT. The Australian Bureau of Statistics (ABS) national data indicates that only 13 per cent of women who have experienced sexual assault reported it to police.⁴¹

It can also be many years between an incident and a report. For example, the Royal Commission into Institutional Responses to Child Sexual Abuse observed that for child sexual abuse victim survivors ‘Many victims do not disclose child sexual abuse until many years after the abuse occurred, often when they are well into adulthood. Survivors who spoke with us during a private session took, on average, 23.9 years to tell someone about the abuse and men often took longer to disclose than women (the average for females was 20.6 years and for males was 25.6 years). Some victims never disclose’.⁴²

Further, in 2020, according to ABS data,⁴³ there were 289 sexual assaults recorded or reported to ACT Policing, whereas ACT Policing reported 487 incidents of sexual assault in the ACT.⁴⁴ Because each data set is relying on different sources and applying different counting rules and definitions, different data is obtained.⁴⁵

These figures, although different for the reasons cited, are still not a true representation of the number of incidents of sexual violence that were perpetrated in the ACT and reflect only the number of people who were willing to disclose or report the sexual assault to police for that year. Notably the 2016 ABS Personal Safety Survey found that 1, ABS *Personal Safety Survey 2016*, Table 1.1 female experiences in the last 12 months — ACT 900 females in the ACT experienced sexual violence in the previous 12 months.⁴⁶

“I know that the percentage of women who are or will be sexually assaulted is very high, but we should not neglect that there is also sexual violence that occurs against men.”

Community leader,
Insights from CALD
Communities Report, 2021

40 ABS, *Recorded Crime – Victims 2020*.

41 ABS 2021, *Sexual Violence – Victimisation*, <www.abs.gov.au/articles/sexual-violence-victimisation>.

42 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report – Volume 4, Identifying and disclosing child sexual abuse*, Commonwealth of Australia, 2017. p. 9.

43 ABS, *Recorded Crime – Victims, 2020*, Table 9 Victims, Selected offences by states and territories, 1993–2020

44 AFP, ACT Policing Crime Statistics, Crime Statistics | ACT Policing Online News ACT Police outline that the selected offences highlighted in the statistics include: assault, sexual offences, robbery, burglary, motor vehicle theft, other theft (such as shoplifting and fraud) and property damage. It is important to note that these numbers may fluctuate as new complainants come forward. Sexual assault offences are described as incidences reported to ACT Police that meet the following definition: Physical contact, or intent of contact, of a sexual nature directed toward another person where that person does not give consent, gives consent as a result of intimidation or deception, or consent is proscribed (i.e. the person is legally deemed incapable of giving consent because of age, temporary/permanent (mental) incapacity or there is a familial relationship).

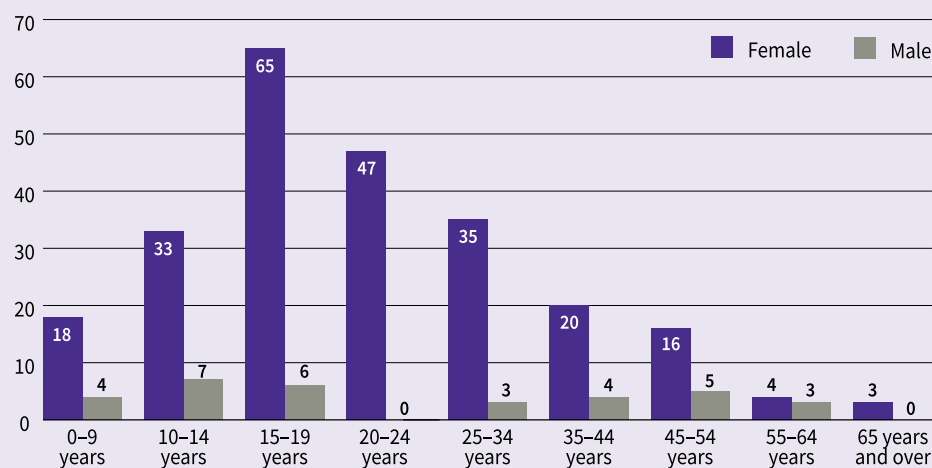
45 The ABS utilises its own counting rules and definitions when reporting as compared to ACT data sources. ABS methodology found at <www.abs.gov.au/methodologies/recorded-crime-victims-methodology/2020>..

46 ABS, *Personal Safety Survey, 2016*, Table 1.1 Female Experiences I the last 12 months — ACT.

Who is impacted by sexual assault?

While people of all ages, identities and genders experience sexual violence, the great majority of victim survivors of reported sexual assaults are women and girls under 35 years of age.⁴⁷

Figure 2: Australian Bureau of Statistics, Recorded Crime—Victims (Table 16, Victims of sexual assault, age at incident by sex, states and territories, 2020)



Police collect data on matters including age and gender but do not presently collect data on matters that would assist the ACT to understand when and how reports are made, and when and how they ‘fall out’ of the system, such as the lengths of time between when the incident of sexual violence occurred and the reporting of the incident. Police agree with stakeholders that gathering this additional data would provide useful insight into when and how survivors choose to engage with the justice system.

⁴⁷ ABS 2020, *Recorded Crime—Victims, 2020*, Table 16 Victims of sexual assault, age at incident by sex, states and territories.

OUR COMMUNITY

ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE

This section of the report is informed by the voices, experiences, and perspectives of the Aboriginal and Torres Strait Islander Consultation Committee.

Aboriginal and Torres Strait Islander people have the right to live safely in their families, community and culture, and the recommendations outlined in this report are endorsed by the Aboriginal and Torres Strait Islander Consultation Committee.

In listening to the Consultation Committee, we heard that colonisation, cultural genocide, dispossession, forced child removals and the oppressive and racist policies of the past, continue to have a lasting impact on Aboriginal and Torres Strait Islander people. It is important to acknowledge that this history has brought trauma to many, and healing from that trauma will take time.

Aboriginal and Torres Strait Islander children who were forcibly removed from their families as a result of various government policies were vulnerable to sexual abuse and exploitation. Almost one in ten boys and just over one in ten girls have said they were sexually abused in a children's institution.⁴⁸ This historical legacy contributes to Aboriginal and Torres Strait Islander women being between three and three and a half times more likely than non-Indigenous women to be victim survivors of sexual violence.⁴⁹

In the justice system, the over-representation of Aboriginal and Torres Strait Islander people in detention, including as perpetrators of sexual violence, contrasts with the under-representation of Aboriginal and Torres Strait Islander people accessing support for sexual violence.

Accessing and participating in the justice system can be hard. This is compounded by the fact that the justice system was not designed to, and does not, sufficiently support Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people can distrust justice services, and experience these as perpetuating Australia's colonial history of racism through ineffective, disrespectful, racially ignorant service provision. Although much is known about the involvement of Aboriginal and Torres Strait Islander offenders in the criminal justice system, little is known about the degree to which Aboriginal and Torres Strait Islander victims engage with the justice system. This deficiency tends to place the emphasis in the public eye squarely on the over-representation of Aboriginal and Torres Strait Islander offenders who are incarcerated or who die in prison, while the voices of Aboriginal and Torres Strait Islander victims are silenced.⁵⁰ The importance of family and community can make it even harder to seek justice support, especially where help seeking leads to unwelcome police or government intervention.

48 AHRCb 1997, *Bringing them Home: National Inquiry into the separation of Aboriginal and Torres Strait Islander Children from Their Families*, p. 141.

49 AHRCc 2017, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, p. 201.

50 ACT Victims of Crime Coordinator 2009, *We don't Shoot our Wounded... Aboriginal and Torres Strait Islander Victims of Family Violence Access to Justice and Access to Services in the ACT*, ACT Government, p. 1.



The underrepresentation of Aboriginal and Torres Strait Islander people accessing support and the under reporting of incidents of sexual violence is compounded by evidence which suggests that Aboriginal and Torres Strait Islander women are 3.1 times more likely to experience violence than non-Indigenous women.⁵¹ However, national prevalence estimates for sexual assault are not available.⁵²

ABS data for 2020 does not record any victims of sexual assault as identifying as Aboriginal and Torres Strait Islander from the ACT. The data only records victim survivors identifying as Aboriginal and Torres Strait Islander from New South Wales (NSW), Queensland, the Northern Territory and South Australia due to the data either not being of sufficient quality or does not meet the ABS standards for national reporting 2020.⁵³

The Aboriginal and Torres Strait Islander Consultation Committee identified the following barriers for victim survivors in receiving the culturally safe and responsive supports that they need. These barriers equally apply to the challenges in accurately collating data regarding the reporting of sexual assault.

- Women will not disclose violence unless they know the immediate needs of their family are met — including, housing, financial and safety.
- Women will not disclose violence if they fear their children could be removed from their care.
- Young people will not disclose violence out of fear of unintended consequences for their family.
- Disclosures to police generally do not occur due to mistrust as a result of incarceration rates, racism and the broader history of the country.
- Mainstream support services are not equipped to provide culturally-safe and responsive services, mainly due to insufficient Aboriginal and Torres Strait Islander staff. The lack of Aboriginal and Torres Strait Islander workforce in this field has an ongoing impact, including:
 - potential conflicts of interest for Aboriginal and Torres Strait Islander staff, reflecting the realities of Canberra’s small community
 - burn-out of specialist Aboriginal and Torres Strait Islander staff, due to a lack of cultural supervision and support
 - failure to develop and foster the next generation of Aboriginal and Torres Strait Islander workers.
- Aboriginal and Torres Strait Islander services are safe and responsive, but confidentiality can be an issue in a small community.

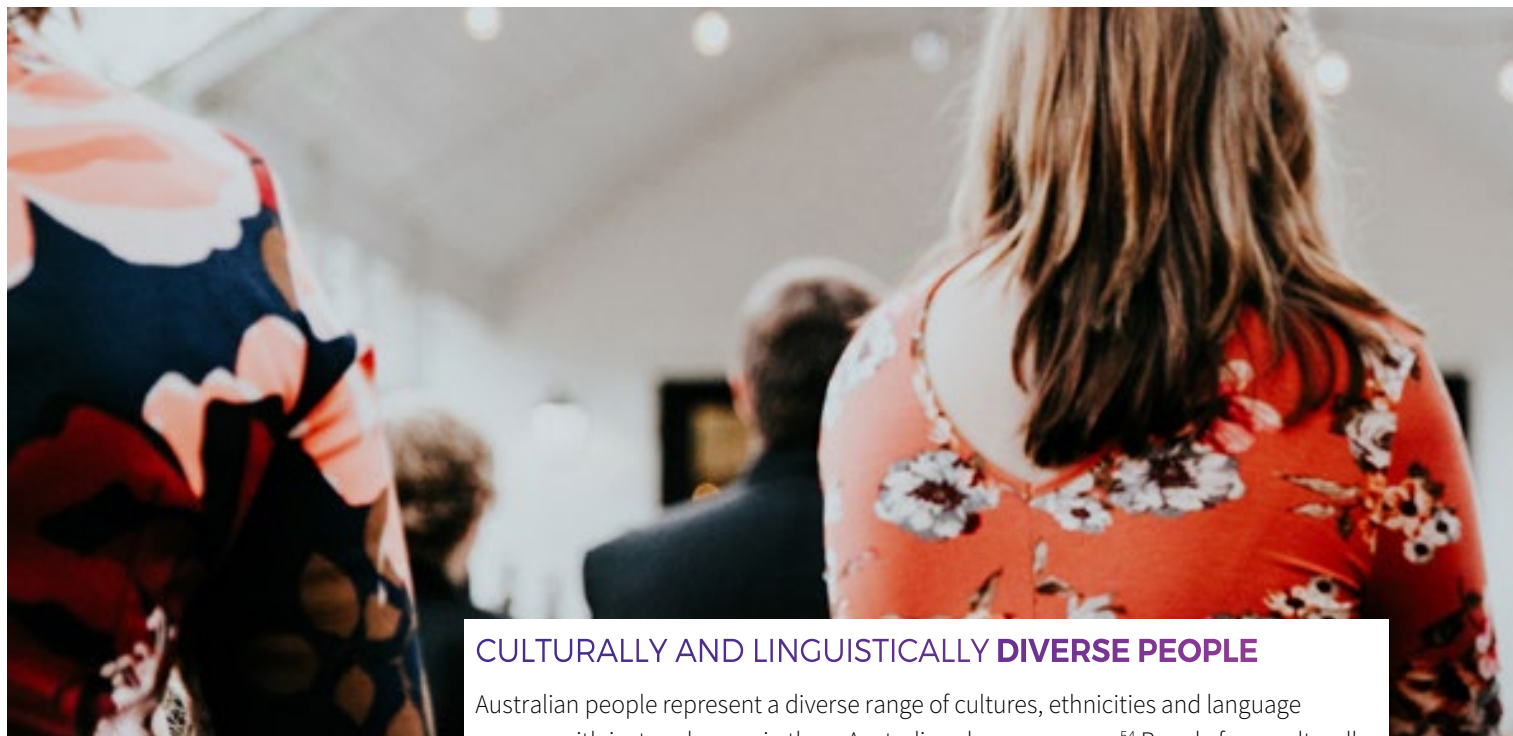
51 AIHW 2020, *Sexual Assault in Australia*; Our Watch 2018, *Changing the Picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*.

52 Mitra-Kahn T, Newbigin C, Hardefeldt S 2016, *Invisible violence: understanding and improving data on the experience of domestic and family violence and sexual assault for diverse groups of women*. State of knowledge paper. Sydney: ANROWS.

53 ABS 2020, Recorded Crime — Victims.

Implementing the recommendations in this report must continue to involve Aboriginal and Torres Strait Islander people. Implementation must also embed an understanding of the intergenerational experience of Aboriginal and Torres Strait Islander people. Recommendations relating to system responses must also apply a cultural lens to ensure that responses are culturally safe and culturally-informed. Aboriginal and Torres Strait Islander people are best placed to develop the responses to address the issues that impact upon their communities, as they understand this legacy and the importance of stopping violence. This is reflected in the following principles identified by the Aboriginal and Torres Strait Islander Consultation Committee for consideration across all recommendations:

- The intergenerational experience of colonisation and dispossession upon Aboriginal and Torres Strait Islander people is a central consideration for any policy or service response to sexual assault.
- The systemic barriers which prevent Aboriginal and Torres Strait Islander women, children and young people from making disclosures should be understood and accepted in all policy development and service responses.
- Aboriginal and Torres Strait Islander people have a right to self-determination, to be decision makers in all matters that affect their lives, including social, emotional and economic. Responses for Aboriginal and Torres Strait Islander people should be co-designed and where possible, led by Aboriginal and Torres Strait Islander people.
- In general policy designed to meet the needs of Aboriginal and Torres Strait Islander people will help ensure that the system is more responsive and culturally-appropriate for the diversity of our whole community.
- Robust data collection and monitoring is fundamental to understanding the demographic profile of people accessing services, the effectiveness of those responses and the outcomes for victim survivors. However, Aboriginal and Torres Strait Islander people should always have a choice in whether they identify as being Aboriginal and Torres Strait Islander or not in any given situation.



CULTURALLY AND LINGUISTICALLY DIVERSE PEOPLE

Australian people represent a diverse range of cultures, ethnicities and language groups, with just under one in three Australians born overseas.⁵⁴ People from culturally and linguistically diverse backgrounds have a range of different cultural, faith and family norms and practices that may influence perspectives on the issue of sexual violence, and the approach to help-seeking.

The commentary in this section is informed by consultations conducted for this review. The findings from that consultation are outlined in detail at Appendix 4.

Culturally and linguistically diverse communities can have vastly different experiences when it comes to being able to define sexual violence, with a spectrum ranging from little to no understanding to a deep, nuanced understanding and ability to identify it.⁵⁵ Culturally and linguistically diverse people can also have very different views about what is considered to be sexual violence, ranging from a lack of recognition of sexual violence in marriage, to the belief that commonly accepted behaviours are a type of sexual harassment.⁵⁶

Language is central to the preservation and recognition of cultural identity. Language can also inform whether and how an idea or experience is expressed within a culture; sometimes there are no words to directly translate or describe in a culturally relevant or appropriate way what is meant in English by terms like ‘sexual assault’ or ‘consent’ within a cultural group. Translators often have the cultural understanding of these differences in language and use soft interpretations and euphemisms when working with victims of sexual violence. In some cultures, anything to do with sex, sexuality or sexual activities is never discussed openly or directly. As such there is no direct interpretation for the term ‘sexual assault’ or ‘sexual violence’.⁵⁷

Factors that prevent culturally and linguistically diverse people from seeking help following experiences of sexual violence include:

- prejudice and discrimination on the basis of language, ethnicity, culture, migration/

54 ABS 2020, *Australia's population: over 7.5 million born overseas*, <www.abs.gov.au/articles/australias-population-over-75-million-born-overseas#:~:text=Australia%27s%20population%3A%20over%207.5%20million%20born%20overseas%20,%20%202.2%20%208%20more%20rows%20>.

55 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 3.

56 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 3.

57 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 7.



refugee experience and migration status in Australia (e.g. vulnerable visa status, exclusion from certain public services and supports)

- the risk of losing their visa if their partner leaves them
- cultural dislocation between Australia and the individual's country of origin
- a distrust of police and government, especially for recent migrants and refugees
- compounding marginalisation for LGBTIQ+ people who are also from culturally and linguistically diverse backgrounds
- fear of judgement and ostracisation after seeking support, and
- fear of further violence from the perpetrator.

Young culturally and linguistically diverse people are often isolated and unwilling to seek help if they experience sexual violence. Even when victim survivors have the language to explain their experiences, victim-blaming is common and permeates conversations, dissuading help seeking. 'Cultural etiquette' has prevented young culturally and linguistically diverse people from seeking help, as sex and sexual assault must be kept 'private'.⁵⁸ Older culturally and linguistically diverse women, however, may have their own 'quiet' ways of reaching out to other women for help. Older women sometimes discuss these personal matters in small groups or one on one with someone that they trust. Euphemisms are often used in a way that men or children within earshot would not be able to understand.⁵⁹

Some culturally and linguistically diverse people may find it easier to seek help from professionals that identify with their own culture, out of fear that someone from outside of their own culture or religion may not understand them or may judge them. Others find it easier to seek help from someone outside their own culture so that victim survivors do not feel that their story will be exposed to the community.⁶⁰

The needs of people from culturally and linguistically diverse backgrounds are also, by definition, very diverse. To effectively engage with individuals and communities who are culturally and linguistically diverse, a range of different service supports, and responses is required.

58 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 7.

59 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 7.

60 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 13.

PEOPLE WITH DISABILITY

People with disability experience significant barriers to disclosure and help-seeking when they experience sexual violence. Additionally, responses to people with disability often do not meet the needs of the individuals seeking support.

The 2016 ABS Personal Safety Survey found that living with disability or a long-term health condition raised the likelihood of experiencing various types of violence for women but not for men. These types of violence include physical violence by any perpetrator, violence by a cohabiting partner (physical and/or sexual), emotional abuse by a cohabiting partner, sexual harassment by any perpetrator, and stalking by any perpetrator.⁶¹

Women with disability are twice as likely to experience violence (physical and/or sexual) by a cohabiting partner as women without disability.⁶² Women with a physical or intellectual disability are more likely to experience domestic violence and the violence is more likely to be more severe and continue for longer compared to other women.⁶³ Men with disability are also 2.6 times as likely to report sexual violence, in comparison to their peers without disability.⁶⁴

Several factors may contribute to the higher risk of sexual violence against people with disability, including:

- individuals experiencing a lack of choice and control over their own lives
- negative response towards, or punishment of, behaviours seen as ‘assertive’
- exposure to higher numbers of support workers or ‘care takers’
- the normalisation of intimate touching and lack of privacy (such as through intimate personal support)
- isolation and segregated settings
- communication barriers
- difficulty distinguishing between appropriate and inappropriate touching, and
- lack of education or awareness regarding consent, sexual health and rights.⁶⁵

People with disability often do not have access to the legal supports and services they need and the legal system can be particularly difficult to navigate. As a result, people with disability do not have the protection and services which are their right.⁶⁶ People with intellectual disability or cognitive impairment also face barriers including negative assumptions and stereotypes about the reliability of their evidence and the ability to participate in police interviews and court proceedings.⁶⁷

61 ABS 2016, *Personal Safety Survey*.

62 ABS 2016, *Personal Safety Survey*.

63 ACT Government CSD 2019, *Towards disability justice for the ACT summary of research and consultations*, p. 32.

64 *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia* (Research Report), Centre of Research Excellence in Disability and Health (CRE-DH) March 2021, p.10.

65 National Disability Authority, *Sexuality and relationships 2014* (Ireland). These factors have also been highlighted in the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, see particularly Public hearing 17: The experience of women and girls with disability with a particular focus on family, domestic and sexual violence (Part 1) October 2021.

66 ACT Government CSD 2019, *Towards disability justice for the ACT Summary of Research and Consultations 2019*, p.1.

67 ACT Government CSD 2019, *Towards disability justice for the ACT Summary of Research and Consultations 2019*, p.9.

A summary of the barriers to disclosing sexual violence for people with disability include:⁶⁸

- the relationship between the victim survivor and the perpetrator — a victim survivor of sexual assault may be in a dependent relationship with the perpetrator, whether this is an intimate partner, other family member, or a paid in-home carer
- disability workers not knowing how to support and respond to disclosures of sexual violence
- police or others dismissing allegations of sexual violence, and the victim survivor's perceived reliability
- lack of policies or procedures in organisations to respond to disclosures of violence from people with disability
- fear of being institutionalised
- lack of awareness of, and support to uphold, their rights
- lack of recognition from others — particularly for people who are non-verbal, or have communication barriers, the impact or signs of sexual assault may be dismissed or misattributed to disability
- poor access to education about healthy sexual relationships resulting in some people with disability not knowing that a sexual assault has occurred
- not knowing how to report a sexual violence or to communicate what has occurred.

People with disability face many systemic and structural barriers to accessing justice, including:⁶⁹

- physical accessibility (such as inaccessible legal offices or courts)
- lack of support, adjustments, and aids (such as Auslan interpreting or hearing augmentation)
- lack of legal information and advice in accessible formats, and
- negative attitudes to people with disability which can be held by those working in the justice system.

...we want the justice system to work with us not to do things to us.

Consultation participant,
Towards Disability Justice for the ACT

68 AIFS 2008, 'Sexual assault and adults with a disability: enabling recognition, disclosure and a just response', *ACSSA Issues*, September 2008.

69 ACT Government CSD 2019, *Towards disability justice for the ACT*, p.9.

CHILDREN AND YOUNG PEOPLE

Children and young people are at the highest risk of sexual violence, with children under the age of 15 years representing 42 per cent of all victim survivors of recorded sexual assaults.⁷⁰ Sexual violence against children and young people does not often occur in isolation. Often there are other factors that contribute to a child or young person's vulnerability; we must look at the context in which these factors (such as domestic and family violence, abuse and neglect, intergenerational trauma etc.) occur.⁷¹ Furthermore, research indicates there is a strong linkage between domestic and family violence and child abuse, where children experiencing domestic violence are more likely to be emotionally, physically or sexually abused.⁷² Almost 30 per cent of all sexual assaults recorded against children aged 0–14 years were perpetrated by a family member, and almost three quarters were perpetrated by someone known to the victim survivor.⁷³ In 58 per cent of sexual assault-related hospitalisations involving children aged 0–14 years in 2016–17, the perpetrator was a parent or other family member.⁷⁴

The most significant barrier to children and young people disclosing sexual assault, is that the assault has often taken place in a relationship of trust and the children either do not know how to, or do not feel comfortable, telling anyone.⁷⁵

The point of disclosure is a critical point of engagement with therapy services for children impacted by sexual abuse.⁷⁶ Child sexual abuse can often get lost in discussions about violence and abuse more generally. It is important that this area of work is looked at in as much detail as the experiences of adult sexual assault. At present, there is no Australian jurisdiction that has current and available data on the rates of referral, engagement and completion for therapy following the disclosure of child sexual abuse. This highlights the need for increased research on the barriers to accessing therapy following disclosure.⁷⁷ Factors that help victim survivors of child sexual abuse to access support in the years that followed the abuse include approachable/supportive staff members (30.3%), availability of support services (24.8%) and readiness to access/participate in support services (24.8%).⁷⁸

'Addressing child sexual abuse requires a range of prevention programs and plans, as well as trauma-informed responses and supports for people who have experienced or been affected by it.'

National strategy to prevent and respond to child abuse, 2021

70 ABS, *Recorded crime — Victims, 2020*, Table 2 Victims, Sex and age at report by selected offences, 2010–20.

71 Tinning C 2021, Allied Health Manager, Division of Women, Youth and Children, Canberra Health Services ACT Government, Response Working Group, SAPRP.

72 Glanfield L 2016, *Report of the Inquiry: Review into the system level responses to family violence in the ACT*, ACT Government, p. 13.

73 ABS, *Recorded crime — Victims, 2020*, Table 21 Victims of sexual assault, Relationship of offender to victim by sex and age at report, ACT, 2014–20.

74 AIHWb 2020, *Australia's Children*, cat. no. CWS 69, p. 337.

75 DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p. 1.

76 Herbert J 2021, *Rates of therapy use following a disclosure of child sexual abuse*, CFCA paper no. 58, p. 3.

77 Herbert J 2021, p. 2.

78 AIFS 2017, *Pathways to support for victim/survivors of child sexual abuse and their families: Report for the Royal Commission into Institutional Responses to Child Sexual Abuse*, p. 15.

Child victim survivors are also often impacted by the daunting nature of the criminal justice system, rendering it even more difficult to progress a charge through to conviction.⁷⁹ While sexual offences have a very high rate of attrition,⁸⁰ sexual offences against children have one of the highest rates of attrition of any offence.⁸¹

The current system in the ACT in responding to child sexual abuse is fragmented, siloed and complex. There is a risk that this fragmented system compromises the ability to take evidence from children and young people in a way that ensures its integrity is protected for the purposes of court processes. This may be one explanation for the high attrition rate in this area, particularly from the point of reporting to the point where the decision is made to lay criminal charges or not. As outlined in the first *National Strategy to Prevent and Respond to Child Sexual Abuse*, there is a need to improve and share best practice approaches to child witness interviewing.⁸²

Children and young people are also increasingly impacted by social media and online content, as relationships move increasingly online. This shift is changing how children and young people form their views about sex, consent, and relationships.

A child's lived experience also reflects their intersecting identities, background, and experiences. The Disability Royal Commission highlighted that 'almost one in four girls with disability reported experiencing abuse compared to one in six boys.'⁸³ Sexual abuse was more common than physical abuse for girls with disability and the reverse was true for boys.' The Australian Human Rights Commission (AHRC) also found that young people are at greater risk of sexual harassment in the workplace. In 2012, 18–24 year olds were most likely to experience sexual harassment in the workplace, representing 21 per cent of those who were sexually harassed in the past five years.⁸⁴ Young people are also less likely to know how and lack confidence to seek support for inappropriate workplace behaviour.

Developing effective responses that better meet the needs of children and young people impacted by sexual violence in the ACT requires improving both opportunity for disclosure and community awareness of sexual violence, to ensure that responses to disclosures are appropriate. Overall, children and young people need to be believed and kept safe, with timely, tailored and integrated interventions and responses that meet their needs.

79 DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p.1.

80 Attrition measures the rate at which cases that have entered the criminal justice system 'drop out' before a conviction is recorded.

81 Australian Institute of Criminology, *Evaluation of the ACT Sexual Assault Reform Program (SARP 2012): Final report, AIC Reports*, Technical and Background Paper 51, p. 2.

82 Australian Government 2021, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021–2030*, p.41.

83 Disability Royal Commission, Transcript of public hearing, 13 October 2021, p. 11, <<https://disability.royalcommission.gov.au/system/files/2021-10/Transcript%20Day%201%20-%20Public%20hearing%2017%2C%20Virtual.pdf>>.

84 AHRCc, p.25.



LGBTIQ+ PEOPLE

A number of Australian studies have found that LGBTIQ+ people report high levels of verbal and physical abuse, harassment and sexual assault, including within their homes.⁸⁵

Almost one in two LGBTIQ+ people reported being coerced or forced into sexual acts that they did not want to engage in,⁸⁶ with the sexual assault more commonly reported as perpetrated by former and current intimate partners and friends.⁸⁷ In some instances, such experiences resemble conversion practices in their underlying drivers.

In a national survey of LGBTIQ+ people:

- More than three in ten non-binary participants (36%) and trans men (30%) had experienced sexual violence from an intimate partner, compared to cisgender women (24%), trans women (17%) and cisgender men (11%).⁸⁸
- Sexual violence was experienced most frequently by pansexual (37%), queer (33%), bisexual (29%) and asexual (24%) identifying participants, compared to lesbian identifying (17%) and gay identifying (11%) participants.⁸⁹
- Sexual assault from a family member was experienced by three times as many non-binary participants and trans men compared to cisgender men.⁹⁰

However, LGBTIQ+ people are often overlooked in awareness and support campaigns. This also has implications for reporting rates where there are lower levels of recognition of intimate partner and family violence among LGBTIQ+ people than heterosexual people.⁹¹

LGBTIQ+ people are subjected to different modes of power and control in their relationships, that may leave them vulnerable to sexual assault or unable to seek the help that they need. These modes of power include outing sexuality/health status without consent, verbal abuse related to gender identity, isolation from other LGBTIQ+ people, controlling medication access and ridiculing a person's expression of sexuality/identity.⁹²

85 Carman M, Fairchild J, Parsons M, Farrugia C, Power J and Bourn A 2020, *Pride in Prevention: A guide to primary prevention of family violence experienced by LGBTIQ communities*, La Trobe University.

86 ARCSHS 2020, *Private Lives 3: A national survey of the health and wellbeing of LGBTIQ people in Australia*, La Trobe University, p.75.

87 ARCSHS 2020, p.76, Table 34. Further 19.1 per cent nominated a casual partner and 18.4 per cent nominated a stranger.

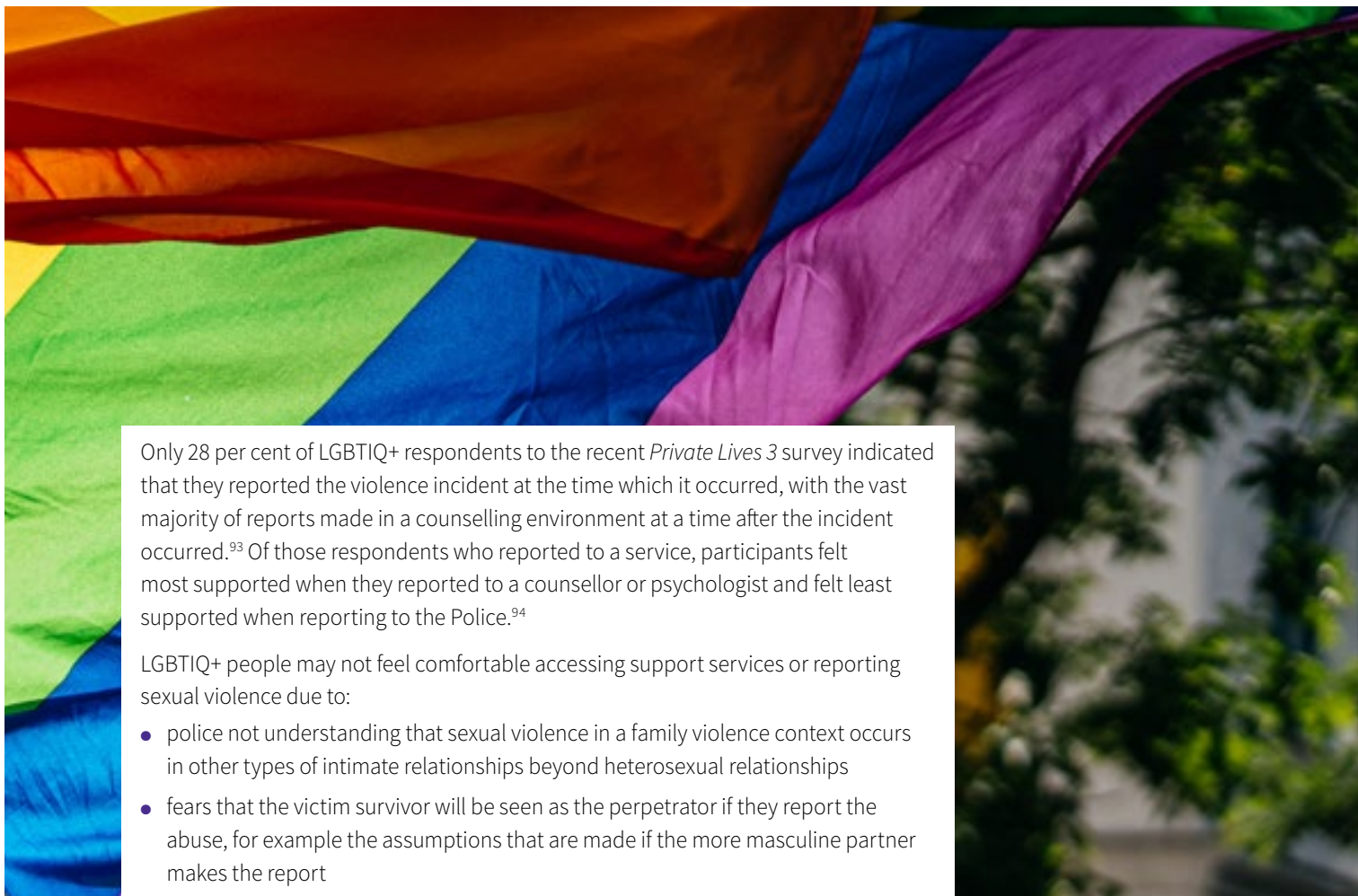
88 ARCSHS 2020, p.72.

89 ARCSHS 2020, p.72.

90 ARCSHS 2020, p.72.

91 ARCSHS 2020, p.77.

92 ARCSHS 2020, p.71.



Only 28 per cent of LGBTIQ+ respondents to the recent *Private Lives 3* survey indicated that they reported the violence incident at the time which it occurred, with the vast majority of reports made in a counselling environment at a time after the incident occurred.⁹³ Of those respondents who reported to a service, participants felt most supported when they reported to a counsellor or psychologist and felt least supported when reporting to the Police.⁹⁴

LGBTIQ+ people may not feel comfortable accessing support services or reporting sexual violence due to:

- police not understanding that sexual violence in a family violence context occurs in other types of intimate relationships beyond heterosexual relationships
- fears that the victim survivor will be seen as the perpetrator if they report the abuse, for example the assumptions that are made if the more masculine partner makes the report
- historical low levels of trust between LGBTIQ+ people and the state, including with the police
- a lack of trust in mainstream services
- feelings of hopelessness and a fear of being retraumatised.

Intersecting identities can compound the experience of sexual violence, especially for people from culturally and linguistically diverse backgrounds. LGBTIQ+ people who come from a culturally and linguistically diverse background suffer additional layers of complexity, such as sanctions or punishment from their community if they are outed. Trans women of colour who are sexuality diverse and a migrant or of lower socio-economic status face multiple forms of marginalisation that put them at high risk of sexual violence.⁹⁵ Culturally and linguistically diverse trans women also experience the highest rates of sexual assault perpetrated by strangers, which compounds the trauma of assault with the constant fear of further sexual violence.⁹⁶ LGBTIQ+ refugees are likely to have experienced sexual violence yet will have limited opportunities to address these historic experiences once in Australia.⁹⁷

93 ARCSHS 2020, p. 75.

94 ARCSHS 2020, p. 75, Table 33.

95 ANROWSb, *Crossing the Line: Lived Experiences of Sexual Violence among Trans Women of Colour from culturally and linguistically diverse backgrounds in Australia*.

96 ANROWSb.

97 Hopkinson, et al. 2017, 'Persecution Experiences and Mental Health of LGBT Asylum Seekers', *Journal of Homosexuality*, 64(12), 1660–6.

‘In a former workplace I had to deal with lots of drunk men. Sexual harassment, aggression and stalking were all just unspoken parts of the job.’

Union ACT report.

I withdrew the HRC complaint because work led me to believe it would be sorted...I just had in my head that work would do a good job and sort it...I tried so hard to work ‘within the box’ at work but I’ve been let down.

Victim survivor consultation participant 2021

WORKERS

There are a number of pervasive elements of workplace culture that implicitly support gendered violence and prevent women and gender-diverse people from asserting their rights and accessing help.⁹⁸

A 2020 survey of workers in the ACT identified that 67.1 per cent of respondents felt they had been treated in a sexualised way or had experienced sexual harassment.⁹⁹ Each victim survivor’s experience of workplace sexual harassment is unique and could be characterised by:

- verbal forms of sexual harassment (comments, jokes, intrusive questions, pressure for sex)
- sexually explicit pictures, posters or gifts
- intimidating or threatening behaviours (staring or leering, sexual gestures, being followed or watched)
- inappropriate physical contact (unwelcome touching, actual or attempted rape or sexual assault)
- sexual harassment involving the use of technology.¹⁰⁰

For respondents who had experienced some form of gendered workplace violence, only half reported it to their employer. Not reporting was attributed to reasons including not feeling confident that their employer would support them, not wanting to be known as a complainer and the workplace culture frowning on reporting.¹⁰¹ It may also be the case that those experiencing workplace violence have not been properly educated about their rights.¹⁰² There is also a broader concern that complaining will impact their reputation, career prospects and relationships within their community or industry.¹⁰³

The *Respect@Work* report noted that people who identify as gay or lesbian, bisexual, transgender, queer, intersex or people with another orientation were significantly more likely than people who identify as straight or heterosexual to be sexually harassed in the workplace in the last five years.¹⁰⁴

The prevalence and impact of gendered workplace violence is compounded by poor workplace reporting processes and policies.¹⁰⁵ Most people who experience sexual harassment never report it, and the system for addressing workplace sexual harassment is seen as complex and confusing to navigate.¹⁰⁶

98 Unions ACT 2021, *Gendered Violence in the Workplace: Report from Survey of Workers in the ACT 2020*, p. 2.

99 AHRCa p.17.

100 AHRCa p.18.

101 Unions ACT 2021, p. 6.

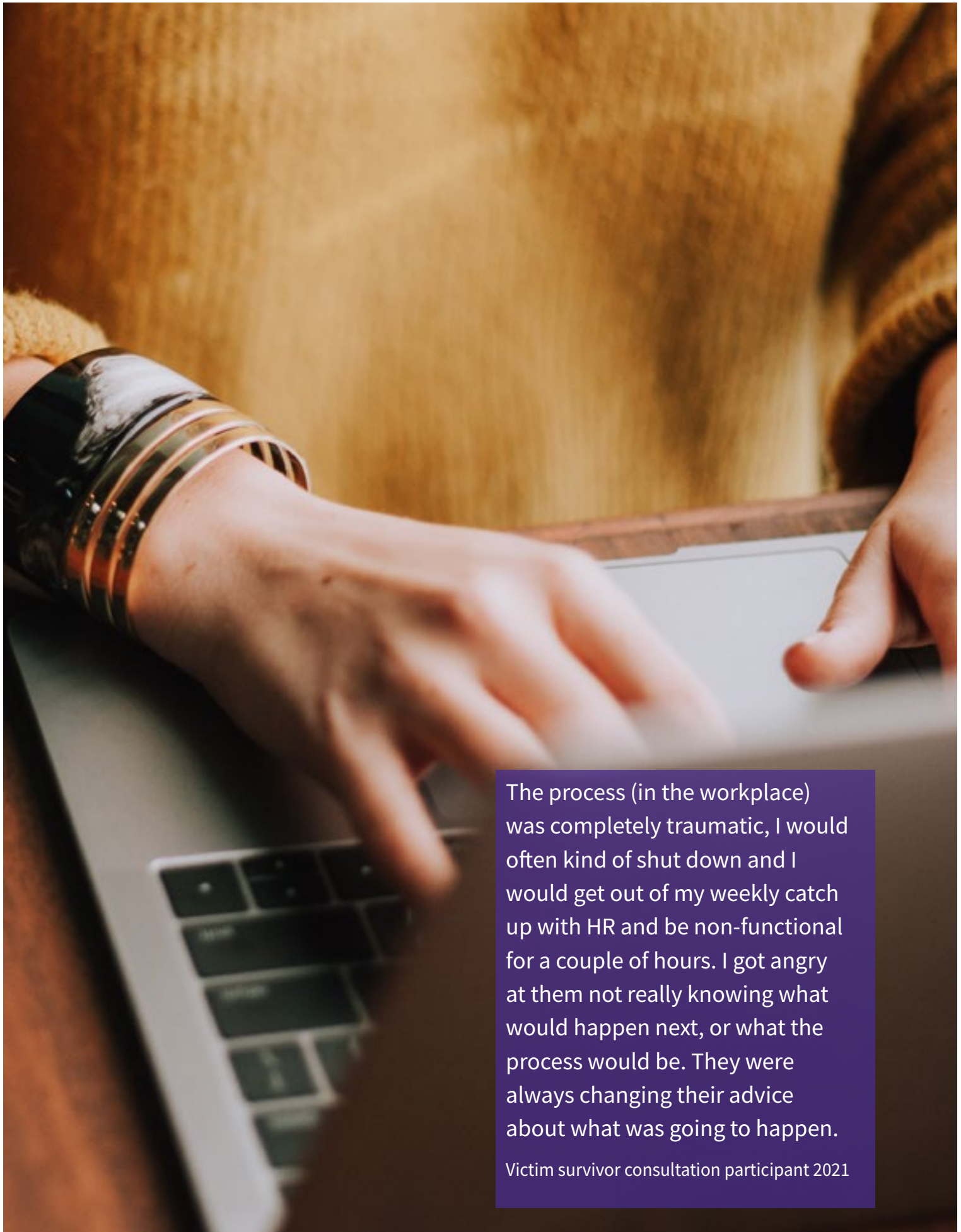
102 Unions ACT 2021, p. 7.

103 AHRCa, p. 14.

104 AHRCa, p. 174.

105 Unions ACT 2021, p. 6.

106 AHRCa, p. 14.



The process (in the workplace) was completely traumatic, I would often kind of shut down and I would get out of my weekly catch up with HR and be non-functional for a couple of hours. I got angry at them not really knowing what would happen next, or what the process would be. They were always changing their advice about what was going to happen.

Victim survivor consultation participant 2021

FAILURE OF THE JUSTICE SYSTEM

In the ACT, a very low proportion of cases proceed to conviction as compared to other jurisdictions.¹⁰⁷ For example, in 2020, less than three per cent of sexual offences reported to ACT Policing resulted in charges being laid against the offender, as per the data provided to the Steering Committee by ACT Policing, generated by their database ‘PROMIS’ (Police Real-Time Management Information System).

Inter-jurisdictional comparison of maximum penalties for sexual offences is difficult given different criminal laws and different definitions for sexual offences. However, a general comparison of statutory maximums indicates that the ACT’s maximum penalties for sexual offences are at the lower end. For example, the maximum penalty for sexual intercourse without consent in the ACT is 12 years.¹⁰⁸ The maximum penalty for sexual assault in NSW and sexual penetration without consent in WA is 14 years.¹⁰⁹ In Victoria the maximum penalty for rape is 25 years and in Tasmania the maximum penalty for all offences is 21 years.¹¹⁰ In the NT, Qld and SA the maximum penalty for sexual intercourse without consent or rape is life imprisonment.¹¹¹

Victim survivors who engage with police to report and investigate sexual violence consistently report that these processes are retraumatising, which can in turn contribute to a lack of community trust and a low rate of reporting.

The ABS crime data in Table 1 shows the outcomes of sexual assault investigations in Australia at 30 days in 2020. This data shows that the ACT has one of the highest proportions of sexual assault investigations not finalised in Australia. Additionally, in 2020 the ACT had one of the highest proportions of investigations where a case was finalised with no proceedings against an offender within 30 days of reporting.

In 2020, the ACT also had one of the lowest proportions of investigations finalised and the lowest proportion finalised with proceedings against the offender, with only 2.8 per cent of offences (15 cases) resulting in charges being laid against the offender within 30 days.¹¹² The comparative average for all other jurisdictions is that 17.4 per cent of offences were finalised with proceedings against the offender within 30 days.

The system is rigged against victims of sexual assault. Instead of support it feels more like hoops to jump through. A survival of the fittest.

Women’s Health Matters
Survey 2021

Table 1: Outcomes of sexual assault investigations in Australia at 30 days (%), 2020

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT	
Investigation not finalised	69.9	64.0	57.4	83.4	53.0	67.4	48.6	75.8	
Total finalised	30.1	36.0	42.6	16.6	47.0	32.6	52.4	25.3	
Investigation finalised	No offender proceeded against	22.1	19.3	16.9	11.9	30.8	7.9	25.1	22.8
	Offender proceeded against	8.1	16.7	25.6	4.6	16.1	25.1	26.2	2.8

Source: ABS, *Recorded Crime – Victims, 2020*, Table 14 Victims, Outcome of investigation at 30 days by selected offences, states and territories. Cells in this table have been randomly adjusted to avoid the release of confidential data. Discrepancies may occur between sums of the component items and totals.

107 See Table 1 and ABS Criminal Courts, Australia 2019–2020 The ACT recorded the lowest rate of defendants finalised for acts intended to cause injury.

108 s54 *Crimes Act 1900* (ACT).

109 s611 *Crimes Act 1900 NSW* and s325 *Criminal Code Act Compilation Act 1913* (WA).

110 s38 *Crimes Act 1958* (Vic) and s389 *Criminal Code Act 1924* (Tas).

111 s192 *Criminal Code Act 1983* (NT), s349 *Criminal Code Act 1899* (Qld) and s48 *Criminal Law Consolidation Act 1935* (SA).

112 ABS, *Recorded Crime – Victims Table 14 Victims, Outcome of investigation at 30 days by selected offences, states and territories, 2020*.



Available data also indicates that of the very small number of victims who report their assaults formally to police, a significant proportion of matters remain without an outcome—recorded as ‘uncleared’—for extended periods.

The ABS crime data in Table 2 demonstrates that in 2020, there was a 3.6 per cent decrease (compared to 2019) in the number of sexual offences reported to ACT Policing which resulted in charges being laid against the offender. This is a marked downward trend compared to previous years of reporting.

Table 2: Outcomes of sexual assault investigations in the ACT at 30 days (%) 2016–20

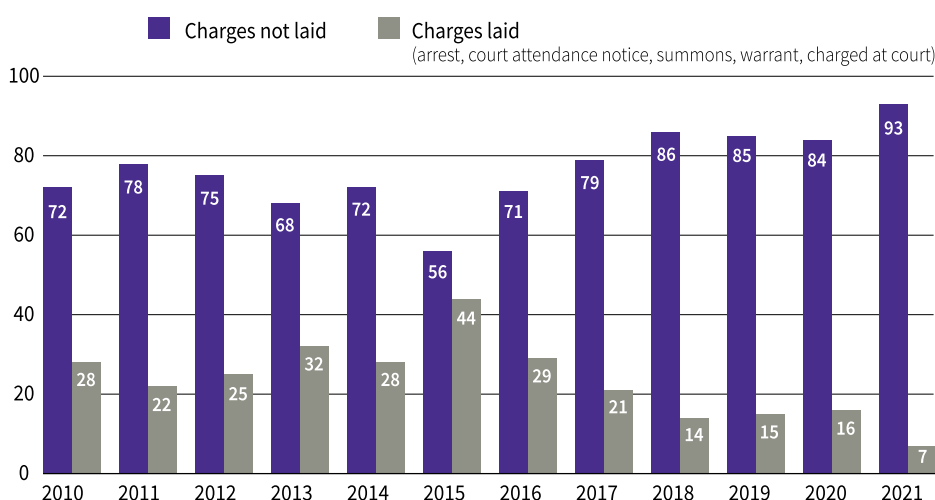
	2016	2017	2018	2019	2020
Investigation not finalised	79.0	69.1	73.9	72.5	75.8
Total finalised	21.0	30.5	26.5	28.7	25.3
Investigation finalised					
No offender proceeded against	15.5	22.9	19.1	23.5	22.8
Offender proceeded against	6.8	6.4	7.4	6.4	2.8

Source: ABS, *Recorded Crime—Victims* (Table 14 Victims, Outcome of investigation at 30 days by selected offences, states and territories, 2020).

Overall the trend evident in Table 2 is consistent with ACT Policing data in Table 3, which shows that in the decade since 2010, the percentage of reports where charges were laid has, on average, decreased.¹¹³

¹¹³ ACT Policing PROMIS data, 1 January 2010 to 30 June 2021. Charges not laid includes matters where the complainant withdraws the charge or where the offender cannot be charged.

Figure 3: Laying charges in sexual offence matters (2010–21) — percentage (%) of offences reported



The ACT Policing PROMIS data in Figure 3 shows for the period 2010–21 the proportion of cases where charges were laid have decreased.

Police advise that any analysis of data represented in Figure 3 should take account of the fact that the offences relevant to this depiction of data represent a broad spectrum of alleged offending ranging from non-consensual distribution of intimate images through to non-consensual sexual intercourse. As required by the National Crime Recording Standard, ACT Policing record the number of offences within each criminal incident. Accordingly, each criminal incident (each case) will be recorded as one or more offences. For example, the act of one individual illegally exchanging intimate images may result in many offence counts, and therefore affect trend data. Police also note that more than 10 per cent of sexual offences depicted in Table 3 relate to non-contact offences of a sexual nature.

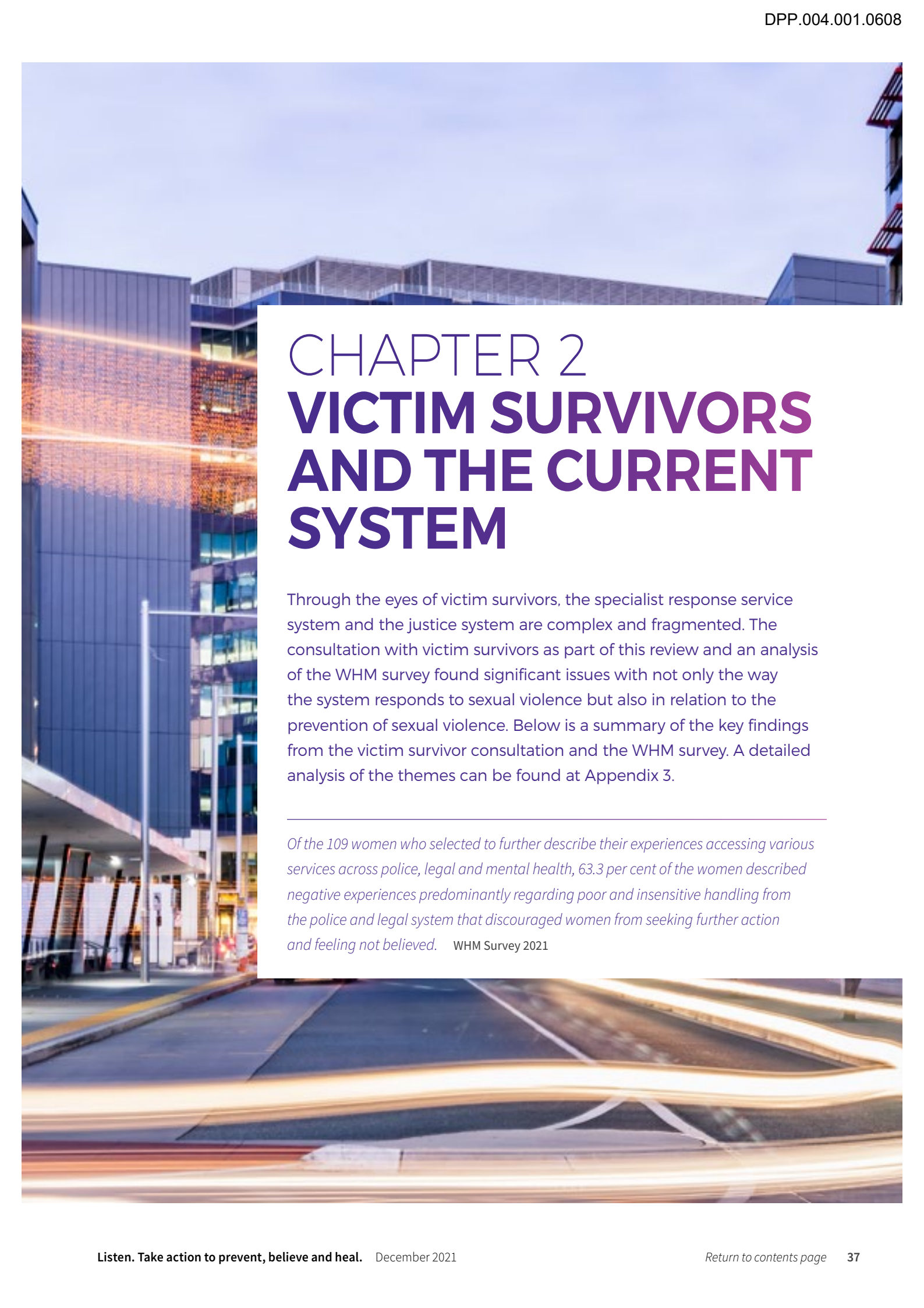
When police lay a charge, the matter is referred to the Sexual Offences Unit at the Office of the DPP which determines if the matter should proceed.

In the ACT, the number of sexual offence matters discontinued by the DPP is relatively low. Since 2017–18, the percentage of discontinued matters has decreased to 1 per cent or less of total sexual offence matters that reach the DPP. In 2019–20, 0.3 per cent of sexual offence matters were discontinued by the DPP.¹¹⁴

Table 3: ACT DPP Sexual Offence Matters, 2010–11 to 2019–20

	2010–2011	2011–2012	2012–2013	2013–2014	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020
Discontinued (%)	3.7	8.4	4.9	3.0	1.3	4.0	1.2	1.0	0.6	0.3
Total matters	188	239	225	368	320	275	326	288	308	292

114 DPP data collected from DPP annual reports.



CHAPTER 2

VICTIM SURVIVORS AND THE CURRENT SYSTEM

Through the eyes of victim survivors, the specialist response service system and the justice system are complex and fragmented. The consultation with victim survivors as part of this review and an analysis of the WHM survey found significant issues with not only the way the system responds to sexual violence but also in relation to the prevention of sexual violence. Below is a summary of the key findings from the victim survivor consultation and the WHM survey. A detailed analysis of the themes can be found at Appendix 3.

Of the 109 women who selected to further describe their experiences accessing various services across police, legal and mental health, 63.3 per cent of the women described negative experiences predominantly regarding poor and insensitive handling from the police and legal system that discouraged women from seeking further action and feeling not believed. WHM Survey 2021

PREVENTION

NEED FOR COMMUNITY EDUCATION

Victim survivors universally report the need for better understanding of sexual violence amongst the broader community, and particularly schools, universities and other educational facilities. This includes education that dispels myths around sexual violence, education on how to respond to disclosures of sexual violence in a respectful and trauma-informed way, and education about how victim survivors can seek support and what options they have for pursuing justice. Victim survivors stressed that education must include education about consent and to counter myths in the community that sustain the prevalence of sexual violence.

Victim survivors also stressed the need for education about consent. One victim survivor explains that while the message ‘no means no’ is important, there should be a duty to recognise and respond to other verbal and non-verbal forms of communication that also indicate ‘no’, such as the ‘freeze’ response.

All victim survivors during the consultation spoke about their experiences of disclosure of sexual violence. Of those that had positive disclosure experiences, they said it was because they felt believed, supported, and validated in their experience. The WHM survey found that stigma, victim blaming and not being believed were the main issues that led to negative disclosure experiences.

In both the WHM survey and the consultation, victim survivors made clear that the way their disclosure was treated had a significant impact on whether they then decided to receive ongoing support, as well as being a major factor in their overall health and wellbeing.

The smaller support agencies are not funded enough, if you don't connect with someone you don't have a choice about connecting with someone else. I felt like I was being abused all over again, I felt like control was being taken away from me.

Victim survivor consultation participant 2021

RESPONSE

The WHM survey also found that 59.9 per cent of victim survivors felt they were not able to find the help and supports they needed. In the recent consultation some victim survivors were critical of some of the specific response agencies. It is important that this report takes those comments into account in order to better understand the flaws and gaps in the system from the victim survivor perspective.

SUPPORT SERVICE RESPONSE

Victim survivors want to engage with support services and counsellors who specialise in sexual violence and highlighted the importance of the role of the Canberra Rape Crisis Centre (CRCC) in crisis support. However, victim survivors reported long waiting lists for counselling support, as well as a lack of qualified trauma specialists. Several victim survivors reported that CRCC advised them that, due to limited capacity, they could not be provided with ongoing counselling support for several months and they were not offered any alternative supports or services in the interim. Many victim survivors reported that the delays in receiving therapeutic support extended their recovery time and their ability to heal and move forward.

Victim survivors also highlighted the need for advocacy support¹¹⁵ in the justice system, with some victim survivors viewing the need for advocacy support to be just as important as therapeutic support. In particular, victim survivors pointed to the need for support and advocacy when reporting and providing evidence to police, although there were mixed views on how this support should be provided.

Victim survivors also reported a lack of responsiveness and timeliness from Victim Support ACT's financial assistance scheme, with some victim survivors waiting years for a decision. Victim survivors pointed to the need for the scheme to be faster, more streamlined, and easier to access.

¹¹⁵ Advocacy Support can include (but is not limited to), discussing the supports available if disclosing police, supporting to give a statement to police, keeping the victim survivor updated as the matter proceeds through court, explaining the victim survivor's rights to them, agencies advocating for a victim survivor throughout the process to ensure their rights are upheld. This could include contacting police and other agencies on the victim survivor's behalf etc.

Others noted the unfairness of having to prove injury under the scheme and recommended that if there is a sexual assault conviction there should be consideration of automatic payments of financial assistance. These experiences were perceived by some victim survivors as further abuse by the system.

POLICE RESPONSE

Many victim survivors reported interactions with police where they felt disrespected or judged by officers. Several victim survivors reflected that these interactions almost deterred them from reporting and pursuing an investigation altogether. This was echoed in the WHM survey which highlighted that unhelpful and distressing interactions with ACT Policing caused shame and deterred women from seeking further help.

Victim survivors pointed to an urgent need for police to have specialised and ongoing training about the nature of sexual violence so they can provide a trauma-informed response to disclosures of sexual violence and understand the dynamics of sexual violence when investigating matters. Victim survivors also reported that some acts of sexual violence, for example, sexual harassment and acts of indecency, appear to be minimised by police, despite the complexity and harm caused by all forms of sexual violence. Having these matters remain with General Duties officers rather than the Sexual Assault and Child Abuse Team (SACAT) left some victim survivors feeling that the offences perpetrated against them were considered less important and not worthy of the specialist response they deserved. There was strong support amongst victim survivors for a specialist response for all forms of sexual violence.

Some victim survivors reported that they were required to tell their story multiple times to different officers, for example, when their matter was referred to another officer or when a General Duties officer referred the matter to SACAT. Not only was the victim survivor's trauma compounded by the need to repeat their story, but in some cases, there were also considerable delays in referrals and no clear timeframes for when referrals would be made. Some victim survivors reported better experiences once their matter was referred to SACAT. However, victim survivor experiences with SACAT appear to depend on the individual officer involved and other victim survivors reported their engagement with SACAT

left them feeling that even the specialist officers were not able to engage in a trauma-informed and respectful way. A dominant theme that arose for nearly all victim survivors was the importance of having the option to speak to a female officer. However, several victim survivors were not given this option, and some were refused the opportunity to speak with a female officer even when they asked.

Lengthy timeframes from investigation and prosecution

Many victim survivors reported significant delays in investigations, including delays of months or years, and collectively reflected on the need for a faster and more efficient police response. Victim survivors raised concerns about the impact of these delays on the collection of evidence and justice outcomes. One victim survivor recalled that, after they initially spoke to police, they did not hear from them again for a year, which compromised the clarity of her recollection of events and therefore the evidence that could be obtained.

Victim survivors reflected on how significant delays in investigation and court proceedings compounded trauma by making it difficult or impossible to 'move on' and heal. Victim survivors also reported difficulties in accessing regular updates about the investigation's progress and reflect that in some cases this compounded their trauma and stress. Some victim survivors reflected that the need to continually follow up to obtain updates is difficult and that they felt they were viewed as an inconvenience by police for asking for updates.

I waited over a year for the Canberra detectives to contact me. I kept thinking, what is going on here? When they did contact me they said something about losing my paperwork. By the time they did my video evidence it was 18 months later and by that time, I had it all jumbled up in my head to save myself.

Victim survivor consultation participant 2021



LAW REFORM

FAITH IN THE CRIMINAL JUSTICE SYSTEM

A number of victim survivors stated that it is not likely that they would encourage someone to report to police and engage in the criminal justice system in its current format, due to a lack of faith in the way the current system works. Currently many victim survivors feel re-violated by the court process. This in turn stops victim survivors from participating in a process that is supposed to be designed to help them. Many victim survivors also spoke of the lack of trauma-informed practice in the criminal justice system and how this causes further harm to victim survivors.

Several victim survivors reflected that their mental health and wellbeing further deteriorated because of the inordinate time it took from the date an initial report was made to the conclusion of a trial. For some it felt as if the system did not at all accommodate or account for the need of the victim survivor to recover and heal. The delays in the investigative process were compounded by the court delays, which meant for some victim survivors their lives were on hold for years and they could not, because of the pending legal proceedings, engage fully in therapeutic support and move forward with their lives. It was reflected by many victim survivors that those within the legal system — judges, police, and lawyers — require a deep and nuanced understanding of these crimes and what it is like for victim survivors to go through a legal process. There needs to be a better understanding of the impacts of violence, and the impacts of going through a criminal proceeding in a sexual violence matter.

Some victim survivors chose not to report to police because the outcome was simply not worth being retraumatised by the court system.

I can really understand and see why victims of sexual assault do not come forward. The whole process is geared to retraumatise them over and over again, it really is. Unless you have hard evidence of the assault you will not see justice. The system is victimising.

Victim survivor consultation participant 2021

Sentencing penalties

Victim survivors collectively stress the need for the justice system to hold individual offenders to account and to also send a message to the community that sexual violence is not acceptable. Victim survivors consider that suspended or partially suspended sentences and reductions to sentences for pleading guilty do not adequately reflect and represent the severity and ongoing long-term impacts of the offence on victim survivors and their families. There was support for the maximum penalty for sexual violence to be increased to better reflect the severity of sexual violence offences and the harm caused.

It is important that the courts hold people to account for the way they have taken other's livelihoods and innocence away from them.

Victim survivor consultation participant 2021

Some victim survivors reported that their knowledge of inadequate sentencing was the reason they did not report to police at all, as the potential outcome was simply not worth the retraumatisation of engaging with the justice system.

THE WORKPLACE

Victim survivors who experience sexual violence in the workplace face unique challenges in progressing their recovery and seeking justice. There is a need for workplaces to have training about the nature of sexual harassment and sexual violence, to have measures in place to reduce and prevent sexual violence in the workplace, and to create safe future working environments for victim survivors that do not disadvantage their career prospects.

Victim survivors raised the need for clear and safe pathways for reporting sexual violence in the workplace and for alternative pathways beyond reporting to immediate supervisors. Some victim survivors called for workplaces to mandate reporting to WorkSafe of psychological injuries that were sustained at work from sexual violence.

Victim survivors also reported the need for workplaces to recognise the long-term impacts of sexual violence and to work with victim survivors to make long-term plans for their safety and recovery. This includes flexibility in working arrangements so that they can manage ongoing safety concerns or attend appointments with medical and justice services. Some victim survivors expressed concerns about depleting all their personal leave in these circumstances and called for options for additional leave to be available for sexual violence victim survivors in similar fashion to family and domestic violence leave.

Victim survivors also noted the importance of fostering a future safe working environment for victim survivors that does not disadvantage their career prospects. One victim survivor reported that her workplace required her to continue working in close proximity with the offender and that when concerns were raised about this, they were the one who had to leave their position and relocate to a different position.

VICTIM SURVIVOR ENGAGEMENT

The experiences and insights of people with lived experience of sexual violence should drive all reform to services and systems that respond to victim survivors. Given this, there must be ongoing and embedded structures that facilitate consultation with victim survivors in a manner which acknowledges that the path to 'healing' is not linear and further to find a way to engage with victim survivors from across our community.

This means a structured consultation program is required, utilising the existing trauma-based skills and practices of key ACT support agencies as well as their existing relationships with victim survivors. With assistance from the agencies' specialist support providers, including Aboriginal and Torres Strait Islander liaison officers, culturally and linguistically diverse liaison officers and disability liaison officers, this approach will allow for reach across different communities in the ACT and prevent victim survivors from the potential trauma of re-telling their story to an unknown person. The program must be adequately resourced in order to prevent re-allocation of resources from these essential, frontline services. We further note the importance of acknowledgement of victim survivor contribution and recommend government consider remuneration to victim survivors who participate in the program.

RECOMMENDATION 1

The ACT Government establish and appropriately resource an ongoing structured consultation program with victim survivors to continue to drive and inform change in the prevention of and response to sexual violence in the ACT.

SUPPORT FOR VICTIM SURVIVORS OF SEXUAL VIOLENCE

TRAINING

Responding to disclosures in a victim survivor centred way

A victim survivor-centred approach should be adopted in responding to sexual assault disclosures. A victim survivor centred approach is focused on first and foremost the needs of the victim survivor, focusing on the minimisation of traumatisation, by delivering services in a non-judgemental, compassionate, and sensitive way.¹¹⁶

It is important to distinguish between responding to a disclosure of sexual violence and the approach that will be appropriate when a formal report to police is made of sexual violence. The response, for example by a friend or family member or health professional, to a disclosure of sexual violence should not be focused on if the offence did or did not occur, investigating the truth of the claim, or quizzing the victim survivor on details of the sexual assault. A disclosure should be focused on ensuring the wellbeing, safety, and support of the individual. This is particularly true for child victim survivors of sexual violence, where there is much evidence to suggest that the response can significantly influence the child or young person's ability to recover from the trauma and seek further help and assistance.¹¹⁷

The social reactions that sexual assault victim survivors experience when disclosing sexual assault can have a detrimental impact to their emotional and psychological wellbeing.¹¹⁸ There is significant research that shows a large correlation between negative responses to disclosures of sexual assault and the development of Post-Traumatic Stress Disorder (PTSD) symptoms in victim survivors.¹¹⁹ Much research shows that positive responses to assault disclosures result in victim survivors having

better psycho-social outcomes.¹²⁰ Research also shows that 'being believed; being understood; being offered empathy and getting psychosocial support/counselling' (World Health Organization and Sexual Violence Research Initiative, 2007) aids in recovery.¹²¹

A formal report to police about a sexual assault may include investigating the complaint. In the criminal justice system, evidence will be gathered to support the complaint, and detailed questions will be asked regarding the incident. It is at this point that the police will investigate the offence, which could include obtaining evidence in relation to the matter.

When a victim survivor decides to disclose their experience of sexual violence, it is critical that they feel heard and believed and that the person they disclose to is able to refer them to the right supports and services.

Many people who have experienced sexual violence choose to initially disclose to a trusted individual, whether they be a professional in a service setting, or a friend or family member. No matter the person, it is important they have the skills to recognise, respond and appropriately refer the victim survivor to services and supports that can meet their needs. For this reason, training should encompass areas such as: the myths and stereotypes surrounding sexual violence; the emotional, psychological and social impact of sexual violence on victim survivors; and the different experiences and needs of particular marginalised victim survivors, such as people with cognitive disabilities, Aboriginal and Torres Strait Islander people and those from culturally and linguistically diverse backgrounds and LGBTIQ+ communities.

Training and ongoing education is a necessary aspect to maintaining a contemporary workforce that is skilled and qualified in responding to the complex needs of clients. This training should be provided to a wide range of government and community service sector frontline workers as well as primary healthcare and allied health professionals.

116 UN Women 2019, *Victim/survivor-centred approach*. UN Women — Centre to end violence against women and girls. <www.endvawnow.org/en/articles/1790-victim-survivor-centred-approach.html>.

117 CFCA 2015, *Responding to children and young people's disclosures of abuse*, AIFS, <<https://aifs.gov.au/cfca/publications/responding-children-and-young-people-s-disclosures-abu>>.

118 Ullman S and Peter-Hagene L 2014, 'Social Reactions To Sexual Assault Disclosure, Coping, Perceived Control, And Ptsd Symptoms In Sexual Assault Victims', *Journal of Community Psychology*, vol.42, no.4, pp. 495-508. Crossref, doi:10.1002/jcop.21624.

119 Ullman S and Peter-Hagene L 2014.

120 WHO and Sexual Violence Research Initiative 2007, *Rape: How Women, the Community and the Health Sector Respond. Research Summary*, p. 2.

121 WHO and Sexual Violence Research Initiative 2007, p. 2.

For culturally and linguistically diverse individuals, the consultations undertaken to inform this report tell us that disclosures of sexual violence are likely to be with a trusted friend or individual from within their cultural group. This person may not have appropriate knowledge about how to respond to a disclosure of sexual violence and may instead respond out of their own beliefs or prejudices, or in ways that do not support the victim survivor.¹²² Any community education about sexual violence prevention and responding to disclosures to the culturally and linguistically diverse community should be designed and developed inclusively with communities to ensure cultural competency and safety.

It is recognised that ACT Policing would be a critical stakeholder for consultation to ensure any training packages delivered are complimentary to criminal investigative processes and do not negatively impact aspects of such investigations, including evidence collection and witness/alleged offender engagement.

Over the past two decades there has been growing emphasis on the need for men to be engaged in a range of primary prevention strategies to prevent and reduce domestic, family and sexual violence.¹²³

BYSTANDER TRAINING

An active bystander is someone who acts after witnessing or hearing about an incident of sexist or sexually harassing behaviour. Being an active bystander aligns with the notion of empowering men to take the responsibility of influencing and changing peer behaviour in a positive way. This may range from giving a disapproving look, to speaking out or reporting the behaviour, or intervening to prevent it continuing. Being an active bystander is not just about responding to incidents involving individuals — it also includes taking action to challenge a culture that supports sexist and sexually harassing behaviours.¹²⁴

The small but growing evidence base for the effectiveness of active bystander training is demonstrating that bystander intervention strategies (such as training or awareness raising) can increase participants' willingness to act, their sense of efficacy in doing so and their actual participation in prosocial bystander behaviour.¹²⁵

RECOMMENDATION 2

The ACT Government fund training to relevant government and community settings on the dynamics of sexual violence, responding to sexual violence disclosures, and sexual violence active bystander training. Training to be provided to:

- frontline workers in health, education, child protection, and housing
- primary health care and allied health professionals in collaboration with professional bodies
- culturally and linguistically diverse community and cultural leaders, drawing on culturally and linguistically diverse expertise
- targeted community organisations
- tertiary education settings
- other workplaces including staff in the relevant service sector.

122 Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention & response*, Report for the Office for Family Safety, p. 18.

123 AHRC 2012, *Encourage. Support. Act! Bystander Approaches to Sexual Harassment in the Workplace*, <<https://humanrights.gov.au/our-work/part-4-bystander-interventions-violence-prevention>>.

124 VicHealth and Behavioural Insights Team 2019, *Take Action: Empowering bystanders to act on sexist and sexually harassing behaviours*, Victorian Health Promotion Foundation, Melbourne.

125 AHRC 2012, *Encourage. Support. Act! Bystander Approaches to Sexual Harassment in the Workplace*, <<https://humanrights.gov.au/our-work/part-4-bystander-interventions-violence-prevention>>.



SPECIALIST RESPONSE SERVICES

INTEGRATION, COLLABORATION AND CASE COORDINATION

The current response system comprises of a number of specialist services providing different services to people in response to sexual violence. There is no central coordination for service provision, and each service works independently from the other.

The Canberra Rape Crisis Centre is a community organisation that receives funding from both federal and local government. It provides crisis counselling, and ongoing therapeutic counselling to people who have experienced sexual violence. The service operates from 7am – 11pm daily for clients, as well as a 24-hour crisis call out service to Police and Forensic and Medical Sexual Assault Care (FAMSAC) which includes supporting victim survivors of sexual violence while they give statements to police or undergo a forensic medical examination.¹²⁶

FAMSAC, which is part of Canberra Health Services, provides forensic examination and medical care services to victim survivors of sexual assault.¹²⁷ This service is located at the Canberra Hospital and can be accessed every day of the year. Victim survivors can choose a male or female doctor when accessing this service.¹²⁸

Domestic Violence Crisis Service (DVCS) is another community organisation that receives funding from both federal and local government. DVCS provides crisis responses to people impacted by family violence, including where sexual violence occurs in a domestic or family violence context. This support is 24/7 by phone and face-to-face and includes crisis intervention, advocacy, legal advocacy and court support, access to crisis accommodation and safety planning.¹²⁹

If it wasn't for Victim Support, DVCS, and Legal Aid, I would still be in touch with no one.

Victim survivor consultation participant 2021

¹²⁶ CRCC 2021, *About Us*, <www.crcc.org.au/about-us>.

¹²⁷ ACT Health 2021, 'Sexual Assault Care | Health', <www.health.act.gov.au/services-and-programs/sexual-health/sexual-assault-care>.

¹²⁸ ACT Health 2021, 'Sexual Assault Care | Health'.

¹²⁹ Domestic Violence Crisis Service 2018, *Our Services – DVCS*, <www.dvcs.org.au/our-services>.

Victim Support ACT sits within the ACT Human Rights Commission and provides assistance to anyone who is a 'victim of a crime' that has been committed in the ACT. For sexual violence offences, Victim Support ACT can provide case coordination, referrals for counselling or psychology sessions, advocacy and information relating to the criminal justice system, support in court and financial help via the financial assistance scheme.¹³⁰ Victim Support ACT also has specialist Aboriginal and Torres Strait Islander, Multicultural and Disability outreach programs. Victim Support ACT is a government agency and is available during business hours Monday to Friday.

ACT Policing's SACAT is a specialist team that focusses on investigating sexual assault committed against children and adults.¹³¹ Matters are referred to SACAT through ACT Policing General Duties officers, or from other agencies such as Child and Youth Protection Services.

The CARHU, which is part of Canberra Health Services, provides medical examinations, health screens, education, consultation and therapy for all children and their families and/or carers in the ACT with concerns of child abuse and neglect.¹³²

The current model is predicated on each of these response services providing its highly specialised services to victim survivors while coordinating with other organisations that victim survivors may need to access. For example, victim survivors may need specialist medical attention including the collection of physical evidence; crisis support to maximise immediate safety; secure and safe accommodation; access to information about service options including financial help; support to report what has happened to police and to remain engaged in the police investigation; ongoing safety support; counselling and therapeutic interventions to address the harm caused by sexual violence; and other legal help such as advice about family law arrangements or help seeking a protection order.

Choosing to work in the specialist services response system is indicative of a professional's level of commitment and care for the people they are striving to look after, to provide access to safety, support, advocacy and assistance to healing as well as some kindness when a victim survivor is at their most vulnerable. Many professionals are attempting to assist sexual violence survivors despite operating in an under-resourced and struggling system. When a victim survivor is responded to and their needs met in an integrated and timely way, the opaqueness and innate complexities of the response system is minimised and understood. Some victim survivors reported positive experiences of some aspects of the specialist response system.

Unfortunately, notwithstanding the tireless and vocational commitment of the people who work in the specialist response system, the majority of victim survivors report that the ACT sexual violence response system is overburdened, lacks coordination, and does not consistently meet child and adult survivors' needs. It appears the key areas where the specialist response system can be improved include wait times for services, coordination between services, greater clarity for victim survivors about which service to access and when, their eligibility to access a service, and how they go about engaging a service. For many victim survivors it is unclear to them when they should report an incident to police and, if they do make a report, why some cases are dealt with by SACAT and others by general duties police officers.

130 VSACT 2015, *What We Do – Victim Support ACT*, <www.victimsupport.act.gov.au/what-we-do>.

131 ACT Policing 2021, *Sexual Assault*, accessed 4 August 2021, <www.police.act.gov.au/safety-and-security/sexual-assault>.

132 ACT Health 2020, CARHU, <www.health.act.gov.au/services-and-programs/women-youth-and-children/children-and-youth/child-risk-health-unit>.

I was really upset that day, it's really hard to have to do that statement. It's a really hard thing to do – knowing you're being filmed and she [the CRCC worker] was just a support. She was a really comforting person.

Victim survivor consultation participant 2021

They [FAMSAC] were completely delightful. The doctor was very sincere, and I felt really cared for. I didn't find the physical examination particularly difficult. They talked me through everything at the time. It took quite a long time, partly because they weren't rushing me.

Victim survivor consultation participant 2021

Services themselves recognise they are attempting to provide quality services but are not always able to due to resourcing and other constraints. They often have limited capacity to engage in wider system coordination and collaboration that is required to keep people safe, supported and informed about their sexual violence matter while attending to the case in a timely, effective way.

Many victim survivors during the consultation process stated that they were either confused by the number of services contacting them and unsure which was the best service for them, or they experienced a disjointed system where they did not realise they could access certain services because no one told them some services were available. Many victim survivors were of the view that ACT service responses often fail children, young people and adults who are sexually assaulted. Victim survivors and their families suffer as a result.

When survivors choose to engage in the formal justice system it is rarely possible from the outset to provide support toward their empowered engagement and informed decision making as they navigate the system.

The fragmented and siloed nature of the ACT's sexual violence response system means survivors experience inconsistent system responses. Their experience is highly dependent on the organisations they approach and the individuals they then engage with. For example, if a survivor of sexual assault first contacts police, a referral to SACAT may or may not happen. If no referral to the specialist SACAT team occurs, the general duties police officers don't necessarily refer the survivor to the crisis and longer-term services available through CRCC, VSACT and other organisations.

Alternatively, if the survivor first discloses sexual assault to a health professional they may or may not be guided to report to the police or assisted to access counselling. Even if the survivor is referred to a counselling service there is a high chance they will be informed of delays to them accessing assistance. In November 2021, CRCC noted there were approximately 100 people awaiting counselling services. Survivor feedback demonstrates that survivors who are left feeling unsupported experience their trauma continuing or increasing. They may 'drop out' of the system.

ACT survivors most at risk of sexual violence, such as those who are children or young people, Aboriginal or Torres Strait Islander people, who live with a disability, are from a culturally and linguistically diverse background and/or LGBTQI+ people, are least likely to receive a swift and highly effective service response tailored to their needs. This is due to a range of factors highlighted earlier in this report including a lack of highly skilled, specialist professionals engaged as staff across the response system. Some promising examples of tailored service responses exist but they are insufficient to meet current ACT needs.¹³³

The ACT's population is growing, and long term increases in reporting of sexual assault are evident in the ACT and nationally. Funding to ACT sexual responses services in general has not kept up with increased demand.

¹³³ Such as *Disability Justice Strategy* Disability Liaison Officers engaged in some ACT criminal justice stakeholder organisations and VSACT's CALD, Disability and Aboriginal Unit Outreach officers.

Children are especially vulnerable survivors of sexual violence. There were 288 police reports of children and young people under 16 years of age having sexual offences perpetrated against them in the ACT in 2018–19.¹³⁴ The average number of annual reports of sexual assault of children and young people is 257.8 reported offences per 12-month period.¹³⁵ Child victim survivors often experience a co-occurrence of sexual assault and family violence. These cases are particularly complex and require a highly skilled and coordinated health, social service and justice system response for improved child safety, recovery, and wellbeing, as well as prevention of future perpetration.

In the ACT, the current response is not consistently best practice. The Response Working Group heard examples of inadequate responses from the point of reporting of child sexual assaults onwards. This included uncoordinated service responses at the point of disclosure followed by delays in investigation, prosecution and court adjudication of children's matters. These issues compound to negatively impact children affected by sexual assault and their families. Successful prosecution of children and young people's sexual assault cases is rare in the ACT, especially when compared to the numbers reported. Inadequate system responses are partially responsible but could be improved with targeted attention and resourcing.¹³⁶

A lack of access to counsellors and other therapeutic assistance for children and young people throughout police investigation and court processes, which may take years of each child's life, can exacerbate children and young people's suffering after sexual assault.

Investing immediately in the strengths of the ACT's professionals and specialist organisations will go some way to improving the system's ability to respond. Some investments could occur immediately. These include good practices previously utilised in the ACT which have languished¹³⁷ combined with new approaches adopted from other jurisdictions and tailored to suit local needs.¹³⁸

Immediate, targeted investments designed to improve sector coordination and responsiveness will lead swiftly to improving victim survivor experiences. At a minimum, these include reinvigorating the Wraparound model to improve sector coordination. Wraparound was initially established in the SARP reforms to ensure that victim survivors of sexual offences who had reported the incidents to police were supported throughout their time in criminal justice system.¹³⁹ When first established, support meetings occurred monthly to ensure individuals who consented to the Wraparound referral were being adequately and appropriately supported.

ACT Policing noted that under current ACT Policing training and procedures, all victim survivors of sexual offences should be referred to Wraparound with their consent, irrespective of whether the investigation is undertaken by SACAT or general duties.

134 ACT Policing PROMIS database statistics (received October 2020) show police received 288 reports of children and young people under 16 years of age having sexual offences perpetrated against them during the 2018–19 financial year.

135 ACT Policing PROMIS data (received October 2020). The average rate of sexual assaults reported as perpetrated against children and young people is calculated from the following statistics provided: 2014–15: 225 offences; 2015–16: 222 offences; 2016–17: 315 offences; 2017–18: 239 offences; 2018–19: 288 offences.

136 See section of recommendations titled 'children and young people'.

137 Such as the Wraparound model recommended under SARP in 2005 and first started in 2008.

138 A successful example of introducing neighbouring jurisdictions' approaches tailored to assist sexual assault survivors, is the introduction of witness intermediaries. Introduced in 2019, intermediaries assist hundreds of ACT sexual assault survivors annually by helping child and adult witnesses to communicate their evidence of sexual assault to police, lawyers and in the ACT Magistrates and Supreme Court, strengthening the system's response.

139 Anderson J, Richards K and Willis K, *Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report*, AIC, <www.aic.gov.au/sites/default/files/2020-05/tbp051.pdf, Appendix B: Wraparound terms of reference>.

An additional support would be the establishment of Independent Sexual Violence Advisers (ISVA) to support victim survivors to navigate the system from their initial point of contact. ISVAs were introduced in the UK due to the growing recognition of the need for victim survivors to be provided with advocacy and support when they have been sexually assaulted.¹⁴⁰

ISVAs help victim survivors to navigate the services they need after experiencing sexual assault.¹⁴¹ An ISVA works with people who have experienced rape and sexual assault, irrespective of whether they have reported to the police.¹⁴² The priority focus of an ISVA is to attend to the needs of the victim, ensuring the victim survivor is central to the process. ISVAs provide information, advice, support and guidance to victim survivors and play an important role in advocating for their needs.¹⁴³ ISVAs work by coordinating agencies and services to provide a victim survivor-centred response, tailored to the individual's needs. The ISVA's support reduces fear and uncertainty for the victim survivor and can encourage their participation in the justice process.¹⁴⁴

In effect, the ISVA reduces the burden on a victim survivor of having to become an expert in understanding what can seem like a complex web of specialist services (which can extend to housing, Centrelink, family law, protection orders, Child and Youth Protective Services, education/schools) at a time when they are at their most vulnerable. It is crucial that each intervention follows best practice to protect the interests of the victim survivor and to ensure the choices they may make for further action are not compromised by system complexity (whether that be solely a therapeutic response or a justice response).

Another initiative able to transform the experience of ACT sexual assault survivors and immediately improve the coordination of the service response is a MDC where specialist sexual violence response services including police would be co-located, adopting models already functioning successfully in NSW and Victoria. The focus of an MDC is to provide a victim-centred, integrated, and holistic response to victim survivors of sexual crime and child abuse.¹⁴⁵ In recent years, the MDCs in Victoria have expanded their remit, co-locating family violence specialists with sexual assault specialists. This is appropriate given the large prevalence of matters where sexual violence is an element of a family violence relationship. MDCs operating in these jurisdictions have yielded strong outcomes for clients who experience greater coordination and integration from the system on the complex issues. MDCs are an innovative way of responding to sexual offences by providing coordination of specialist services to improve responses and outcomes for victim survivors.¹⁴⁶

The Introduction of MDCs in Victoria came as a result of a report by the Victorian Law Reform Commission in 2004 which highlighted significant issues with the current system, noting the low rates of reporting, prosecution and conviction of sexual offences in Victoria.¹⁴⁷ The report also detailed a significant level of attrition of cases that had been reported, and how the model suffered from 'fragmented, inadequate and inconsistent service delivery' (Powell, M and Wight, R 2012).¹⁴⁸

140 Robinson A and Hudson K 2011, *Different yet complementary: Two approaches to supporting victims of sexual violence in the UK*, *Criminology and Criminal Justice*, 11(5):515-533. doi:10.1177/1748895811419972

141 UK Government Home Office 2017, *The role of the independent sexual violence adviser: Essential elements*, p.5.

142 UK Government Home Office 2017, p.5.

143 Robinson A and Hudson K 2011.

144 Robinson A and Hudson K 2011.

145 Victoria Police 2017, *Information Sheet – Multidisciplinary Centres (MDCs)*, p.1.

146 Victoria Police 2017, p.1.

147 Powell M and Wright R 2012, 'Professionals' Perceptions of a new model of sexual assault investigation adopted by Victoria Police', *Current Issues in Criminal Justice*, vol. 23, no. 3, pp. 333–52. Crossref, doi:10.1080/10345329.2012.12035928., p. 334.

148 Powell M and Wright R 2012, p. 334.

Evaluations were conducted from both a professional and victim survivor perspective on the experiences of accessing the MDC. The evaluation highlighted that victim survivors found it ideal that all services were in one location and made comment on the positive benefit of this, with particular reference to this reducing stress associated with accessing services.¹⁴⁹ The findings also suggested a significant shift by police regarding prioritisation of sexual offences and improved attitudes towards victim survivors.¹⁵⁰

In the *We don't Shoot our Wounded* Report (2009) it was recommended that 'a specific service for Aboriginal and Torres Strait Islander women [be established] where a range of legal, advocacy, practical and healing activities be delivered'.¹⁵¹ The purpose behind the establishment of a specific service was to provide a culturally-appropriate and safe service which assisted Aboriginal and Torres Strait Islander women to receive assistance, support and advice in a coordinated, responsive and immediate manner to improve their access to justice and to protect them and their children from all forms of violence. The establishment of this service would provide a gateway to assist those within the Aboriginal and Torres Strait Islander community who prefer to access an Indigenous rather than a non-Indigenous service.

At the time it was observed that a long term consistent and constantly reviewed Indigenous Family Violence Initiative was required.

Victim survivors need different responses to facilitate healing. They report the need to broaden supports available to assist recovery. There is a call for multiple ways for victim survivors and their families to recover and heal. Some victim survivors also spoke about the need for expansion of therapeutic supports and facilities for victim survivors and their families to access so they can heal and recover from the longstanding impacts of sexual violence. Victim survivors further expressed interest in less formal supports such as support groups led by the community where the focus is on victim survivors having a shared experience connecting with one another, and other supports including fitness sessions, music, or dance classes.

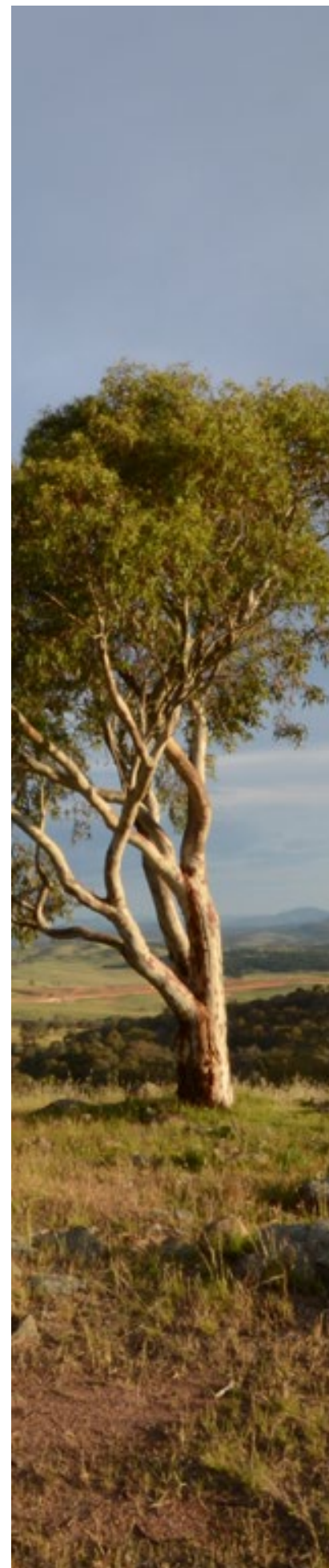
It [the STOP Campaign] was really supportive and helpful – the director is great at creating a supportive environment for survivors to connect. By participating in the STOP Campaign, it gave me a place to share my story in a safe way.

Victim survivors also reflect on the importance of having supports available to meet the needs of different communities including children and young people, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people with disability, and people from LGBTQI+ communities, and for these supports to be developed and co-designed together with these communities.

149 Powell M and Cauchi R 2013, 'Victims' perceptions of a new model of sexual assault investigation adopted by Victoria Police', *Police Practice and Research*, 14:3, 228–41, DOI: 10.1080/15614263.2011.641376, p. 10.

150 Powell M and Cauchi R 2013, p. 10.

151 Act Victims of Crime Coordinator 2009, *We don't Shoot our Wounded... Aboriginal and Torres Strait Islander victims of family violence access to justice and access to services in the ACT*, ACT Government, p. 4.



Make sure they can listen to people, make sure they treat people with respect and make sure they really listen to what is happening. All of my issues came up for me, all of the time. I needed help and I was fortunate to get it. It took me nearly three years just to get over the incestuous relationship. It has taken me a long time to get over the rest. Listen to a victim's story, prosecute the perpetrator of violence, and protect the children by whatever means possible.

A participant in the *We don't Shoot our Wounded Report*

RECOMMENDATION 3

Integration, collaboration and case coordination between the response services must be immediately improved along with assistance to victim survivors to navigate the system.

- a The response services should, at a minimum, be resourced to take immediate action to improve case coordination and collaboration when providing services to victim survivors. This should include reinstating the Wraparound model with regular face-to-face meetings to coordinate addressing the needs of victim survivors, including children and young people, and to ensure provision of coordinated support whether or not the matter is, or is likely to be, proceeding through the criminal justice system.
- b The ACT Government should immediately scope and pilot new mechanisms to further improve system coordination from the point of disclosure onwards while also increasing the ease of system navigation for victim survivors. This should include the establishment of a Multi-Disciplinary Centre (MDC) where specialist sexual violence response services, including police, would be co-located and able to collaborate immediately and as intensively as required when addressing sexual violence cases (especially children's cases, high risk and complex cases). It should also include the engagement of one or more Independent Sexual Violence Advisers who would support and assist victim survivors to navigate the system. There should be a specific service for Aboriginal and Torres Strait Islander women established for Aboriginal and Torres Strait Islander women to seek advice and support either separately or co-located with the MDC. Finally, a Centre for Healing should be established within the MDC to provide dedicated therapeutic pathways for victim survivors to recover and heal.

SPECIALIST SERVICES REVIEW

The ACT Government should ensure there is clear direction to government and non-government sectors responding to sexual violence, as to its expectations of high service standards, transparency, and accountability to victim survivors and the wider community which has a strong interest in knowing that sexual violence perpetration will be addressed. The strongly expressed dissatisfaction of victim survivors and frank feedback from service system stakeholders suggests that high standards within and between all services are not currently being achieved. The Sexual Assault Prevention and Response Program Steering Committee sought, but was unable to identify, transparent and meaningful data demonstrating service system responsiveness and effectiveness. Immediate investment in good practices (including investments in coordination, collaboration, navigation assistance to survivors) combined with a thorough review of services with a view to improving the response system's overall capacity is recommended.

The specialist services review is a means to further explore these issues and investigate the existing service responses available to victim survivors to consider if they are providing best practice responses, having regard to both quality and timeliness. The review should also consider the distribution and adequacy of funding and whether greater levels of investment are needed across the continuum of responses. This work could link with the current activities within ACT Government to shift funding from output-based procurement to outcomes focused commissioning. The review should also assess:

- the levels of complexity and demand presenting to services
- the cultural competency of services for the Aboriginal and Torres Strait Islander community and whether responses are inclusive
- the qualifications of and training provided to staff
- the effectiveness of integration and case coordination for clients.

RECOMMENDATION 4

The ACT Government undertake a specialist services review of all agencies and statutory bodies, funded either wholly or partly by ACT Government, that provide services related to sexual violence with a view to identifying current system strengths requiring further investment to address survivors' needs, as well as changes needed in services' operating practices, performance measures and standards, training, cultural capacities, structures, coordination systems and current funding arrangements, with a view to informing future investments in necessary system improvements to enable victim survivors to receive highly effective, timely support in an integrated way.

ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL RESPONSIVENESS

Colonisation, cultural genocide, dispossession, forced child removals and the oppressive and racist policies of the past continue to have a lasting impact on Aboriginal and Torres Strait Islander people. It is important to acknowledge that this history has brought trauma to many and healing from the trauma will take time. The ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people (inter-generational trauma, the disruption of cultural identity and role) and non-Indigenous people and society (racism, disrespect, ignorance, indifference), compounded by the gendered drivers of sexual violence, results in Aboriginal and Torres Strait Islander women experiencing disproportionate levels of violence.¹⁵² It is imperative that violence against Aboriginal and Torres Strait Islander women is not seen as an 'Aboriginal and Torres Strait Islander problem' and that Aboriginal and Torres Strait Islander women are able to access mainstream services and achieve a safe and culturally respectful response.

The justice system was not designed to and does not sufficiently support Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people often distrust justice services, and experience these as perpetuating Australia's colonial history of racism through ineffective, disrespectful, racially ignorant service provision.

This recommendation seeks to build the cultural awareness and competency of the ACT Police and other specialist service responses to challenge misconceptions about violence against Aboriginal and Torres Strait Islander women and to address the ongoing impacts of colonisation. The Aboriginal and Torres Strait Islander Consultation Committee advised that cultural awareness and competency is achieved when the training in this area informs all other aspects of an organisation's work and broader training program.

It is proposed that:

- a In organisations where cultural supervision/support cannot be achieved in-house, mainstream organisations prioritise the importance of formal network meetings attended by Indigenous workers from multiple organisations in the Sector.

This would achieve the following:

- Connect Indigenous workers across agencies who are doing family violence and sexual violence work, strengthening immediate working relationships between workers.
- Facilitate better knowledge exchange about what services are offering and pave the way to stronger referral pathways.
- Be an opportunity for cultural supervision and support (either in a group context, or one-on-one with the group facilitator, or both).
- Ensure agencies are accountable for applying funds received for identified Indigenous positions to employ Indigenous workers.
- Sharing information between organisations about how to best support Indigenous workers.

¹⁵² Our Watch 2018, *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*, 3.1 times the rate of non-Indigenous women — reporting experiencing violence .

- b ACT Policing (general duties and SACAT) and specialist response services provide cultural awareness and competency training to all staff, acknowledging the long-lasting far-reaching and intergenerational consequences of colonisation and dispossession upon the Aboriginal and Torres Strait Islander community. This training should be inclusively designed and delivered with representatives from the Aboriginal and Torres Strait Islander community.
- c ACT Policing (general duties and SACAT) and specialist service providers undertake training on *how to work with Aboriginal and Torres Strait Islander people* in addition to cultural awareness and competency training noting the purpose of this training is different to the training referred to above.
- d Non-Indigenous sexual violence response services create culturally safe environments for Aboriginal and Torres Strait Islander workers and clients by:
 - identifying at least two identified positions for Aboriginal and Torres Strait Islander workers to prevent burnout, to address potential conflict of interest issues and provide emotional and cultural support
 - providing a flexible and culturally responsive workplace.
- e ACT Policing within SACAT and each Police Station establish identified positions for ALOs. The establishment of these positions would play multiple roles to:
 - assist in effective communication between the victim survivor and ACT Policing, ensuring all information and discussions occur in a culturally safe and informed way
 - act as an intermediary and assist ACT Police in keeping the victim survivor up to date regarding progress, next steps and what needs to be done such as further evidence gathered
 - limit the impact of the turnover of staff within SACAT and Police Stations on corporate cultural awareness understanding, knowledge and expertise
 - support SACAT and General Duties officers in the area of sexual violence
 - assist in ensuring that sexual violence survivors don't get lost as part of a more general response to family violence. The impact of sexual violence is different to the impact of family violence
 - strengthen the culturally sensitive and informed capacity of ACT Policing
 - play an informal educative role in assisting Police to know and be aware of what to do and say, their boundaries and their capabilities.

The Aboriginal and Torres Strait Islander Consultation Committee observed it is very important the positions are fully supported by all levels of ACT Policing. When such positions are created, the cultural knowledge and lived Aboriginal and Torres Strait Islander experience should be recognised as professional expertise analogous to formal qualifications and therefore remunerated accordingly.

RECOMMENDATION 5

The ACT Government, ACT Policing and non-government service providers take action to improve the cultural competency of workers and the cultural responsiveness of specialist services in relation to Aboriginal and Torres Strait Islander people.

SUPPORTING AND INVESTING IN THE ABORIGINAL AND TORRES STRAIT ISLANDER WORKFORCE

Earlier in this report, the Aboriginal and Torres Strait Islander Consultation Committee identified several barriers preventing victim survivors receiving the culturally safe and responsive supports that they need. One of these barriers is that mainstream support services are not equipped to provide culturally safe and responsive services, mainly due to insufficient Aboriginal and Torres Strait Islander staff. The lack of Aboriginal and Torres Strait Islander workers in this field has an ongoing impact including:

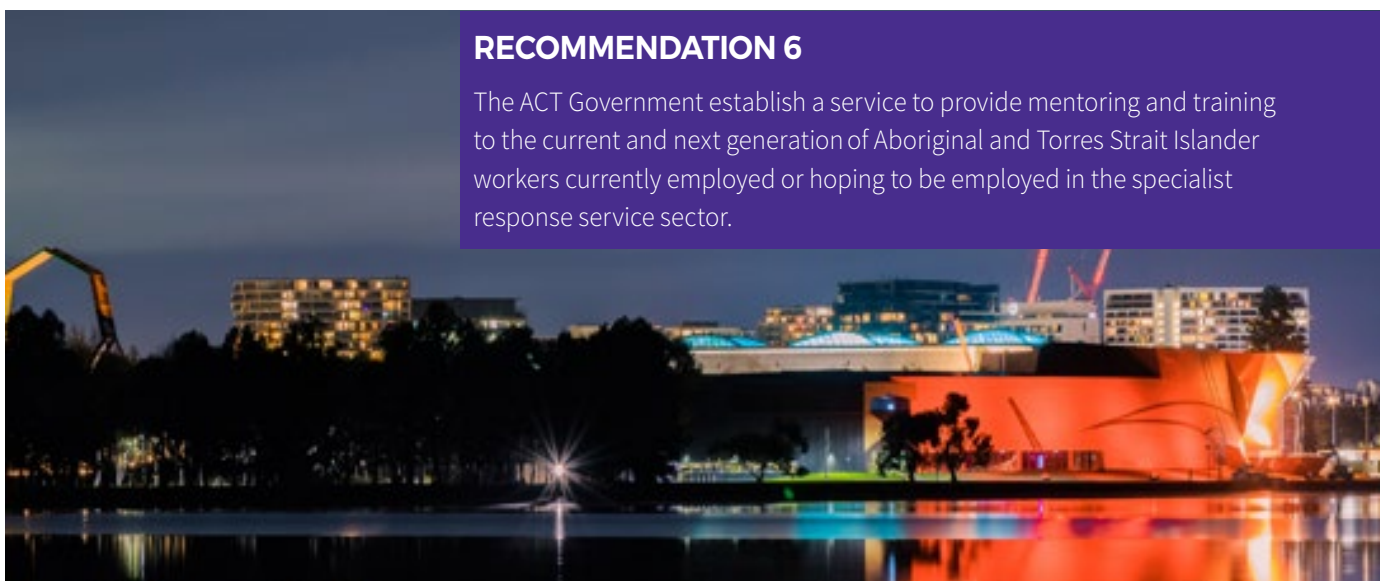
- potential conflicts of interest for Aboriginal and Torres Strait Islander staff, reflecting the realities of Canberra's small community
- burnout of specialist Aboriginal and Torres Strait Islander staff due to a lack of cultural supervision and support
- failure to develop and foster the next generation of Aboriginal and Torres Strait Islander workers.

The Aboriginal and Torres Strait Islander Consultation Committee observed there is generally a lack of cultural understanding in mainstream workplaces regarding the different demands made on Indigenous workers which are complex on a personal and a professional level. For this reason, it is critical Aboriginal and Torres Strait Islander workers receive the mentoring, training, support and cultural supervision required to ensure they feel safe and supported in their work and personal life. Should this be achieved, there would be a direct positive impact on the service experience of victim survivors and the accessibility of services for people who identify as Aboriginal and Torres Strait Islander.

To build the capacity of the Aboriginal and Torres Strait Islander workforce in sexual violence services on a long-term basis it is recommended that a service be established to provide advice and assistance to mainstream organisations to ensure those organisations are culturally sensitive and ready. This includes advice on providing a flexible and responsive workplace and on valuing cultural experience and knowledge as expertise; established programs for recruitment; training and mentoring; and policies and procedures which prioritise cultural supervision as of equal importance and value as substantive supervision.

RECOMMENDATION 6

The ACT Government establish a service to provide mentoring and training to the current and next generation of Aboriginal and Torres Strait Islander workers currently employed or hoping to be employed in the specialist response service sector.



CHILDREN AND YOUNG PEOPLE

COLLABORATION BETWEEN AGENCIES

Children and young people are some of the most vulnerable and at-risk individuals in the community. The 2016 Personal Safety Survey conducted by the ABS estimated approximately 1.4 million people living in Australia experienced sexual abuse before the age of 15 years.¹⁵³ Of those people, it is estimated that approximately 52 per cent of the male respondents and 60 per cent of the female respondents had experienced sexual abuse before the age of ten.¹⁵⁴

There must be adequate and appropriate resources and services available to meet the needs of child victim survivors in a timely, efficient and coordinated way. For children and young people, it is imperative that multi-agency collaboration occurs to reduce the need for the child to retell their experience of sexual abuse. There is also a need for responses to be trauma-informed and child-focused. Research commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse highlights that trauma-informed principles for child welfare following sexual abuse need to target the symptoms of trauma more explicitly.¹⁵⁵

Child sexual abuse has a range of detrimental impacts on a child or young person's development, health and safety.¹⁵⁶ It is important that children and young people who experience sexual abuse are provided with timely support and intervention in a coordinated way to reduce the possibility of revictimisation and minimise the risk of ongoing and cumulative harm.

Most jurisdictions have implemented successful collaborative efforts to bring multi-sector agencies together to respond better to the needs and experiences of children and young people. There has been some work done in this area in the ACT in recent years in response to the death of nine-year-old Bradyn Dillon whose life was taken by his father. The coronial inquest into his death, along with several commissioned reports by government, has highlighted the need for collaboration and information sharing between agencies to respond to child-at-risk concerns in a timely, integrated and expeditious manner and to minimise the risk of repeated systems failure. Although these reports focus on child abuse more broadly and are not specific to child sexual abuse, they speak to collaborative responses leading to better outcomes across the community.¹⁵⁷

A paper by Australian Institute of Family Studies commissioned by the Child Family Community Australia (CFCA) compared characteristics of cross-agency responses to severe child abuse in Australian jurisdictions. Key findings of the CFCA paper included that, as at the time of writing, most jurisdictions had detailed arrangements in place for joint investigations by specialist child abuse police and child protection workers with

In 2018, the rate of police-recorded sexual assaults against children aged 0–14 years (167.6 per 100,000) was nearly twice that of people aged 15 and over (90.2 per 100,000).

AIHW *Sexual Assault in Australia 2020*

153 ABS 2016, *Personal Safety Survey Australia*, Table 31.1 Experience of abuse before the age of 15, Characteristics of abuse by sex of respondent, Estimate.

154 ABS 2016, *Personal Safety Survey Australia*.

155 Quadara A and Hunter C 2016, *Research Report – Principles of trauma-informed approaches to child sexual abuse A discussion paper – treatment and support needs*, AIFS, commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse, p. 40.

156 AIHW 2020, *Sexual assault in Australia*, <www.aihw.gov.au/getmedia/0375553f-0395-46cc-9574-d54c74fa601a/aihw-fdv-5.pdf.aspx?inline=true>, p. 11.

157 See *Inquest into the death of Bradyn Stuart Dillon* [2021] ACTCD 3; Glanfield L 2016, *Report of the Inquiry: Review into the system level responses to family violence in the ACT*, ACT Government; DVPC 2016, *Review of Domestic and Family Violence Deaths in the ACT*; and CSD 2016, *ACT Domestic Violence Services System Final Gap Analysis Report*.

There is evidence to support the idea that multi-disciplinary teams can result in improvements, particularly in criminal justice outcomes and increased referral to and/or uptake of therapeutic and support services.

AIHW Sexual Assault in Australia 2020

the exception of Queensland, Tasmania and the ACT.¹⁵⁸ The CFCA paper also highlighted the progressive ways that other jurisdictions are responding to investigations of child abuse.¹⁵⁹ A standout model in this comparison was the Joint Child Protection Response Team (JCPRT), formerly known as the Joint Investigation Response Team (JIRT). The JCPRT is a well-established multi-agency approach in NSW that has been operating for 20 years.¹⁶⁰ The JCPRT co-locates police, health, and child protection in responding to child abuse. The JCPRT has been evaluated on several occasions, most recently in 2017 by the Australian Centre for Child Protection. The JCPRT model is seen to be favourable when compared with other jurisdictions.¹⁶¹

In analysing the ACT's approach to child abuse, the CFCA paper referred to the Sexual Assault Reform Program which is no longer in effect and the Monthly Wraparound (Wraparound) meetings between all the relevant agencies. Wraparound no longer consistently conducts face to face monthly meetings on a regular basis and has moved to online referrals. Although referrals are still received through the program, there is no longer a consistent opportunity for agencies to meet face to face to discuss complex matters requiring multi-disciplinary and cross-directorate coordination and support. The CARHU has also reported that for 2021, they have not yet received a single referral for a child or young person through Wraparound.

In the 2005 SARP Report, it was recommended that a model similar to the JCPRT and other interagency models be established in the ACT, as an 'ideal way of dealing with children who have been sexually or physically abused... The ACT is sufficiently small, both in population and geographically, to make the model's introduction feasible.'¹⁶²

It is proposed that there be an initial feasibility study of how joint investigations could be carried out followed by a pilot which would identify the complexities in the operating environment, including potential strengths and weaknesses of different models, and allow for an opportunity for engagement between all key stakeholders (ACT Policing, CARHU and CYPS).

Pending the outcome of the review, it is recommended there be a re-evaluation of the role of the current liaison officers from different directorates (i.e. health, police) that are situated in CYPS. Noting that the Liaison Officers were originally established to facilitate more coordinated, effective system responses in relation to cases of child/ young person sexual abuse, a review will identify how Liaison Officer roles can best achieve their intended outcomes which may include updated role descriptions and/or improved resourcing, accountability and oversight.

RECOMMENDATION 7

The ACT Government:

- a resource ACT Policing (SACAT), CAHRU and CYPS to initially conduct a feasibility study of how joint investigations of child sexual abuse could be carried out in the ACT and thereafter implement a (minimum) 12-month pilot of joint investigations of child sexual abuse based on learnings from the NSW Joint Child Protection Response Program (JCPRP, previously referred to as JIRT).
- b review of the role and mandate of the Liaison Officers from other directorates, such as a Police and ACT Health that are located within CYPS.

158 Herbert J and Bromfield L 2017, *National comparison of cross-agency practice in investigating and responding to severe child abuse CFA no. 47*, AIFS, p. 7.

159 Herbert J and Bromfield L 2017, p. 6.

160 Ombudsman NSW 2017, *The JIRT Partnership—20 years on*, p. 5.

161 Ombudsman NSW 2017, p. 42.

162 DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p. 71

TRAINING

There is an urgent need for appropriate responses for children and young people and their families who experience sexual violence as well as for education and training to system stakeholders.

The CARHU is a small team (10 FTE including doctors) with an area of responsibility which includes the ACT, South Coast of NSW and the areas across to Wagga Wagga. CARHU provides child medical examinations, health screens, education, consultation and therapy for all children and their families regarding concerns of child abuse and neglect.

This is crucial work with some of the most vulnerable people in the community which requires extremely specialised expertise and response. It is imperative that they are appropriately resourced. It is recognised within CARHU that sexual abuse towards children and young people often occurs within a broader context of abuse and neglect.¹⁶³

In 2005, CARHU received additional funding to enable enhancement of services provided by CARHU particularly in medical services, psychosocial assessment, and counselling, including a program to work with children with sexually harmful behaviours. Since 2005, CARHU has not received any increase in funding but continues to see an increase in demand for services for children and young people.¹⁶⁴

Due to the volume and complexity of the work of the unit, there is little opportunity for the team to use its expertise to build capacity across the system for early intervention and response or to build and maintain strong and collaborative working relationships with other key providers.

An increase in allocated funding would allow CARHU or an appropriate expert specialists to provide annual education and training to system stakeholders regarding the presentation of, and effective approaches and responses to, children and young people who have experienced sexual assault, noting training should be prioritised for judicial officers (as occurred previously in the ACT under the Judicial Education Program which ceased in 2015–16), police, lawyers, CYPS staff, VSACT and other organisations as required.

163 Glanfield L 2016, *Report of the Inquiry: Review into the system level responses to family violence in the ACT*, ACT Government, p. 13, 35.

164 Cassandra Tinning, Allied Health Manager, Division of Women, Youth and Children, Canberra Health Services, ACT Government, Response Working Group Presentation, SAPRP 2021.

It is noted that consultation with all stakeholders including Australian Federal Police and ACT Policing will be critical. A staged approach to the training framework would help ensure appropriate resources are available.

Increased funding would also allow CARHU and/or other relevant specialist organisations to explore a model of collaboration similar to that operating in NSW to improve joined up responses to children who have experienced sexual violence. See previous recommendation.

This is imperative to ensure coordinated support is provided to child victim survivors. Coordinated and timely intervention and support will provide the best opportunity for children and young people to recover from their trauma.

Increased funding would also allow the provision of the following critical bodies of work:

- a negotiate, draft, implement and annually review Practice Guidelines, MOUs and Service Level Agreements with ACT Policing, CYPS, Education Directorate and other organisations (where applicable) to ensure children and young people who are sexually assaulted are engaged with in a coordinated, effective, legally responsive and compliant manner.
- b to draft best practice policies and procedures in conjunction with other relevant and interested stakeholders to ensure more effective organisational responses to disclosures of sexual abuse of children and young people and engagement with children with sexualised behaviours.

RECOMMENDATION 8

The ACT Government fund specialist children's services to provide additional training on effectively responding to children who have experienced sexual abuse and to increase collaboration and integrated responses across the system responding to child sexual abuse

SPECIALIST COURT

There is no ACT-specific data available regarding the standard timeframe it takes for a matter to progress through the court. The 2012 Evaluation of the ACT SARP highlighted that the estimated timeframe from the DPP at the time for matters going through court was the following:

- Magistrates Court:
 - from first appearance to committal: **three to four months.**
- Supreme Court:
 - from post-committal to delivering pre-trial evidence: **six to 12 months**
 - from post-committal to trial date: **18 to 24 months** (note that the six to 12 months for pre-trial evidence is included in this estimation)¹⁶⁵ (SARP Final Report 2012).

The understanding from discussions with the service sector through consultation and working group meetings is this is still the case for many adult and child victim survivors.

Internationally, several countries have introduced specialist sexual assault courts. South Africa has a significant number of specialist sexual assault courts and has done so for over 25 years.¹⁶⁶ In 2016, New Zealand piloted a specialist sexual assault court with the goal of reducing pre-trial delays and improving the experience for victim survivors.¹⁶⁷ Following the pilot, the government established an ongoing specialist sexual violence court.

The evaluation shows that overall, the time to reach trial for cases entering the pilot (at the case review stage) has reduced by 30 per cent or 110 days on average in Auckland; and by 39 per cent or 201 days on average in Whāngārei. This means average time to trial from case review is eight and ten months in those centres respectively. Prior to the pilot it took an average of 12 months in Auckland and 17 months in Whāngārei — The District Court of New Zealand, 2019

For children that experience sexual abuse and have their matters progress to court, there is a need for these matters to receive priority to progress quickly and efficiently through the justice system. In the ACT, although s4A(d) of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) provides that, ‘the proceeding should be resolved as quickly as possible’ when dealing with child witnesses there is no formal provision for children’s matters to be fast-tracked through the court process. Delays impact on a child’s capacity to heal from their trauma.

In Australia, NSW has implemented a specialist sexual assault court for children to combat this issue. Victoria has also implemented a specialist sexual offence list within the Court, which commenced in 2004 with child sexual assault matters, then expanded to include all sexual offences.¹⁶⁸ A review of the Victorian introduction of the specialist list for child matters found that as a result of the list there was a reduction in delays for child matters and an increase in guilty pleas.¹⁶⁹ In NSW, a pilot for a specialist jurisdiction for child sexual abuse was trialled within the Sydney West District Court in 2003.¹⁷⁰ This pilot had three main aims: to reduce delays; to improve the physical environment of the court and utilise special child-centred measures to aid in supporting child witnesses to give evidence; and to increase the skills of the legal profession and judiciary involved in the court process.¹⁷¹ The ACT could adopt a similar model and consider applying the learnings from the NSW pilot to enhance the experience of child victim survivors as soon as practicable with specific reference to ensuring implementation of comprehensive practise directions and continuity of crown prosecutors appointed to matters.¹⁷²

The idea of expediting sexual violence offences through the ACT Courts is not a new concept. The 2005 SARP report recommended the consideration of fast-tracking sexual assault matters and recommended that there be consideration given to a weekly ‘sexual assault list’, similar to the family violence list.¹⁷³

165 Anderson J, Richards K and Willis K 2012, *Evaluation of the ACT Sexual Assault Reform Program (SARP): Final report*, AIC, <www.aic.gov.au/sites/default/files/2020-05/tbp051.pdf>, p. 26.

166 Daly K and Griffith University, School of Criminology and Criminal Justice 2011, *Conventional and Innovative Justice Responses to Sexual Violence* [E-book], Amsterdam University Press, p. 13.

167 The District Court of New Zealand 2019, *Sexual Violence Court Pilot: Evaluation confirms model reduces trial lead-up times and trauma* [press release], <www.districtcourts.govt.nz/media-information/media-releases/14-august-2019>.

168 Daly K and Griffith University 2011, School of Criminology and Criminal Justice 2011, *Conventional and innovative justice responses to sexual violence* [E-book], Amsterdam University Press, p. 13.

169 Daly K and Griffith University, p. 13.

170 Cashmore J and Trimboli L 2005, *An evaluation of the NSW child sexual assault specialist jurisdiction pilot*, NSW Bureau of Crime Statistics and Research.

171 Cashmore J and Trimboli L 2005, pp. xi.

172 Cashmore J and Trimboli L 2005.

173 DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p. 222.

If the list were managed weekly by a specific magistrate, the defence and prosecutors could be encouraged to ensure that the matters are ready to proceed. Data could be collected in the same way as occurs with the Family Violence List; it could thus be seen how these matters proceed through the court system and what factors impede their progress.
Office of the DPP and AFP, 2005

Should the ACT Government adopt this approach it is suggested that a specialist Court in the ACT be implemented along the following lines:

- All sexual violence matters are fast tracked and prioritised by the Courts to reduce delays.
- At any one time, two sitting judges of the Supreme Court of the ACT are designated as specialist judges in sexual assault matters and engage accordingly in ongoing specialist judicial education in this area.
- Consideration of any other relevant related matter, including the development of relevant bench book and practice directions and consistent utilisation of witness intermediaries for all children and young people who are witnesses in line with Royal Commission recommendations.

RECOMMENDATION 9

The ACT Government consult with ACT Courts for the purposes of undertaking a review and investigation of the NSW specialist court program to hear the matters of adults, children and young people who have experienced sexual violence.

DATA COLLECTION FRAMEWORK

Data collection should be improved across specialist response services and ACT Policing. At the commencement of the SAPRP it was evident that consistent available data was limited across the specialist response services system, including service agencies and ACT Policing, on the experiences of victim survivors of the system. The available information highlighted significant differences in the way data is captured, the underlying purpose of obtaining the data, terminology and definitions adopted in data sets, and the timeframes over which data is collected and measured.

The 2005 SARP report highlighted the lack of consistency with data across agencies, noting that a good data collection policy would inform further policy development.¹⁷⁴

The data gaps in the ACT across the specialist response services system is mirrored at a national level and has been identified as a key area of reform.¹⁷⁵ At the national level it has been identified that there are notable information gaps mainly due to:¹⁷⁶

- lack of data about pathways, impacts and outcomes for victim survivors and perpetrators
- inconsistent identification, capturing and counting procedures between different data sets and jurisdictions
- limited information about Aboriginal and Torres Strait Islander communities and other population groups.

Although legislation, policies and practices vary across the states and territories there is a national commitment to improve data collection and reporting.¹⁷⁷ If key data gaps are filled, this can strengthen the evidence base and support the prevention and response to sexual violence through targeted and effective measures. Accurate and timely statistics play a vital role in developing and implementing effective policies and the ongoing evaluation of those policies.

For this reason, the ACT Government should commission a Sexual Violence Data Collection and Reporting Framework to guide consistent and coordinated compilation and analysis of statistical data for all organisations (government and non-government) delivering services for victims and/or perpetrators of sexual violence.

The framework would ensure adequate data collection standards are set for the collection of demographic information including the appropriate methods for capturing age, sex, gender, and Aboriginal and Torres Strait Islander status. Apart from demographic information, data collection standards would also include reporting on service delivery and operational considerations. Additionally, it is recommended that the criteria and terms used in the data collection procedures have standard definitions to ensure the data is accurate.

It is acknowledged that to improve data collections, costly changes are often required to data collection tools and client management systems. There may also be a requirement for staff training to support improved data collection. As such, it is recommended that the ACT Government embed a requirement for data collection into service funding agreements and that dedicated funding be allocated for organisations to implement the Data Collection Framework and support compliance with the framework.

The framework would then provide for the reliable capturing of data on service access and outcomes and accordingly inform targeted policy responses to ensure the interests of the victim survivor remains central to this work. Regular collection and analysis of data will help to assess the effectiveness and true cost of initiatives that seek to prevent and respond to sexual violence.

RECOMMENDATION 10

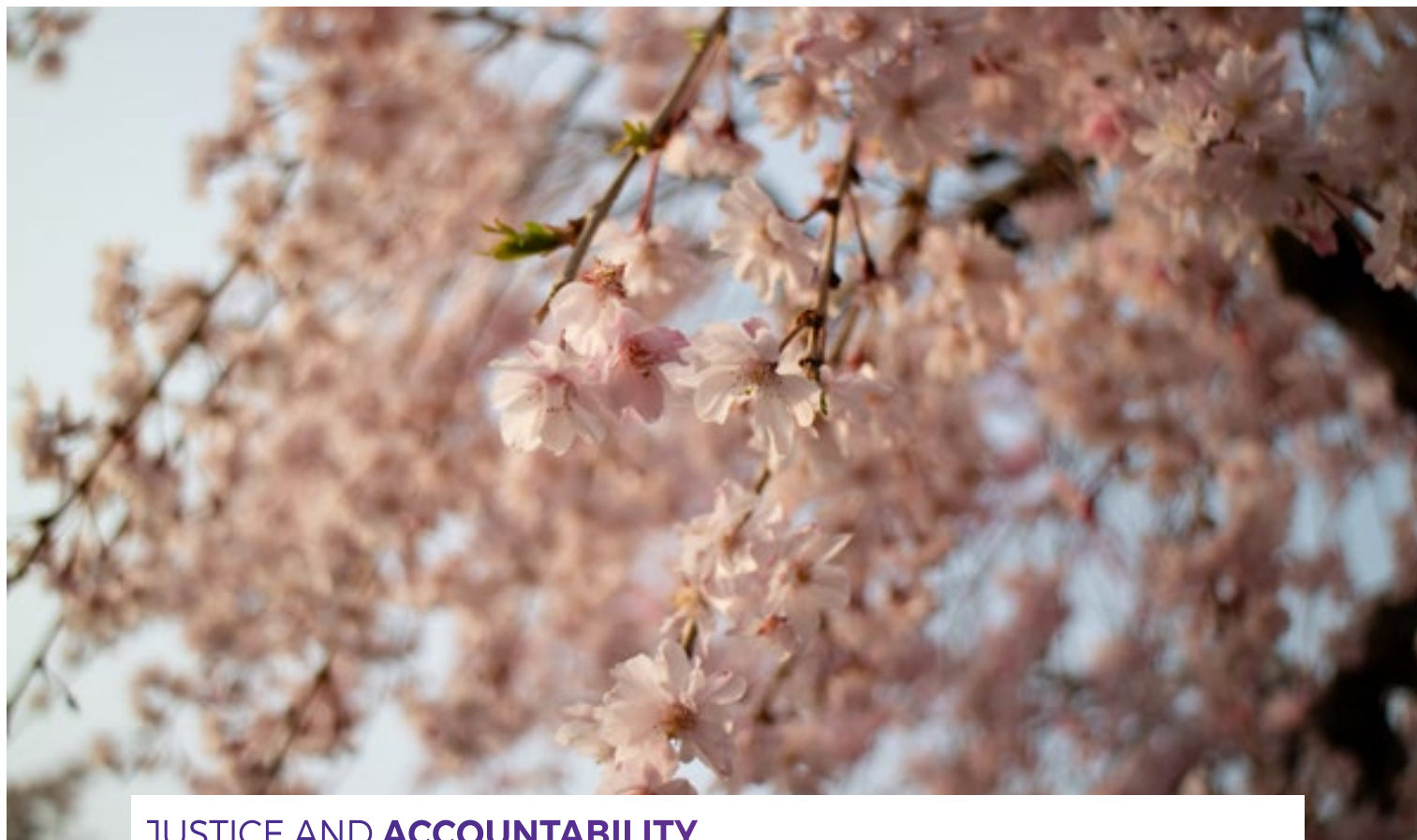
The ACT Government commission a Sexual Violence Data Collection Framework and embed a requirement for compliance with this framework in service funding agreements.

174 DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p. 5.

175 AIHW 2020, *Sexual Assault in Australia*, p. 14.

176 AIHW, 2019, *Family, domestic and sexual violence in Australia: continuing the national story*, p. 119.

177 A summary of several data initiatives currently underway at a national level are summarised at p. 14 of AIHW, 'Sexual Assault in Australia'.



JUSTICE AND ACCOUNTABILITY

Sexual violence offences remain under-reported, under-charged and under-prosecuted in the ACT. Very few cases of sexual violence enter the criminal justice system and those that do will face significant barriers and obstacles in progressing to sentencing.¹⁷⁸ This reflects the reality that our criminal justice system is currently ill-equipped to respond to the needs of victim survivors in meaningful ways.

The criminal justice process, from the initial report to police to the process of charging offenders to prosecution and sentencing, is extremely harrowing for victim survivors of sexual assault.

Victim survivors have reported feeling retraumatised by their experiences of the criminal justice process with some regretting their decision to report to police or proceed to prosecution.¹⁷⁹ High rates of attrition at various stages of the criminal justice process for sexual offences also remains concerning.¹⁸⁰

¹⁷⁸ ALRC 2010, *Family Violence—A National Legal Response*, Report 114.

¹⁷⁹ Women's Health Matters 2021, *Summary of the findings from the survey by Women's Health Matters of ACT Women's experiences of seeking help following a sexual assault*.

¹⁸⁰ ALRC 2010.

COMMUNICATION WITH VICTIM SURVIVORS

Improving victim survivors' experiences in the criminal justice system

Victim survivors have consistently reported that their experiences of the criminal justice system are retraumatising. Criminal justice responses are rarely victim-centred, meaning victim survivors often feel they and their experiences are left unrecognised and unacknowledged.¹⁸¹ Further, the lack of consistent trauma-informed processes and practices in the criminal justice system exposes victim survivors to damaging experiences, including a lack of support when reporting to police, a lack of understanding about the severe and ongoing harms caused by sexual assault, invasive evidence gathering procedures, and unnecessarily hostile cross-examination. Improving the criminal justice process may lead victim survivors to feel more supported to report sexual assault and proceed to trial.

A key issue perpetuating victim survivors' negative experiences of the criminal justice process has been the lack of clear and accessible information about the justice process and poor communication between victim

¹⁸¹ Daly K 2011, 'Conventional and innovative justice responses to sexual violence' *ALFS, ACSSA Issues* (12), p. 27.

survivors and the professionals within the justice system. Research has shown that there is often a difference between what professionals communicate to victim survivors and what victim survivors experience and understand from this communication.¹⁸² Communication processes need to be improved to ensure information is accessible and comprehensible for victim survivors.

Improving communication processes with victim survivors and developing effective educational tools to help victim survivors understand the criminal justice process in an accessible and comprehensible ways is critical.

Improvement should also be made to how victim survivors are acknowledged throughout sentencing. The harms that victim survivors and their families have experienced should be acknowledged in sentencing. A therapeutic justice model which prioritises victim-centric language without impacting the defendant's rights may assist in achieving this.

Victim Impact Statements (VIS) are a key way that victim survivors can be heard in the sentencing process. However, there have been identified deficiencies with this process.¹⁸³ Some victim survivors do not submit a VIS due to their fear of being subject to cross-examination. Following the recommendations from the ACT Family Violence Act Review, the Justice and Community Safety Directorate is looking into whether the process and role of VIS should be reformed to better support and acknowledge victim survivors.

It is recommended that further consideration of reform regarding the preparation and/or treatment of VIS await the outcome of the work currently being undertaken by Justice and Community Safety Directorate (JACS) in this area, following the independent review of the Family Violence Act and its consultation with Victim Support ACT, regarding the Victims Charter of Rights.

RECOMMENDATION 11

The ACT Government research and consider measures to improve victim survivors' experiences of the criminal justice process and ensure they are acknowledged and recognised throughout the process.

182 Davies R and Bartels L 2020, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia', *Laws* 9, no. 4: 31, <<https://doi.org/10.3390/laws9040031>>.

183 Davies R and Bartels L 2020.

Charter of Victims' Rights

In January 2021, the ACT introduced the 'Charter of Victims Rights' into the *Victims of Crime Act 1994* (ACT). Key elements of the Charter were to include specific rights for victims of crime in relation to several areas including a right for respectful engagement; access to support services; provision of information about general administration of justice processes; provision of information regarding investigations, proceedings, and decisions; and participation at particular stages of the justice process.¹⁸⁴

They were not keeping me updated or being transparent about what their methods of investigation were ... I never got an update on that case unless I rang them, over and over again.

Victim survivor consultation participant 2021

Through the victim survivor consultation, we heard from many victim survivors about the difficulty in receiving regular updates from the police regarding the progress of the investigation which caused significant anxiety and stress in their lives. Some victim survivors even felt as if they should feel bad for wanting to be updated on matters.

We also heard from many victim survivors that sometimes they did not feel a part of the criminal justice process when their matters proceeded to court. Given the current adversarial nature of the criminal justice system where victim survivors already feel disenfranchised, it is important that when victim survivors are afforded rights through legislation, these rights are upheld.

As a result, it is appropriate that the prescribed justice entities review their current policies and procedures to ensure mechanisms are in place to uphold victim survivors' rights, as required by law.

RECOMMENDATION 12

Justice agencies (DPP, Police, Corrections and Courts) review their internal procedures with a view to ensuring that they comply with their obligations to victim survivors pursuant to the *Victims of Crime Act 1994* (ACT).

184 Part 3A—Victims rights, *Victims of Crime Act 1994* (ACT).

EXPLORING ALTERNATIVE AVENUES FOR JUSTICE

One of the key themes arising from the consultation with victim survivors is the importance of not only being believed to recover and heal, but that perpetrators are held to account for their actions. While the key mechanism for holding perpetrators to account is traditionally through the criminal justice system, the figures outlined earlier in this report make clear that this mechanism is currently not effective in most cases.

Combined with the trauma and distress many victim survivors experience through the justice pathway and the close and familial relationships many victim survivors have with the perpetrator, many victim survivors expressed a desire for alternative non-criminal pathways for holding perpetrators to account.

I was told either I drop it and don't say anything, or I go down the formal investigation route... My initial response is that I don't want to ruin [the offender's] life. That was never my intention. Yes, he did the wrong thing, but I just wanted him to know that [he did the wrong thing]. I wanted him to have this 'oh my god' realisation. I wanted it to be on the record so that if it ever happened again, they could keep an eye on him if something similar happened.

Victim survivor consultation participant 2021

There are limited pathways open to victim survivors that are timely and responsive and facilitate accountability in a formal setting without having to engage with the criminal justice system.

Currently the only alternative formal setting outside the criminal justice process is the restorative justice process. To access the statutory Restorative Justice program, a victim survivor is required to have made a formal report to ACT Policing.

It is proposed that government explore options to appropriately expand access to restorative justice processes for victim survivors including by amending eligibility criteria for the statutory program to allow for referrals where a victim survivor has not initiated a criminal justice process.

It is also recommended that the ACT Government research and pilot other alternative civil justice pathways. In circumstances where remedies would exclude incarceration, a civil justice option may provide an alternative pathway for victim survivors which is rigorous, timely and a which offers a set of outcomes that promote accountability and reduce the risk of recidivism.

RECOMMENDATION 13

The ACT Government research and pilot additional mechanisms to hold perpetrators to account including by:

- a Expanding restorative justice processes for victim survivors
- b Alternative civil justice regimes.

POLICE PROCESSES

A theme arising from the consultation with victim survivors and the WHM Survey is a lack of clarity around police processes. Victim survivors identified the need for more publicly accessible information about how to make a report to police and what happens after that report is made. Information should include options for reporting in person, over the phone or online; the role of general duties officers and the role of SACAT and the pathway between them, particularly about when matters are referred to SACAT and when they are not; and, importantly, what will happen with the information disclosed.

Victim survivors also report that it is often unclear when the next step of an investigation will take place, with many having to make contact with police to check on the progress of their matter.

To address these issues, ACT Policing should review its communication strategy to provide a more accessible, responsive, and streamlined way of communicating processes with victim survivors.

Recruitment policy

A lack of diversity in ACT Policing has also been identified as a barrier to feeling safe when victim survivors seek to access justice. Victim survivors have also identified issues with the ability to select the gender of their interviewing officer in sexual assault matters. By increasing the number of women employed in SACAT (particularly women in senior positions) a victim survivor's right to elect the gender of the interviewing officer can be better achieved.

Additionally, employing more Aboriginal and Torres Strait Islander officers to work in SACAT will improve cultural safety and build trust with Aboriginal and Torres Strait Islander victim survivors.

General duties training

A lack of police understanding of sexual violence was reported throughout the victim survivor consultations. Collectively many victim survivors said that the general police understanding of sexual violence needs to be better. Some victim survivors spoke about the importance of police understanding sexual violence in the context of a domestic violence relationship. To address these concerns, many of the victim survivors felt that police needed further training on how to appropriately respond to disclosures when they present either on the phone, or in a police station.

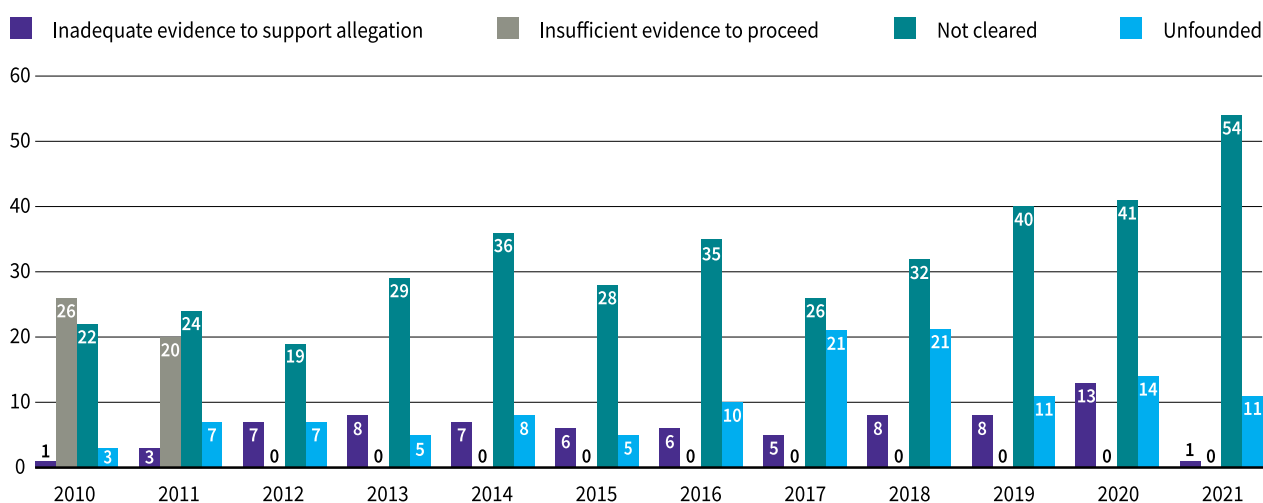
A review of training for all ACT Policing officers (including SACAT officers) should be undertaken to ensure the capabilities that apply to sexual violence and child abuse investigations are adequate.

SACAT training

Specialist training provided to SACAT officers by an external specialist expert in investigative interviewing techniques has ceased in the last decade. Because of this, specialist interviewing skills have reduced, compounded by high staff turnover at all levels in SACAT. Notably, the charging trends indicate a decreasing number of matters proceeding to charge over this time. Training should be introduced to address the issues relating to the way Evidence in Chief (EIC) interviews are carried out by SACAT officers, including issues relating to interviewing vulnerable witnesses. Vulnerable witnesses include children, young people, people with disabilities, Aboriginal and Torres Strait Islander people, LGBTIQ+ people, and culturally and linguistically diverse people. This training should be carried out on an annual basis.

To improve EIC interviews, forensic psychologists should be engaged to advise on the preparation and conduct of EIC interviews with witnesses reporting sexual assault. This work should be a 12-month pilot program to adopt a suitable forensic investigative model that is compliant with ACT law and is suitably tailored for the presenting witnesses. This should include suitable adjustments to the approach to interview including the interview script which is currently a standardised script for an adult. The pilot should be evaluated at its conclusion in accordance with a set of Terms of Reference agreed by ACT Policing, DPP and the Victims of Crime Commissioner, with input from other relevant stakeholders (such as the Independent Sexual Violence Advisor position recommended in this report at Recommendation 9).

ACT Policing should also direct that police officers newly transferred to SACAT preferably do not undertake EIC Interviews with highly vulnerable witnesses (including child witnesses) until they have undertaken the specialist training in relation to the conduct of EIC Interviews referred to above, which will preferably occur prior to (or within three months of) officers joining SACAT.

Figure 4: Insufficient evidence to proceed, not cleared and unfounded (% of total reported sexual assault clearances 2010–21)

Source: PROMIS data as at 1 July 2021, Performance Statistics team.

Decision not to charge

Since 2012, the proportion of matters determined to be ‘not cleared’, ‘unfounded’ or have ‘inadequate evidence to support allegation’ has steadily increased (Figure 4).

The category ‘insufficient evidence to proceed’ appears in the first two years of the data from PROMIS, but then does not appear to be used following 2012. It is likely that matters that would have been placed in this category, have been allocated to a different clearance category.

The PROMIS data provided by ACT Policing identified a significant gap between the number of reports of sexual assault made to police and the number of reports that resulted in a criminal charge. There can be reasons in sexual assault cases, as with any crime type, not to proceed to charge an offender. For example, it may not be possible to identify or find the offender. However, the significant and growing number of cases where charges are not laid cannot all be attributed to well-founded reasons. To the contrary, there does not appear to be a practice by ACT Policing to document or maintain any records as to the reasons that justify a decision not to charge in a sexual assault case. The decision not to charge is attributed to one of several categories such as ‘unfounded’ or ‘not cleared’ or ‘inadequate evidence’; however, police officers do not seem to apply these terms in any consistent or well-defined way and there are no clear criteria as to what police need to demonstrate to reach a decision not to charge.

Information provided to this review also suggests that police may be applying the erroneous principle that a charge can only be made when a conviction is likely, as opposed to the correct test that it is likely on reasonable grounds that an offence has occurred.

ACT Policing should immediately implement clear procedures to be followed when a decision is made not to charge in a sexual assault matter. These procedures should ensure that the decision not to charge is made by an experienced senior member with a suitable level of authority and supervisory responsibility for the case. The victim survivor should be notified of the decision not to charge, the reasons for the decision, and their rights. This information should be adequately recorded.

These procedures should be implemented with training for all officers via collaboration between ACT Policing and the DPP on an annual basis, including a focus on the legislative test to decide whether to charge in sexual assault matters.

It is noted that since the commencement of this Review, ACT Policing has implemented several initiatives to improve its capacity and capability to investigate sexual assault. This includes the introduction of an Inspector specifically assigned to SACAT. This position is intended to provide additional oversight of operational matters and associated decision-making matters.

Forensic samples

A significant delay in processing time has been identified for sexual assault forensic samples in the ACT with some samples taking more than six months to be processed. This delay results in an inability for police to continue an investigation and sometimes prevents laying charges until forensics have been analysed and the results returned. This causes a delay in progressing the matter to court, resulting in a drawn-out process for victim survivors. The longer a matter is before the court, the greater the risk the evidence being relied on (apart from the forensic evidence) may become tainted or its weight compromised. Policing should identify a way to prioritise sexual assault forensic samples being examined and identify a specific timeframe within which these samples should be processed.

There should be further consideration given to the length of time a forensic sample can be kept without a formal police investigation in progress. The current timeframe a forensic sample can be kept without a police job number is three months. In 2005, the SARP report recommended that forensic samples should be retained for a period of 12 months.¹⁸⁵ More consideration should be given to this as victim survivors should have the opportunity to take time to heal and recover following a sexual assault without having to decide within this short timeframe if crucial evidence should or should not be destroyed.

¹⁸⁵ DPP and AFP 2005, *Responding to sexual assault: the challenge of change*, p. xx.

RECOMMENDATION 14

The ACT Government consider development of a Ministerial Direction to ACT Policing to focus specifically on the priority of effectively responding to sexual violence against children and adults as a strategic crime type, and that this be reflected in the AFP Corporate Plan. Whether or not the proposed direction is made, ACT Policing should:

- a Review its communications strategy to ensure all relevant information to victim survivors is provided in a more accessible, responsive and streamlined way.
- b Support SACAT to conduct a review of the current training framework for both specialist SACAT investigators and all other community-facing ACT Policing capabilities as they apply to sexual assault and child abuse investigations.
- c Review its policies for recruitment of SACAT officers, to address the lack of diversity and particularly to allow a victim survivor's right to elect the gender of the interviewing officer, by:
 - i increasing the number of women employed in SACAT including women in senior positions
 - ii employing Aboriginal and Torres Strait Islander officers to work in SACAT.
- d Fund the design and delivery of externally provided specialist training to SACAT officers on an annual basis in relation to the conduct of effective EIC interviews with vulnerable witnesses including children, young people, people with disabilities, Aboriginal and Torres Strait Islander people, and ensure that new officers to SACAT do not undertake EIC Interviews with vulnerable witnesses until they have undertaken the specialist training.
- e In conjunction with ACT Government, consider a 12-month pilot engaging forensic psychologists to advise on the preparation for and conduct of EIC interviews with witnesses reporting sexual assault, adopting a suitable forensic investigative model compliant with ACT law and suitably tailored for the presenting witness.
- f Immediately implement clear procedures to be followed when a decision is made not to charge. These procedures are to address:
 - i the requirement that a senior designated officer with oversight of the case must review and approve the decision not to charge
 - ii written reasons to be recorded on the file setting out the basis of the decision and the victim survivor is notified of the decision not to charge and the reasons
 - iii decisions not to charge are reviewable by a representative of the DPP upon the request of a victim survivor or their representative.
- g Collaborate with the DPP to provide training to all officers on an annual basis, addressing the legislative test to decide whether or not to charge.
- h Direct and support priority being given to examining forensic samples in sexual assault cases within a specific timeframe.

REVIEW OF SEXUAL ASSAULT CRIMINAL INVESTIGATIONS

Nationally, only a very small percentage of sexual assault matters initially reported to the police ultimately proceed to prosecution. In 2018, 26,334 reports were made to police—of those 16,574 were cases where the investigation was not finalised (63 per cent), 5,031 cases were finalised with no legal action (19%) and 4,731 cases were finalised and legal action was commenced (18%).¹⁸⁶

Attrition also occurs in the ACT, though with even poorer outcomes, with only 2.8 per cent of reported matters of sexual assault progressing to prosecution. However, there is limited data about the causes and stages of attrition.

High attrition rates are common across a range of crime types in the ACT and nationally, however when comparing attrition rates for different crime types in the ACT, it is evident that poorer outcomes are reported for sexual assaults than many other crime types. When comparing assault with sexual assault, the below table demonstrates that a much greater proportion of assaults progress to prosecution compared with sexual assaults.

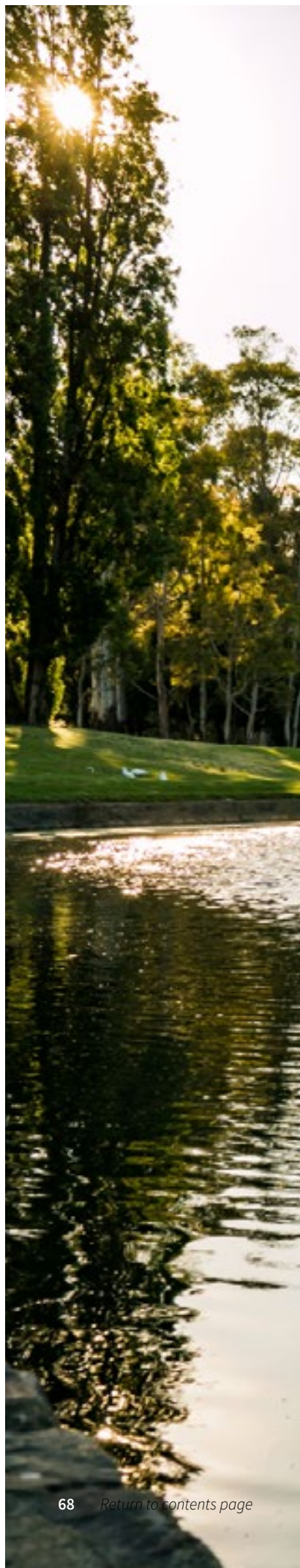
Table 4: ABS, *Recorded Crime—Victims, 2016–20*, outcomes of offences at 30 days by selected offences (%).

Assaults in the ACT		2016	2017	2018	2019	2020
Investigation not finalised		63.7	65.0	64.3	49.1	45.4
Total finalised		36.4	34.9	35.4	51.0	54.9
Investigation finalised	No offender proceeded against	14.1	16.0	15.6	33.1	34.6
	Offender proceeded against	22.3	19.1	20.0	17.8	19.9
Total		100.0	100.0	100.0	100.0	100.0
Sexual assaults in the ACT		2016	2017	2018	2019	2020
Investigation not finalised		75.0	69.1	73.9	72.5	75.8
Total finalised		26.2	30.5	26.5	28.7	25.3
Investigation finalised	No offender proceeded against	18.0	22.9	19.1	23.5	22.8
	Offender proceeded against	7.4	6.4	7.4	6.4	2.8
Total		100.0	100.0	100.0	100.0	100.0

A review of sexual violence assault matters reported to ACT Policing will help the ACT to understand when and where blocks and barriers prevent cases progressing and help to develop strategies to ameliorate them.

¹⁸⁶ Evershed N, 'The "Rule of Law": How the Australian Justice System Treats Sexual Assault Survivors', *The Guardian*, 17 March 2021, accessed 25 November 2021. Note: Data presented in this article is from the following sources and has been reviewed by criminologist Dr Michael Salter and sociologist Dr Kristin Diemer. ABS 2016, Personal Safety Australia, figure for 'not reported' is total sexual assaults of women and men from the PSS less the number of sexual assault cases reported to police in 2016. The number reported to police includes cases involving both adults and children, so this reporting figure should be treated as a rough estimate; ABS 2017, 2020, Recorded Crime—Victims, Australia; D Lievore 2003, Non-reporting and Hidden Recording of Sexual Assault, Australian Institute of Criminology; S Bricknell 2008, Trends in violent crime, Australian Institute of Criminology; ABS 2020, Criminal Courts, Australia, ABS, percentages calculated as a proportion of total cases, not total adjudicated cases.





The purpose of such a review would be to:

- 1 Better understand of the reasons for the low number of sexual assault cases proceeding to the point of charge including but not limited to:
 - a identifying whether current police processes are being adhered to and whether any changes should be made to police processes in relation to the conduct of investigations
 - b identifying whether decisions are legally sound in all cases and whether those decisions are clearly recorded and communicated to the DPP and the complainant
 - c any systemic cultural or practical changes or additional services that may be required to better support child and adult complainants and uphold their rights under the Victims Charter
 - d any other relevant matter.
- 2 Identify cases that require further analysis and further police investigation, and assess whether in relation to those cases:
 - a legal action could be taken
 - b if so, should be formally reopened with the consent of the complainant (or parent/guardian).

To undertake this review, the ACT Government should establish a cross-agency taskforce to initially look at all reports of sexual assault made to ACT Policing that were not progressed to charge since 1 July 2020. Subject to the outcomes of this initial phase, the review is to be extended.

The taskforce should have an independent Chair and other relevant members.

It is recommended that resources are allocated to services to support victim survivors if their cases are found to have been improperly dealt with and to support them in their decision whether to proceed.

RECOMMENDATION 15

The ACT Government establish and fund an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, including those deemed unfounded, uncleared or withdrawn.

The initial phase of the review to focus on reports made from 1 July 2020 to present. Subject to the outcomes of this initial phase, the review is to be extended to all reports made since 1 January 2015 that have not progressed to charge.

Further any victim survivor whose matter has not progressed to charge outside of this stated review period may also request a review of their matter.

EDUCATION AND TRAINING

The Australian Law Reform Commission (ALRC) Report, *Family Violence — A National Legal Response*, specifically focused on the necessary reforms to improve the safety of women and children in relation to domestic, family and sexual violence. The ALRC report made clear the importance of education and training especially for judicial officers, law enforcement personnel and other professionals within the legal system who require specialist knowledge of gendered violence.¹⁸⁷ The ALRC report recommended that a national education and professional development framework be developed for professionals in the legal system and that it ‘be designed with these specific audiences in mind; be informed by research on the social context within which violence against women and children takes place; emphasise the diversity of experiences and needs of victim survivors of violence in the community; and enhance understanding of the intent and operation of relevant legislation’.¹⁸⁸

Formalised systemic and individualised education for key legal personnel on sexual violence from a victim survivor perspective is critical to incorporating cultural change into reform attempts.¹⁸⁹ This move is supported by the feedback from victim survivors who commented that the court system lacks trauma-informed practices and often unintentionally causes harm through retraumatisation. Many who experienced the court system thought it was not worth it due to the retraumatisation they experienced, but also for what they felt was an inadequate outcome.

The education and training content must address the nature and extent of sexual violence in society, misconceptions and myths about sexual violence, the social context of sexual violence, and the ongoing effects of sexual violence on victim survivors, particularly regarding how this impacts their capacity to engage with criminal justice processes and the psychological aspects of victimisation.¹⁹⁰

187 ALRC 2010, *Family Violence — A National Legal Response* ALRC Report 114, p. 1460.

188 ALRC 2009, quoting National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children*, 2009–2021, rec 4.4.1, p. 1460.

189 Bluett-Boyd N and Fileborn B 2014, *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions* AIFS Research Report, no. 27, p. xi–xii.

190 Bluett-Boyd N and Fileborn B 2014, p. xii, p. 59; ALRC [31.48].

The content must also consider and include the unique and specific impacts and experiences of sexual violence for diverse and marginalised communities including culturally and linguistically diverse communities, LGBTQI+ peoples, people living with a disability, and Aboriginal and Torres Strait Islander communities.

Ongoing education would ensure those working in the criminal justice system have a holistic and nuanced understanding of victim survivors’ needs and experiences, enabling and supporting reforms intended to improve victim survivors’ interactions with the criminal justice system.¹⁹¹ This would also support wider cultural change on systemic and individual levels by addressing and breaking down prejudices.

RECOMMENDATION 16

That there be ongoing education of all stakeholders working in the criminal justice system, including the judiciary, lawyers, law enforcement personnel, and persons who work with victim survivors to understand and appreciate the nature and extent of sexual violence in society; misconceptions and myths about sexual violence including in relation to child related offences; the social context of sexual violence including modern sexual practices; communication methods surrounding sexual interactions among young people; grooming behaviours; and the ongoing effects of sexual violence on victim survivors, particularly regarding how this impacts their capacity to engage with criminal justice processes.

Cultural competency is the ability of professionals to deliver supports to clients in a manner that understands, respects and appreciates cultural differences. Improving levels of cultural competency will increase the accessibility of services for victim survivors from diverse backgrounds. A recommendation has previously been made addressing cultural competency of services for Aboriginal and Torres Strait Islander people.

Participants from the culturally and linguistically diverse consultation noted that while there will never be a complete understanding of how all cultures manage and respond to sexual violence, training for service providers will go a long way to ensuring that people receive the right

191 Bluett-Boyd N and Fileborn B 2014, p. 51.

support when trying to navigate the service system.¹⁹² The consultation report recommended that service providers should actively seek information on different cultural groups and establish linkages with culturally and linguistically diverse organisations to improve the service they provide.¹⁹³

Participants from the ACT LGBTIQ+ forum emphasised the importance of people being treated with respect and dignity when engaging with services. To achieve this, improvements to training and practice in law enforcement and both specialist and mainstream services is recommended to improve inclusivity and to build trust with the LGBTIQ+ community.¹⁹⁴

People with disability are a widely diverse group that may have distinct experiences of sexual violence and encounter specific challenges when seeking support after an assault has occurred. Expert disability organisations should be engaged to ensure that training for support and justice organisations is understanding of the needs of people with disability.

RECOMMENDATION 17

The ACT Government, ACT Policing and non-government service providers undertake training that improves cultural competency and the ability of staff to deliver inclusive and respectful practices to diverse groups. This training should be designed and delivered in collaboration with representatives of the, culturally and linguistically diverse community, the LGBTIQ+ community, the disability community and other relevant stakeholders.

SEXUAL ASSAULT BENCH BOOK

A Bench Book provides an overview of legal procedure for judicial officers and legal professionals and are used as a guide to legal and court procedures that relate to a specific area of law.

A victim survivor-focused Sexual Violence Bench Book would provide judicial officers and legal professionals with a centralised, comprehensive, and up-to-date source of information regarding the complex nature of sexual violence, the multiple and intersecting harms caused to victim survivors, the ways this impacts their experiences of and engagement with the criminal justice system, and how this may affect judicial approaches and decision-making.¹⁹⁵ This may also include guidance about how legal professionals and the courts can amend their processes and practice to better support and acknowledge victim survivors in the criminal justice process.

This is not a novel proposal. The Australian Law Reform Commission has recommended the development of a national Bench Book on family violence and sexual assault.¹⁹⁶ The Judicial Commission of NSW has published the Sexual Assault Trials Handbook and the Judicial College of Victoria has published the Victorian Criminal Charge Book with Part 7.3 focusing on Sexual Offences.

A comprehensive Sexual Assault Bench Book would support greater consistency in the interpretation of sexual violence offences and promote best practice among judicial officers and legal professionals.¹⁹⁷ This would complement other educative initiatives to ensure victim survivors are understood and centred within the criminal justice system's approach to sexual violence. The public accessibility of a Bench Book would also support broader community education efforts and ensure wider awareness and understanding of evidence-based responses to sexual violence and increase transparency and community awareness of, and confidence in, court processes regarding sexual violence.

RECOMMENDATION 18

The ACT Courts develop a Sexual Assault Bench Book.

¹⁹² Alrifai A 2021, *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response*, Report for the Office for Family Safety, p. 3.

¹⁹³ Alrifai A 2021, p. 3.

¹⁹⁴ Recommendations from the LGBTIQ+ forum conducted for this review, 2021.

¹⁹⁵ ALRC [31.32].

¹⁹⁶ ALRC [31.28].

¹⁹⁷ ALRC [31.37].

CHAPTER 3

PREVENTING SEXUAL VIOLENCE

SOCIAL CHANGE

PREVENTION STRATEGY

Despite its prevalence and impact, sexual violence is not inevitable and can and should be prevented.¹⁹⁸ There is a growing body of practice and evaluation information in Australia and internationally that can inform the prevention of future violence, address the social conditions that support violence, and respond better to those who experience violence.¹⁹⁹ *Change the Story* and associated evidence positions sexual violence as one of several significant and impactful forms of violence against women.²⁰⁰ The Prevention Working Group has actively considered the ways sexual violence is one form of wider violence and discrimination against women, and also how sexual violence has its own dynamics, experiences and therefore responses that are distinct from other forms of violence. The Prevention Working Group notes that positioning sexual violence exclusively under the umbrella of violence against women can risk losing these distinctions.²⁰¹ For example, this can result in failing to address the needs and experience of male, gender-diverse and non-binary victim survivors. An intersectional analysis demonstrates that gender is a key factor and driver of sexual victimisation, but that age, ability, and a combination of health literacy and social capital are also factors in who is targeted by perpetrators of sexual violence to a significant extent. Any prevention framework needs to actively address prevention work with men and boys, given the majority of sexual violence is perpetrated by adult men against women, children, young people, and other men.

In Australia, sexual violence prevention and response can be marginalised or subsumed in public policy and funding by the necessary and important focus on family/domestic violence.

Sexual violence cannot be tackled by considering it in isolation. Sexual violence is encouraged and enabled by the way our society constructs gender and attributes certain behaviours and roles to each gender, including expectations about sexuality and relationships. Prevention strategies need to address and seek to change these expectations. Because assumptions and expectations about gender, relationships and sexual behaviour are conveyed from an early age and through multiple social

Actively challenging violence — supporting narratives and culture includes education about respectful relationships, raising awareness about rigid gender norms and supporting a wide range of gender expression as well as ensuring women and people in groups who experience marginalisation are in positions of leadership and decision-making.

198 Our Watch, ANROWS and VicHealth 2015, *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia*, Our Watch Melbourne Australia.

199 *Frameworks Foundations 1, Change the Story* — this is a background research paper commissioned by Our Watch to inform the development of *Change the Story*. It reviews existing relevant international literature on violence against women and on its prevention and summarises and conceptualises the findings.

200 AIHW 2020, *Sexual Assault in Australia*, 14, and AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*, p.119.

201 SAPRP Prevention Working Group 2021, *Towards an ACT Sexual Violence Prevention and Response Strategy; Setting the scene for sexual violence prevention*, Prevention Working Group, SAPRP 2021.

La Trobe University,
Primary prevention of sexual violence and harassment against women and girls

and familial settings, preventing sexual violence will require a similarly broad campaign of community education and social change. For this reason, we recommend a multi-faceted long term Sexual Violence Prevention Strategy ('the Prevention Strategy'). Prevention measures need to be considered in all settings in the ACT where people work, live, play and study.

When we share, we heal, reconnect, and grow, both as individuals and as a united strengthened collective. History, lived experience, the whole truth, unsanitised, and unedited, is our greatest learning resource. It is what informs social and structural change.

Grace Tame, 2021 Australian of the Year

Sexual violence is also enabled when appropriate supports are not in place to identify situations where there is a risk of sexual violence. Interventions such as raising awareness in men of how to intervene as a bystander if they see someone at risk of sexual violence is an example of an early intervention. These types of interventions are sometimes called 'secondary prevention' and are included in this section of the report.

Responses to sexual violence that seek to prevent a perpetrator re-offending are sometimes called 'tertiary prevention' interventions. This includes therapeutic offender intervention and treatment programs and sentencing options within the criminal justice system to change their attitudes and behaviours. In this report, these aspects will be dealt with in the section 'Support for victim survivors of sexual violence.'

Effective prevention is complementary to robust response systems that establish accountability for people who use sexual violence, protect victim survivors from further harm, provide pathways for victim survivors to heal, and communicate publicly the message that sexual violence is unacceptable.

Proactive prevention work is difficult in a specialist response system in stress. The system needs to be adequately resourced to be able to do its work effectively.

Prevention efforts require a strong prevention infrastructure to provide the leadership and coordination necessary to drive broad, deep and sustainable social change that addresses the drivers and reinforcers of sexual violence, and to embed long-term gender equality, social equity, and anti-violence approaches into the ongoing work of established agencies, organisations and networks. This infrastructure includes:

- mechanisms for coordination and quality assurance
- an expert workforce and robust evidence base
- political, sector-specific, and civil society leadership which is supported by adequate resourcing
- policy and legislative reform
- shared monitoring, reporting and evaluation frameworks
- public education and communication measures.

Prevention efforts will be most effective if all sexual violence prevention and response stakeholders both take advantage of their own specific opportunities, and work in collaboration or partnership with each other to ensure different prevention efforts are consistent and mutually reinforcing. Different stakeholders have different responsibilities, expertise and capacities, as well as varying spheres of influence and opportunities to take action.²⁰²

Primary prevention efforts aim to reach everyone in order to have the greatest impact.²⁰³ This requires an inclusive universal approach, engaging people in all demographic groups. Best practice approaches:

- tailor initiatives to the audience and community context
- focus specific and intensive effort with communities affected by multiple forms of disadvantage and discrimination
- are inclusive
- work across the life course.

²⁰² Marson K 2019, *Ignorance is not Innocence: Safeguarding Sexual Wellbeing through Relationships and Sex Education*, Fellowship Report, The Winston Churchill Memorial Trust Australia.

²⁰³ Note: A significant component of the literature on sexual violence prevention and evaluation of effectiveness is focused on adolescents and young adults in school and college/university settings and is derived in developed economies. In recent decades, there have been two major spikes in evaluation research in the late 1990s and around a decade later. The origins of these studies can subtly reinforce that sexual violence is exclusively an issue for young adults, and frame 'effectiveness' implicitly in social, cultural, legal and political contexts that may not apply elsewhere. Guidelines and reports by international agencies (such as WHO, UNESCO, UN Women) and aid and development NGOs are one source of evidence and practice guidance with a more global perspective and more intersectional perspectives.

The Prevention Working Group identified the following principles to guide the development and implementation of all prevention recommendations:

- **Proactive**— Preventing and responding to sexual violence is accepting shared (whole-of-community) responsibility. The strongest focus is on proactive universal measures that mitigate risk factors and enhance sexual wellbeing by promoting protective factors.
- **Proportionate**— Incorporating an intersectional lens, non-stigmatising support is provided at the right time, in the right measure, and to the right people who are impacted by and use sexual violence.
- **Participation**— Facilitating the full involvement throughout the framework lifecycle, including those with lived experience to share their knowledge and ensuring trauma-informed and intersectional approaches to reduce all risk of retraumatisation.
- **Partnerships**— Guaranteeing co-design with a range of stakeholders is used throughout the framework lifecycle. Utilising the broad multidisciplinary expertise of the sector to ensure that social, environmental, political and legislative responses align.
- **Precise**— Ensuring shared accountability for framework goals across the whole-of-government through evaluation and research and strong data linkage across all government and non-government agencies.
- **Population-based**— Promoting social change by addressing the cultural norms, power structures and gender transformative practices that condone and enable violence to occur and mobilising community participation and shared support for framework goals.

Given the specific impacts and needs of different groups that have been identified in the Our Community section of this report, it is essential that the Sexual Violence Prevention Strategy is co-designed with the Aboriginal and Torres Strait Islander community, the culturally and linguistically diverse community, the LGBTIQ+ community, the disability community, and other relevant groups.

The Prevention Strategy should include:

- A comprehensive community-wide sexual violence prevention campaign to extend over the life of the strategy which should be designed in consultation with experts in preventative interventions to ensure an evidence-based approach to prevention, balancing the need for both structural and individual change.

The campaign should be designed in consultation with representatives of the Aboriginal and Torres Strait Islander community, the culturally and linguistic diverse community, the LGBTIQ+ community, the disability community, and other relevant stakeholders and should:

- target settings where sexual violence is most prevalent, drawing on national and local evidence²⁰⁴
- ensure the campaign is consistent with and complementary to the recommendations in this report on relationships and sexuality education
- use a range of communications media to raise awareness and challenge contributing attitudes, behaviours and social norms across mainstream media, social media, community forums and community arts projects, implemented most effectively in a sustained way, across a range of platforms combined with direct participation/ group education interventions and least effectively as single component communications campaigns (e.g. advertising without other supporting activities)
- be evaluated on an ongoing basis to ensure the key messages, target audiences and their chosen media channels are understood and consistently used throughout the campaign.
- Support for relevant grassroots and community organisations to develop and disseminate resources and information.
- Support for community-led, peer-based workshops designed to prevent sexual violence and extend the reach of relationship and sexuality education recommended in this report.
- An urgent audit of the prevention and intervention programs currently available in the ACT for:
 - children and young people who are exhibiting harmful behaviours
 - adult perpetrators of sexual violence
 - be undertaken with the findings of this audit to inform the development of the Prevention Strategy.
- Programs and mechanisms for men and boys be provided including programs aimed at preventing men's use of violence, supporting boys and men to adopt healthy, positive respectful models of

²⁰⁴ See in particular, *Change the Story* by Our Watch, a national framework for a consistent and integrated approach to preventing violence against women and their children in Australia.

masculinity, and perpetrator programs. These programs should be evidenced based and local, allow for anonymity, and address feelings of shame and stigma while recognising the need for a space where people can seek support and advice free of judgement.

- Government action to identify policy levers, regulation and procurement processes that could drive prevention, including at places that pose greater situational risk. For example in ACT Government contractual negotiations with third party event providers in the ACT, enforcing responsibilities on employers to provide a safe workplace by preventing sexual harassment and violence, adding compliance with defined sexual violence prevention and response obligations to the factors that are taken into account in ACT Government procurement processes and ensuring licence conditions for businesses with high risk of sexual violence include requirements for prevention strategies.
- A commitment to establish a partnership with an independent third party to research, monitor and evaluate on an ongoing basis the impact and progress of the Sexual Violence Prevention Strategy and any further recommendations.
- Support the capability building of journalists and the broader media to encourage responsible reporting of sexual violence.

For a prevention strategy to be effective it must provide for each priority area of the recommended interventions outlined above to occur through a set of mutually reinforcing actions across legislative, institutional, policy and program responses.

RECOMMENDATION 19

The ACT Government design, implement and fund a long-term ten-year strategy for the prevention of sexual violence.

The strategy should aim to change the attitudes and behaviours that perpetuate sexual violence and implement tailored actions to reduce the risk and occurrence of sexual violence in all settings where ACT residents live, work and play.

RELATIONSHIPS AND SEXUALITY EDUCATION

Experts acknowledge that comprehensive relationships and sexuality education is a proven protective factor in safeguarding sexual wellbeing and is foundational to sexual violence prevention strategies.²⁰⁵ The purpose of relationships and sexuality education is to improve knowledge, develop attitudes and create positive behaviour change. It is recommended RSE be designed to be:

- holistic, inclusive and sex positive
- appropriate for all ages commencing in early childhood and continue throughout life
- effective to address drivers of sexual violence e.g. gender inequality
- modified and tailored for all priority groups
- tailored to different institutional settings
- tailored to primary, secondary, and tertiary education settings
- inclusive of representatives of the Aboriginal and Torres Strait Islander community to be culturally-safe and culturally-informed
- inclusive of the culturally and linguistically diverse community, the disability community, the LGBTIQ+ community and other stakeholders
- delivered through multi-agency implementation whereby school-aged children and young people have ACT Education Directorate take the lead to improve the quality, consistency, and accessibility for RSE for primary and secondary school children.



²⁰⁵ Marson K 2018, *Ignorance is not innocence; Implementing Relationships and Sex Education to safeguard wellbeing*, Churchill Fellow.

Sexuality education is an effective life course intervention that increases the health and wellbeing of children and young people. It can enable their knowledge of sexual and reproductive health and rights, develop communication, decision-making and risk education skills, and adopt positive and responsible attitudes to sexuality and relationships.

BZgA. Sexuality education: Lessons learned and future developments in the WHO European Region Conference Report, Berlin 15–16 May 2017,4.

Design Standards for what best practice looks like are well established.²⁰⁶ However, for the effective implementation of RSE, strong public policy frameworks supported by government are crucial to ensure consistency in both the subject matter of RSE and its delivery.²⁰⁷

The Aboriginal and Torres Strait Islander Consultation Committee advised that RSE in schools should be co-designed with First Nations people to ensure that the education program is culturally-safe and culturally-informed. This is particularly important as evidence shows such programs are often a point of disclosure for young people and therefore, the response must be immediate and culturally-safe.

To achieve this and to ensure acceptance and success within the whole-of-community, the development and delivery of RSE to Aboriginal and Torres Strait Islander community members should adopt an approach along the lines of:

- **For children and young people:**
 - *First step*—a set of programs to ‘rapport build’ with children from beginning of school to year 12
 - *Second step*—leadership and empowerment education programs which are part of the ongoing school routine
 - *Third step*—Healthy Relationships education— a broader education strategy.
- **For families and community:**
 - Programs designed around events such as regular yarning circles for mothers and regular community events including elders.

RECOMMENDATION 20:

The ACT Government fund and make accessible evidence-based lifelong comprehensive RSE to all members of the community. For RSE in the Aboriginal and Torres Strait Islander community it is recommended that RSE be co-designed and delivered in collaboration with the representatives of the Aboriginal and Torres Strait Islander community to ensure it is culturally-appropriate, respectful and safe within the community.



²⁰⁶ Marson K 2018; Carmody M, Evans S, Keogh, Flood M, Heenan M and Ovenden G 2009, *Framing best practice: National standards for the primary prevention of sexual assault through education*, National Sexual Assault Prevention Project for NASASV, UWS.

²⁰⁷ Marson K 2018, *Ignorance is not innocence: Implementing relationships and sex education to safeguard wellbeing*.

WORKPLACE

Enterprise Bargaining Agreements

The *Respect@Work* report of the AHRC examined systematic workplace issues and made recommendations to improve how workplaces prevent and respond to sexual harassment in Australia.

The ACT Government can ensure workplaces can better respond to allegations of sexual harassment and assault by working with unions to review current ACTPS Enterprise Bargaining Agreements (EBAs). Part of this work should include developing appropriate EBA clauses that reflect the recommendations of the *Respect@Work* report.

The timing of these changes should also be considered; it is not necessary to wait for the conclusion of the next bargaining round to vary an EBA. Any clause which is agreed to between affected unions and the ACTPS is able to be inserted into the EBA by variation application, to ensure amendments are accessible to workers as soon as possible. The ACT Government could then promote these changes as part of a broader workplace information package regarding sexual harassment and assault.

Secure Local Jobs Code (SLJC)

The SLJC sets out workplace standards for ACT Government contracted service providers so that contracts are only awarded to businesses that meet the highest ethical and labour standards.

The SLJC is focused on high-risk industries including construction, cleaning, security and labour contracts over \$200,000. Any contracts and industries outside of this scope are not captured by the SLJC requirements. For organisations that fall outside the SLJC, a best practice sexual harassment and assault clause could be added to all ACT Government Service Funding Agreements.

It should be noted that the SLJC already captures a broad range of prescribed legislation including the Fair Work Act, along with relevant work health and safety legislation that could address the objectives of this recommendation to provide a safe working environment. In addition, the ACT Government is currently progressing legislative amendments focused on strengthening compliance powers and changes to procurement processes, so there is already significant work underway to increase the oversight of SLJC requirements.

WorkSafe ACT

WorkSafe ACT administers the ACT's work, health, and safety-related legislation as well as compliance and enforcement activities to ensure safe, fair, productive working lives for Canberrans.

One role of WorkSafe ACT is to regulate the Work Health and Safety Act, which covers all workplaces in the ACT. WorkSafe ACT could issue workplace notices in relation to the risk of sexual harassment and sexual assault, but this may require dedicated funding for legislative change and regulatory functions.

ACT Policing observed that it is important to ensure the threshold between sexual harassment and sexual assault is differentiated and clear, and that workplace responses to allegations enhance investigations through increased awareness of criminal investigative processes, witness management and evidence collection. It will be critical for workplace responses to consider these differences to ensure there are no negative impacts on criminal investigations and judicial outcomes for victim survivors.

To achieve this outcome, consultation between ACT Policing, WorkSafe ACT and other key stakeholders will be required.

RECOMMENDATION 21

The following workplace reforms are recommended:

- a The ACT Government review EBAs in the ACTPS in consultation with affected trade unions to:
 - i ensure workplaces can respond effectively to allegations of sexual harassment and assault
 - ii to develop appropriate EBA clauses to give effect to the *Respect@Work* recommendations of the AHRC, to the extent possible in the ACT context.
- b The ACT Government use legislative, policy and funding mechanisms to place a positive duty on organisations to prevent sexual harassment and sexual violence, including to add provisions to the SLJC to require employers to institute policies which prevent sexual harassment and assault in the workplace.
- c WorkSafe ACT to adequately regulate the prevention of and responses to sexual harassment and sexual assault in ACT workplaces.

CHAPTER 4

LAW REFORM

REFORMING THE LAW OF CONSENT AN AFFIRMATIVE COMMUNICATIVE MODEL

Additional commentary and the recommendations in relation to the draft *Crimes (Consent) Amendment Bill 2021* presented by Dr Marisa Patterson MLA and the recent amendment to the *Crimes Act 1990* (ACT) sponsored by Ms Elizabeth Lee MLA to explicitly include stealthing as an act which negates consent is set out in Appendix 5.

Misconceptions and misunderstandings about consent and non-consent within our community contribute to the perpetuation of sexual violence and inhibit the effectiveness of response and support measures. Reforming consent law is vital as we work to build a community that rejects sexual violence in all forms because the criminal law 'is the basis for enforcing the minimum standards of behaviour that the community expects'.²⁰⁸

208 NSW Law Reform Commission 2020, *Consent in Relation to Sexual Offences*, Report 148, [6.43].

The ACT's current legislative framework does not define consent and only lists a series of circumstances which demonstrate that there is not consent.²⁰⁹ This legislative framework may be insufficient to capture the nuances of consent or to respond to sexual violence as the ACT community expects.

Other jurisdictions are moving to enshrine in law a positive concept of consent in which it is expected that consent will be actively demonstrated. On 20 October 2021, New South Wales introduced the *Crimes Legislation Amendment (Sexual Consent Reforms) Bill 2021* to implement consent reforms that clarify consent provisions in the *Crimes Act 1900* (NSW), including that consent is a free and voluntary agreement that should not be presumed, and that consent involves ongoing and mutual communication. On 12 November 2021, the Victorian Government announced plans to overhaul sexual assault laws, including the adoption of an affirmative consent model.

An affirmative communicative model of consent, based on the recognition that every person has agency and a right to choose whether to participate in a sexual act, is the most appropriate model to base laws of consent. In a positive consent model, if a person wishes to engage in sexual activity, they will actively demonstrate their willingness either verbally or through their physical actions. Submission to sexual advances is not enough to demonstrate consent. This indicates a shift away from the belief that a woman not consenting to sexual activity will actively 'fight back' or resist. Not only is a positive consent model more appropriate in recognition of a person's agency and rights to bodily autonomy but it also avoids the risk that a person experiencing a 'freeze' response in fear of sexual assault is assumed to be consenting.

Without having to seek consent, a perpetrator may see no risk in continuing with a sexual act where consent is simply presumed. If the law clearly stipulates that consent must be actively sought, the perpetrator is more likely to consider the risks of their actions if they cannot prove that consent was provided.

Law is a significant mechanism for community education and cultural change. Recognising this, there have been increasing calls for the ACT to adopt an 'affirmative communicative' model of consent, to provide greater clarity in the community about what consent is and is

not. Reforming the law of consent is an important way to address and dispel myths about consent and non-consent and can thereby contribute to the reduction of sexual violence.

The Law Reform Working Group adopted the language of an affirmative communicative model of consent for the purposes of this work, aligning with the law in Tasmania and Victoria and the reforms most recently recommended by the NSWLRC. The working group defined consent under this model as follows:

- Consent must be freely and voluntarily given.
- Consent is communicated between participants to a sexual act, through a process of ongoing and mutual communication and is not to be presumed.²¹⁰
- Consent can be negated by a range of factors.

This affirmative communicative model of consent emphasises that consent to a sexual activity is a positive decision to participate in sexual activity which must be sought and communicated and cannot be assumed. Consent should be a continuous process of mutual decision-making throughout a sexual activity.²¹¹ This model is underpinned by principles of agency, autonomy and responsibility.²¹²

In 2012 the Australian Law Reform Commission and NSWLRC recommended that all federal, state and territory sexual offence laws adopt a definition of consent based on free and voluntary agreement, reflecting the main objectives of modern sexual offence laws — to reinforce communicative understandings of consent and to protect autonomy and freedom of choice.²¹³

One aspect that should be made clear is that people with a disability that affects their ability to communicate should not be disadvantaged by the recommended change. Incorporating the principles of supported decision making and legal concepts of capacity in the legislative framework is imperative in recognition that people with disability should not be presumed incapable of giving consent and engaging in sexual intercourse merely by reason of a communication disability.

210 NSWLRC [4.9].

211 NSWLRC [4.9].

212 NSWLRC [3.27].

213 ALRC and NSWLRC 2010, NSWLRC Report 128, vol. 2 [25.86].

209 *Crimes Act 1900* (ACT) s 67.

Reforming the law of consent to an affirmative communicative model would support the ACT's laws aligning with principles of agency and responsibility — that people have the right to decide whether to participate in a sexual act and that everyone therefore has the responsibility of ensuring that a person they are seeking to engage in a sexual act is in fact consenting to it.

Such reform would also support decisions to report, charge and prosecute sexual violence, and focus trials of sexual offences on whether there has been positive communication between the parties, rather than whether the victim survivor resisted.²¹⁴ Legislative incorporation of these principles would prominently affirm Parliament's commitment to consent and provide an accessible guide to inform and drive community education initiatives about consent.²¹⁵

Any codification of an affirmative communicative model of consent should be drafted carefully to ensure it is appropriate for the ACT and does not capture activities that are not intended to be captured (including behaviours that may not fit conventional norms but are nonetheless consensually entered into by the parties at the relevant time).

COMMUNITY EDUCATION

While law reform is an important mechanism to improve responses to sexual violence, it must be accompanied by wide-ranging community education initiatives focused on achieving cultural change. Educational campaigns focused on addressing misconceptions about sexual relationships and sexual violence which emphasise gender equity, respect, and agency are generally more effective to reduce the incidence of sexual assault when compared to increasing criminalisation and punishment.²¹⁶ The legislative reforms proposed in this report must therefore support and be supported by educative and social measures focused on primary prevention and cultural change, as outlined earlier in this report, that explains how the model of affirmative consent fits within a framework of equal and respectful relationships.

A community education and awareness-raising campaign can explain the nuance of the affirmative communicative model of consent and provide education about respectful sexual relations so that people can understand both what behaviours may now be sanctioned and how people can undertake respectful, mutually supportive sexual relations.

To be effective, legislative amendments must both impose a proportionate penalty for a transgression that better reflects community values and be understood within the community to deter potential sexual assault

RECOMMENDATION 22

The ACT Government amend the law in relation to consent by establishing an affirmative communicative model of consent.

This reform to the law should be accompanied by community education measures.

214 NSWLRC [6.40], [6.49]

215 NSWLRC [4.11].

216 Daly K 2011, 'Conventional and innovative justice responses to sexual violence' Australian Institute of Family Studies, *ACSSA Issues* (12), p.8.

FURTHER RECOMMENDED AREAS OF LAW REFORM

Having regard to the issues relating to the over representation of Aboriginal and Torres Strait Islander people within the criminal justice system, the law should be further reformed to address the ways in which the legal framework does not work well for survivors or does not appropriately hold perpetrators to account:

- a Legislative maxima for sexual assault offences to align with current practice more closely in other Australian jurisdictions.
- b For identified serious sexual offences, the ACT Government introduce a rebuttable presumption that a custodial sentence should be imposed unless exceptional circumstances apply.
- c Introduce a legislative presumption that Intensive Correctional Orders and suspended sentences are not to be imposed for serious sexual offences.
- d The rule established in *Barbaro v The Queen* [2014] HCA 2 be overridden
- e Reform to make clear that evidence of prior family violence between the parties is relevant and admissible in sexual assault cases, provided this evidence is not unfairly prejudicial to the defendant.
- f When evidence of prior family violence between the parties is relevant and admissible in sexual assault cases it should also explicitly apply to people with disability, in care relationships and residential settings, highlighting the findings of the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.
- g The ACT Government review whether legislative reform is the most appropriate mechanism to introduce a rebuttable presumption in sentencing for sexual offences that the offending caused certain harms for the victim survivor.
- h That a presumption be introduced that the courtroom be mandatorily closed when a victim survivor witness is giving evidence in a sexual assault matter, either live or by recording. Provisions regarding the mandatory closure of the courtroom to also apply in a civil family violence proceeding if the Family Violence Order application has been made based on a sexual assault and if the same protections would apply in a criminal setting.
- i That s55, 55A, 56 and 66B of the *Crimes Act 1990* (ACT) be amended to provide that the presumption of bail does not apply.

- j The court rules be amended to provide that additional notices are to be attached to subpoenas dealing with confidential counselling notes for victim survivors of sexual assault.
- k Section 80D of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) be considered to ensure that in a sexual offence proceeding the jury considers whether the defendant's mistaken belief as to consent was reasonable in the circumstances.
- l Legislative reform to clarify that in a sexual assault trial the defendant's level of intoxication is irrelevant to any assessment made by the factfinder as to the defendant's recklessness regarding the element of consent.
- m Amend the title of the offence 'Sexual relationship with child or young person under special care' (*Crimes Act 1900* (ACT) section 56) to remove the term 'relationship'.

In relation to the *Personal Violence Act 2016* (ACT):

- n Amend the Act to include the provision of 'special interim' personal and workplace protection orders, consistent with the provisions that are currently available in the *Family Violence Act 2016* (ACT) when there are ongoing related criminal proceedings.
- o Consideration be given to expand the legislation so that there is capacity for both individuals and trade unions to apply for Workplace Protection Orders.

In relation to the Work Health and Safety Act:

- p At section 19 include an obligation of the employer to provide a workplace free from acts of gendered violence and sexual assault.
- q At section 35 consider including psycho-social injuries in the definition of notifiable incidents.
- r It is recommended that consideration be given to extending the application of the Regulations set out in r21A and 21B, and Part 6.4 to all work environments where there is a principal contractor and sub-contractors to the extent possible and relevant rather than being limited to the construction industry.

RECOMMENDATION 23

The ACT Government review and reform the laws and procedures outlined in detail in Appendix 6 of this report.

CHAPTER 5

GOVERNANCE

GOVERNANCE AND **ACCOUNTABILITY**

Within ACT Government, responsibility for implementation of the recommendations outlined in this report and any further recommendations to be made as the Sexual Assault Prevention and Response Program moves into its next phase, would currently fall across a range of directorates:

- Courts, criminal law, Victims of Crime, and policing are the responsibility of the Justice and Community Safety Directorate.
- The relevant community response agencies are mostly funded and overseen by the Community Services Directorate.
- The Forensic and Medical Sexual Assault Care unit is part of Canberra Health Services.
- Relationship and sexuality education policy and implementation involve the Education Directorate and the Health Directorate (via school-based nurses and the NGO funding agreements.)
- Workplace safety and employment regulation are managed in the Chief Minister, Treasury and Economic Development Directorate.
- Services specific to Aboriginal and Torres Strait Islander communities are provided or governed across multiple directorates.

There is a risk that implementation will be fragmented, and that visibility of progress will be difficult to maintain and could atrophy. Several ongoing governance functions must be ensured for successful implementation of the sexual assault reforms across government and the sector. These functions include:

- **Monitoring:** regularly considering the performance of community and government agencies in prevention and response.
- **Policy input:** providing an expert forum for consultation and/or co-design on development of the actions to implement the long-term strategy.
- **Accountability:** ensuring that the commitments made by government in response to the recommendations continue to be implemented over time..

There are 2 proposed government mechanisms for maintaining visibility and accountability on the progress of implementation:

- 1 An annual Ministerial Statement to the Legislative Assembly by the responsible Minister.
- 2 A specific position within the ACT Government to coordinate and monitor implementation.

The recommended position in the ACT Government is based on the current role of the Coordinator-General for Family Safety to provide strategic leadership, whole-of-government collaboration, and coordination of the government's response to the reforms. This role would also work across government and consult broadly with the service sector to develop new policy, services and approaches that improve how the ACT Government responds to sexual violence.

This proposed role of Coordinator-General could be combined with the current Coordinator-General for Family Safety position, providing that clear measures are taken to ensure sexual violence policy is not subsumed by domestic and family violence policy. If this role is combined, the ACT Government should consider changing the title of the role to reflect both policy areas.

There should also be an ongoing role for community stakeholders in monitoring implementation of this work. The Community Reference Group should have relevant government and non-government representatives and be tasked to provide policy advice and monitor the implementation of recommendations by government and non-government organisations. The Community Reference Group would provide policy advice and

expertise to the ACT Government — this may require sub-groups for advice on specific areas of expertise.

Given the breadth of the recommendations, there will need to be a coordination mechanism within government, hence the Coordinator-General role, and given that the recommendations are going to cover a decade of development and implementation there needs to be ongoing accountability to the community and oversight by key community stakeholders, hence the statement and the Community Reference Group.

RECOMMENDATION 24

The ACT Government:

- a Make an annual ministerial statement to the Legislative Assembly to report on these reforms.
- b Create (or combine) a single role in the ACT Government for the coordination of reforms at the level of Coordinator-General to ensure a sufficient level of responsibility and power to hold all directorates to account for reforms.
- c Establish a Community Reference Group with a focus on policy advice to government and monitoring the performance of government and the community sector in the implementation of the recommendations.

ACKNOWLEDGEMENTS

We want to acknowledge the tireless effort of everyone in the Canberra community we consulted with since the SAPRP commenced its work in June 2021. We wish to thank you for your hard work providing valuable and insightful reflections, briefings and recommendations to the Steering Committee about the complexity of this important issue.

We would like to thank the members of the Aboriginal and Torres Strait Islander Consultation Committee for patiently providing their cultural expertise, knowledge and insights which included a very moving and personal presentation to everyone working in phase one of the SAPRP called ‘Silence of the Songlines.’

We would also like to thank the victim survivors who participated in the initial phase of this work providing their reflections of the experiences they had of the specialist response system and the justice system. Their lived experience and expertise is central in its importance when drafting the recommendations in this report.

We acknowledge and thank the members of each of the working groups (prevention, response and law reform) and the Workplace Reference Group for the extraordinary amount of time and energy they each committed to their role. Each person in every group gave up precious time both within their workdays and outside work hours to contribute to this urgent reform work.

We have listed the members of the Aboriginal and Torres Strait Islander Consultation Committee, each of the working groups and the Workplace Reference Group at Appendix 12.

As part of the project, the Secretariat facilitated the LGBTIQ+ Forum which occurred over two sessions. We would like to thank the participants of the forum and their considered insights.

We would also like to thank The Unveiled Institute, Avicenna Consulting and all participants of the culturally and linguistically diverse consultations undertaken as part of this report.

And finally, we would like to thank the very hard working and dedicated Secretariat team in the Community Services Directorate. We are grateful to everyone for your commitment to this body of work, your ongoing support of victim survivors in the community and your commitment to change.

LIST OF APPENDICES

- 1 Steering Committee terms of reference and membership.
- 2 Victim survivor case studies.
- 3 Victim survivor consultation themes.
- 4 *Insights from culturally and linguistically diverse communities: Sexual assault prevention and response report* by Avicenna Consulting.
- 5 Recommendations regarding the *Crimes (Consent) Amendment Bill 2021* and the criminalisation of stealthing.
- 6 Recommendations that relate to law reform.
- 7 *Towards an ACT sexual violence prevention and response strategy: Setting the scene for sexual violence prevention*, Prevention Working Group, SAPRP 2021.
- 8 *Framing our work with men and boys*, Prevention Working Group, SAPRP 2021.
- 9 Findings from the survey by Women’s Health Matters of ACT women’s experiences of seeking help following a sexual assault, 2021.
- 10 Sexual Assault Reform in Australia and in the ACT.
- 11 ACT Sentencing Database statistics (sentencing outcomes, 1 December 2012 to 30 November 2020) for *Crimes Act 1900* (ACT) — s 55(2) — sexual intercourse ten years old under 16 years.
- 12 Membership of the Aboriginal and Torres Strait Islander Consultation Committee, the Prevention, Response and Law Reform Working Groups and the Workplace Reference Group.
- 13 Resource library.

APPENDIX 1 STEERING COMMITTEE TERMS OF REFERENCE AND MEMBERSHIP

Sexual assault prevention and response steering committee.

PURPOSE

The Steering Committee will oversee the ACT's Sexual Assault Prevention and Response program. The Steering Committee will provide formal recommendations to the Minister for the Prevention of Domestic and Family Violence and to the Coordinator-General for Family Safety on how to improve sexual assault prevention and responses to victims in the ACT.



ROLE OF THE COMMITTEE

The Steering Committee will:

- 1 Oversee the operation of the three Working Groups and Workplace Reference Group.
- 2 Ensure the working groups and Workplace Reference Group are focused on delivering within their agreed scope.
- 3 Establish additional Working Groups as needed with the endorsement of the Minister.
- 4 Prepare independent recommendations to the Minister on key sexual assault reforms. This will be done by:
 - i Listening to and incorporating the perspectives and advice of the Aboriginal and Torres Strait Islander Consultation Committee.
 - ii Considering the advice from the working groups and Workplace Reference Group.
 - iii Considering the views and experiences of sexual violence across the community including people with disability, children, and young people, the LGBTIQ+ community, and communities that are culturally and linguistically diverse.

ROLE OF MEMBERS

The Steering Committee members are responsible for:

- 1 Supporting the achievement of the Steering Committee's purpose and bringing a strong commitment to preventing sexual assault and improving responses to victims.
- 2 Working collaboratively with other members to develop advice on areas for future action and reform. Advice will be evidence-based, drawn from the lessons from other jurisdictions and reflect the needs of a diverse Canberra community.
- 3 Attending all meetings as scheduled. Where absence is unavoidable, the member may nominate a suitable proxy to attend on their behalf. Should a member be absent for three consecutive meetings, their ongoing membership will be referred to the Minister for consideration.

ROLE OF THE CHAIR

The Steering Committee Chair will:

- 1 Attend Steering Committee meetings and provide strategic leadership and guidance to members.
- 2 Attend Working Group meetings when required and provide support to the Chairs.
- 3 Support and lead the Steering Committee in achieving its purpose.
- 4 Liaise closely with the Office for the Coordinator-General for Family Safety.

MEMBERSHIP

Members are appointed by the Minister for the Prevention of Domestic and Family Violence.

Position	Name	Organisation
Chair	Ms Renée Leon	Independent
Member	Tanya Keed	Community member
Member	Dianne Lucas	Community member
Member	Tim Bavinton	Sexual Health and Family Planning ACT
Member	Chrystina Stanford	Canberra Rape Crisis Centre
Member	Heidi Yates	Victims of Crime Commission
Member	Vanita Parekh	Forensic and Medical Sexual Assault Care
Member	Peter Crozier	ACT Policing
Member	Maddy Northam	Unions ACT and CPSU
Observer	Coordinator-General Family Safety	ACT Government

FREQUENCY OF MEETINGS

TBC by the Steering Committee.

SECRETARIAT

The Secretariat will be provided by the Office of the Coordinator-General for Family Safety, Community Services Directorate. The Secretariat will:

- Schedule all meetings and set the agenda with the Chair.
- Ensure members are invited and available to attend all meetings, including additional attendees at the request of the Chair.
- Circulate the agenda and other relevant information to members at least one week prior to the meeting.
- Prepare minutes that record key decisions and actions. Ensure minutes are circulated within one week of the meeting. Maintain a log of the actions.

APPENDIX 2 VICTIM SURVIVOR CASE STUDIES

NOTE: The names of the victim survivor in each case study have been changed to protect their identity.

ANA

Survivor of sexual assault finds greatest value of support from community grass roots organisation.

The disclosure

Ana first disclosed to her best friend following the sexual assault immediately after it occurred. Ana's sexual assault occurred on her university campus by another university student. Ana said that directly after the assault, she called her best friend who came and picked her up. Ana reflected that when she disclosed the assault to her friend, that it was a supportive and positive experience. Ana said what was really important that her friend did, was take the time to ask Ana what she needed. Ana's friend was validating, and Ana felt believed.

Therapeutic and crisis support services

Following the sexual assault, Ana tried to engage with the university counsellor. She explained that there was very little validation or reassurance from the counsellor, and they just kept asking her how she felt about the sexual assault. Ana reflected that when you live off campus, you are not readily aware of what services are available. It is also difficult to understand what supports you might be eligible to access. Ana disengaged from counselling supports as a result of the way the counsellor engaged with her.

Ana also tried to engage with a private psychologist and had a relatively similar experience. She acknowledged she wanted an independent person that was not in her immediate circle of friends. Ana found that the psychologist failed to listen to what Ana was saying she wanted from her sessions with them.

"I wanted them [the psychologist] to hear what I was saying and be actively engaged in what I was saying. I didn't like feeling like I had to remind them what happened to me. I needed them to say yes what you experienced was sexual assault and it wasn't ok. I feel that actively listening and validating a person's emotions is really important."

Ana has had a positive experience through her engagement with 'The STOP Campaign,' a student led activist movement focused on addressing sexual assault at Australian universities through empowerment and education. Ana found her participation in the zine project liberating, as it was the first time that she had written her story out anonymously.

"It [The STOP Campaign] was really supportive and helpful — the director is great at creating a supportive environment for survivors to connect. By participating in the STOP Campaign, it gave me a place to share my story in a safe way."

Ana reflected that it is good that organisations like the STOP Campaign exist, as it raises awareness on how someone should engage with a victim survivor when they disclose a sexual assault.

"It gives me hope that through this awareness, other people won't have an experience when they disclose that triggers them even more".

When asked if Ana thought to engage with services like the Domestic Violence Crisis Service (DVCS) or the Canberra Rape Crisis Centre (CRCC) or Victim Support ACT (VSACT), she said she was not made aware of them and what they could offer her. She now knows they exist but was unaware of the eligibility criteria, including that she would be eligible for support from VSACT due to not having reported the crime to police.

People from migrant backgrounds and reporting to police

Ana said that she would never report her sexual assault to police. She said this is largely due to the cultural stigma associated with reporting in her community. She also reflected that the way the current system is set up does not give her faith that it will be a safe process to report formally.

Ana also raised the importance of the system recognising community or societal pressures with regards to why many women do not report.

"It [reporting] would be a very isolating experience. In a small migrant community, it's very stigmatising and you're not supported to report. There also must be trust in the system, this further deters people from reporting if they feel the system will not support or believe them"

Growing up in a migrant community, Ana acknowledged the value in services demonstrating that there will be support if you decide to report. She highlighted that support is really important, and people need to feel safe and supported to disclose sexual violence. Ana raised that language can also be a huge barrier, and that there must be further work done to create a safe environment for someone to be able to share in their own language, noting it is difficult for individuals to appropriately articulate the situation in a language that is not their own.

“There is huge power in language. How do you translate your experience? There are sometimes, no similar words to even describe, there may not be a word for sexual assault in their language which means we lose the understanding of what has happened to them”.

JANE

Victim survivor wears sign on her backpack saying ‘survivor’ in hopes to start conversations that invoke change.

The disclosure

The first formal disclosure by Jane of her sexual assault was 38 years after the incident. At the time Jane was sexually assaulted, it was not something that people talked about. It was not reported to the police as Jane reflects victim survivors felt as if they were treated as though we were the perpetrators not the victims. If a victim survivor sustained injuries, Jane said that they did not always seek medical advice as victim survivors were not looked on sympathetically either. If the injuries were serious, a victim survivor may have had no choice but to seek medical advice and treatment. Rape counselling services did not exist. Other females had no idea how to respond either, so victim survivors often just pushed the experience to the back of their mind and got on with life.

“I blocked it out for 38 years and only disclosed because I was about to undergo vaginal surgery for pelvic organ prolapse (bladder, bowel and vaginal wall) I knew the surgery could be performed abdominally and hoped the response would have been far better than it was.”

The disclosure was made to a female doctor working in the Gynaecology Pre-Admission Clinic. The doctor gasped in shock and threw her arms up in the air. At the 6-week post op check, Jane told the female gynaecologist she would never sign for that surgery again because she had been raped. The doctor immediately said, “that’s why you don’t have an active sex life” Jane reflected that this had nothing to do with her active sex life and only served to cause further trauma. The trauma caused by both female doctors was far worse for Jane than the rape because she was not able to understand, compartmentalise or rationalise that from female doctors working in gynaecology in the 21st century. Neither of the doctors had any idea how to respond in a positive way to support her. The gynaecologist did ask if she needed counselling, Jane reflected that if the response had been positive from both doctors, that the retraumatisation would not have occurred. The result of both doctors’ failure to respond in a positive way caused what is known as the secondary rape incidence. When a disclosure is met with a negative response, it can lead to feelings of shame for victim survivors. Victim survivor who experience negative

responses to their disclosure are more likely to experience negative long-term impacts as a result of this. This is known as secondary victimisation.

Health services

When asked if Jane was offered any supports following this disclosure, she said she was not. The doctor did not provide her with any information on crisis services, or support agencies that are available for people who experience sexual violence.

Several years after the incidence when Jane had recovered emotionally, she submitted a formal complaint to the hospital. Whilst she received an official apology from the Director of Gynaecology, Jane highlighted that for her, it had no meaning as it was not from either of the doctors involved in the retraumatisation. Unfortunately, Janet had a need to undergo another consultation with the female Gynaecologist recently for failure of the Pelvic Mesh. During the consult, Jane was expected to undergo an internal examination. Jane refused and the doctor sat down and said, “what do you want me to do”. Janet reflected that the response should have been a trauma-informed one, such as “is there something I need to know”. This would provide an opening for the victim survivor to feel able to open up and create a space where a victim survivor feels respected, listened to and treated appropriately. Jane reflected that again, this doctor failed to respond appropriately. As Jane was prepared for another negative response, she told the doctor what her words had done previously, hoping for an apology. It did not happen, which Jane said highlighted that the doctor did not have an understanding of how her actions had impacted and harmed Jane. Jane provided information on how a response should be, but stated she got the distinct impression the doctor only sat there because she knew she had to. This felt like yet another negative response from a female doctor working in gynaecology.

Jane is determined to improve the response and treatment of victim survivors of sexual assault and has been wearing a sign on her backpack that says Survivor. This sign alone has opened the conversation with people from all walks of life, with some people revealing their personal experiences of sexual assault.

The police

Jane has been working away at discovering how victims are treated by first responders in the ACT. When she walked into a police station she said she wanted to talk to someone about sexual assault. The female volunteer and the male police officer responded in a very positive way. The police officer explained it was up to her what and how much she talked about and the interview could be stopped at any time if she felt overwhelmed. This police officer however reflected to Jane that he had not been given much training on sexual assault during his recruit course which was about six months previously.

RHIANNON

Evidence of victim survivor's sexual assault wrongly destroyed.

The disclosure

Rhiannon had to disclose her sexual assault a number of times to different people. Her friend who witnessed the sexual assault which occurred in a public place, was the first person she made her disclosure to. She said her friend was helpful and supportive which was really validating. Following this, she contacted 1800respect through their chat function. Rhiannon said that this was helpful as she was confused by what had happened to her and found their response validating.

Following this, Rhiannon disclosed to the university she went to the wellbeing coordinator at the Hall she resided in. Rhiannon reflected this was due to her being unable to cope following the assault. The response she received from the wellbeing coordinator was good, and gave her information regarding reporting formally to police, or reporting to the university if she wanted to. Rhiannon was not offered information about specialist services however in this conversation, nor any information about counselling, health services, or therapeutic supports.

Reporting to police

A few days after the sexual assault, Rhiannon decided she would like to report to police. When she decided she wanted to report to police, Rhiannon told her wellbeing coordinator who called the police on her behalf. A male and female officer attended her university residence following this phone call.

“We were in my hall, two general duties officers, a man and a woman attended. The man was very clearly in control. He would lead everything- when the female officer tried to ask me questions, he told her to be quiet. It was very unsettling.”

The officers took a few notes and contact details of her friend who witnessed the incident and advised her they would open a case. Rhiannon found the engagement from the male officer disrespectful. She stated that the male officer kept on saying to her (while she was disclosing) that he didn't want much information. She stated that each time the female officer asked her questions the male officer would tell the female officer off. He did so in front of Rhiannon and her wellbeing coordinator.

Rhiannon said that when the officers were leaving, they provided information to her wellbeing coordinator but not to her.

“Then while they were leaving – they told my wellbeing coordinator that because there wasn't penetration it wasn't going to go to the sexual assault unit and was going to stay with them, and the male officer would be the investigator. I was a bit taken back by this.”

Rhiannon found the lack of information being directly provided to her confronting, noting that she had experienced the crime, but that important information was not being provided to her. Unfortunately, this was not the last time this occurred.

Rhiannon was not provided with any information from police about support services that may be beneficial to her.

Therapeutic and crisis support services

Rhiannon found it difficult to find an available and affordable counsellor or psychologist at the time she experienced sexual assault.

“I called CRCC — and I was told I was a high priority person, that I would have to wait at least three months to get any counselling. I was not given suggestions about other services that may assist me, and they did not offer to advocate with police on my behalf.”

Rhiannon engaged with Victim Support ACT (VSACT). She was not aware that the service existed, but through word of mouth she was made aware of it. Rhiannon was referred to a psychologist through VSACT, who Rhiannon believes has been the thing that has helped her most.

“My psychologist specialises in trauma, she gets it. Because before her, I tried seeing the university counsellor/psychologist and they had no idea. They told me she had to google some sort of trauma therapy. I've already had more than ten sessions with the psychologist I was referred to by Victim Support and will keep going with that. I would recommend going to Victim Support — and that they are probably the most useful for discussing options and accessing supports. I'm not sure what I would say about the police.”

Through the investigation, Rhiannon was engaged with the Rights and Reforms team at VSACT. She stated that they were in contact regularly.

The police investigation

Following Rhiannon's report to police, she said she received limited information about the case. Approximately a week later, she emailed the police officer and asked for an update. She heard nothing for the following week, and then out of the blue she received a phone call to say that vital evidence that would have assisted the investigation had been destroyed. This should not have occurred, but because it had they said there was nothing else they could do and were closing her case. Rhiannon was incredibly upset by this and decided to raise the matter with the Media to raise the issue regarding the evidence being destroyed.

“When I went to the media it wasn't initially about the police. However, the journalist went and asked police about the evidence being destroyed, and she found out more stuff, they hadn't told me... It felt like my power was being taken away even more.”

Rhiannon reflected that she felt like the journalist put more effort in than the police had, and that things only actually happened because of the media attention that the case got. Rhiannon found that as a result of the article, lots of people who had experienced similar things reached out to her to thank her for what she had done. Rhiannon found that this became very important for her in her recovery.

Following the media article, Rhiannon received a call from a high-ranking police officer, explaining the investigation was still ongoing and had not been closed. He also provided his details should she need to contact him. Rhiannon requested that she be given updates on her case, and the officer said he would ensure that the case officer contacted her provide one.

Rhiannon stated that the following day she received a call from the case officer. She said the call was not a good experience. The conversation was based around the officer blaming Rhiannon for the description of the man who had assaulted her. Rhiannon stated he essentially said to her that the description was not good enough, and that looking at any other camera footage would be a waste of his time. Rhiannon asked the officer why her friend had not been interviewed, the one who had witnessed the assault, he did not have a response to that. Rhiannon then asked that the officer continue to provide her updates on how the investigation was going.

“I asked if I could have updates, what he said to me was, he asked me what my motives were for wanting updates. I kind of just shut down, I couldn’t speak anymore. I had a friend with me who had to take over the call because of it. I was too upset to even speak.”

Following this interaction, Rhiannon decided she wanted to make a complaint about the conduct of the officer. She was met with resistance from an officer she spoke to on the phone, but eventually was provided with a link to make a complaint.

A few weeks later, she received a call from the high-ranking officer she had spoken to previously. He apologised and stated that the officer had been given further training as a result. Rhiannon advised however, that her matter stayed with the original case officer, it was not until Rhiannon sent a further request, that she was provided with a new case officer who was a Senior Constable.

Rhiannon said that the new officer was a bit better, and actually facilitated for Rhiannon to do a formal interview. He also interviewed Rhiannon’s friend, but she still found getting updates from him was particularly difficult.

Through VSACT, Rhiannon’s case worker advocated for Rhiannon with Police. The officer told the VSACT case worker that they didn’t think there was anything more they could do. Rhiannon said the VSACT case worker made it clear to police that they needed to provide this information to Rhiannon, and that Rhiannon would prefer this information to be faced to

face. It was not until two months later, that police contacted Rhiannon by email and told her that there was nothing further they could do.

“It takes so much to be able to share and disclose and to lose control over what happens to you that is retraumatisation in many ways when that is not handled and responded to well.”

Rhiannon is continuing to advocate for a better response from police with regards to how they conducted the investigation, and how they kept her informed throughout the process. Rhiannon ultimately would like an apology from the officer who treated her poorly, as this treatment further compounded the trauma she experienced. She does not want others to experience what she did and feels that the baseline response needs to be better.

CHELSEA

Victim survivor feels sentencing decision does not reflect the seriousness of the offences.

The disclosure

Chelsea first disclosed the first sexual assault the day after it happened. Chelsea had fled a domestic violence relationship, and said she went to the police station to protect herself and escape the offender.

She had not planned on reporting the sexual assault, but when Chelsea arrived at the police station, she told the officer what had happened to her, including being sexually assaulted by her partner.

At first, she said the officer’s response was that he wasn’t quite sure if what she experienced had been a sexual assault, and so he had to check this with a colleague. When he confirmed with a colleague that what had happened to Chelsea was indeed a sexual assault, he asked her if she was ‘on the gear’ (meaning illicit drugs) because she couldn’t make a statement if she was.

Chelsea found being asked this question incredibly insensitive and offensive, she had been held against her will for hours by her perpetrator and was incredibly tired and stressed but was not on any illicit substances. This comment almost made Chelsea walk away from continuing her report.

She noted that in that moment you need to decide if you will give a statement, whilst still being incredibly stressed and traumatised. She reflected that she didn’t realise at the time, how onerous it would be to make a statement.

Therapeutic and crisis support services

When asked if offered any support to make a statement, Chelsea advised the first time police organised for DVCS to come out and see her at the station and take her to safe accommodation to stay. The second time she reported sexual

assaulted, someone from CRCC was organised to support her to give her statement.

Chelsea reflected positively on her engagement with DVCS, noting she was provided a lot of support for the initial incident, and then provided ongoing support by way of court updates on the criminal matter.

Chelsea said had not been offered CRCC at the first incident, but when she went to give another statement for a further sexual assault SACAT had arranged for a CRCC worker to be in the room; she said that this support was wonderful.

“I was really upset that day, it’s really hard to have to do that statement. It’s a really hard thing to do — knowing you’re being filmed and she [the CRCC worker] was just a support. She was a really comforting person”.

However, Chelsea noted that she did not hear from them again for a number of weeks, and when someone from CRCC did call, they advised as she was still receiving intermittent support from DVCS she could not receive assistance from them. Chelsea said she thought this was strange, because the provided services were for very different things, and at this stage the only support she was being provided with by DVCS was criminal justice case tracking updates and not receiving therapeutic intervention or assistance.

Chelsea was referred for ongoing therapeutic counselling by DVCS to VSACT. She said that this has been helpful to have someone to talk to once a week. She noted that when you’re going through this you need somebody that is not involved in your life to assist you in unpacking what has happened. She reflected however, that this was the third counsellor she had been referred to, as she had not wanted to progress with the previous two counsellors after the first session.

Health services

Chelsea accessed the sexual health clinic following the sexual assault. She said it was always upsetting attending these appointments and waiting for the results. She said the bit she found hardest, was when they would ask the questions ‘when did you last have sex’. For her, she could never forget the date when she was sexually assaulted and found it hard having to explain each time.

The police investigation

Chelsea reflected that, had she have really known what the process was going to be like from the start, she may have walked away. She said she is glad that she didn’t, but the 18 months the matter took to progress through court was incredibly taxing on her mentally and emotionally. “It doesn’t go away — you can’t put it from your mind and can’t move on with your life. It is why a lot of women don’t go through with these things. I feel like the toll on me is greater than the toll on him”.

Chelsea spoke about having a very positive and supportive workplace, that allowed her to have time off when she needed it, but she is not sure this would be the case for everyone.

The court process

Chelsea found the DPP respectful in their engagement, and she reflected on a positive experience with them. When asked if she was offered support from the DPP witness assistant, she said she was not, and did not realise that they were available for anything more than practical support, like organising your parking pass or getting you an appointment with the prosecutor. Chelsea found the court process challenging noting the need to have to remember something that happened such a long time ago, being prepared for cross examination etc.

Chelsea found the trial process itself difficult. You are told you’ll be the first witness, then there’s unexpected legal arguments, you just are just expected to sit there and wait patiently. She said it was hard to build up the courage emotionally to come back the next day. Chelsea reflected that the ‘system’ just expects you to be emotionally able for such a long time and to deal and manage with whatever the ‘system’ asks of you. There isn’t much consideration put into just how onerous, taxing and the emotional toll everything takes on a victim survivor.

Chelsea raised that the court process is very offender focused, and she often felt as if she was on the one on trial.

“He has a right to defend himself and is innocent till proven guilty, I understand that. But I feel like I am the one on trial. He gets to choose to sit there and not have to be a witness if he doesn’t want to be. The burden is all on me.”

Chelsea’s offender entered a last-minute plea of guilty to a negotiated set of charges. As a result, he received a ten per cent discount on his sentence.

“He plead guilty on the second day of the trial, and still got a ten per cent discount on his sentence. That is pretty generous considering he spared me nothing, the benefit was all on his side.”

Chelsea’s offender received just over two years in jail, it is Chelsea’s view that the sentence does not fit the severity of the crime, particularly as he is a recidivist offender.

“The sentence was woefully inadequate. I would have liked at least five years, that creates a bit of accountability for his behaviour. He has referred previously to the Canberra jail as a holiday camp. I don’t feel that justice has been served. Women are safer and the community are safer when he is in jail”.

Sentencing

Chelsea said that the process of putting together a victim impact statement was incredibly difficult, and that a victim

impact statement in its current form is problematic and does not capture the real harm caused by the offending.

“The Victim Impact Statement I found really difficult to do, the restrictions around it were hard and, on the day, I had to submit it further things were taken out of it. Part of what the DPP said to me was if you leave some of this in, his side can question you. I felt like they took out bits that were too upsetting or offensive to him. You can’t reference anything outside of the actual charges that he’s been found guilty of. In a domestic violence relationship, these things don’t happen in isolation”.

Chelsea initially did not intend on reading the victim impact statement out in court, as she is fearful of public speaking, but after speaking to the police officer, she decided to read it in hopes that it would have the most powerful impact to have her voice heard.

“The shame is his, but the shame is often put on the women throughout this process. The path I was on, the places I was going, the life I was living is gone, and you can never go back to that”.

“It is important that the courts hold people to account for the way they have taken other’s livelihoods and innocence away from them”.

HAYLEY

Victim survivor sexually assaulted by work colleague and forced to quit her job as a result.

The disclosure

Hayley first disclosed the sexual assault to her best friend a few hours after the incident— but at that time she didn’t consciously realise that what had happened was assault. She remembers crying on the phone to her friend for an hour. Her best friend was understanding and helpful in her response. She then disclosed the assault to her partner the following afternoon. During that disclosure, it became clear to Hayley that what had happened was sexual assault, and that she was experiencing traumatic shock. She said that the response she received from her partner was great. Her partner was reaffirming that it was not her fault, and that she did not need to feel guilty. Her partner encouraged Hayley to consider getting medically checked, to keep her options open regarding if she wanted to report the assault later, noting that a medical examination was time sensitive.

“Both of them [friend and partner] comforted me, and were also saying various combinations of, it’s not your fault, you didn’t do a bad thing, they did a bad thing. You don’t have to feel guilty or ashamed”.

Health services

The third person Hayley disclosed the assault to was a doctor at FAMSAC three days after the assault. Hayley said she found this hard. Hayley’s partner supported her through this. Hayley reflected that due to the impact of the sexual assault, she would have been unable to navigate this process had it not been for the support she received from her partner.

“There was no way I would have been able to work out how to get there without having support there”. Hayley said that the FAMSAC staff were excellent, and she felt safe and supported through the forensic examination.

“They [FAMSAC] were completely delightful. The doctor was very sincere, and I felt really cared for. I didn’t find the physical examination particularly difficult. They talked me through everything at the time. It took quite a long time, partly because they weren’t rushing me”.

Therapeutic and crisis support services

A week after the assault, Hayley engaged with the CRCC. She was given a face-to-face crisis appointment and found it a positive experience. She said the crisis counsellor she saw was excellent and gave her plenty of time to explore her feelings and what had happened to her. Hayley however highlighted that due to resourcing constraints, CRCC could not offer her ongoing counselling supports moving forward for some months, and she was placed on a counselling waitlist.

Because CRCC had an extensive wait list, Hayley also accessed VSACT for counselling. She said that they could get her in quickly, but she found that the counsellor she was referred to did not have the expertise to support her.

“They got me in with someone a little bit quicker, but who wasn’t particularly appropriate. The counsellor didn’t have the background in trauma, which was what I needed. So, I saw this counsellor two or three times and then stopped.”

Hayley ended up organising a Mental Health Care Plan through a general practitioner (GP). She chose not to go to her normal GP because she didn’t want to talk to anyone who knew her yet (at this stage she had not talked to any friends or family about the assault). Hayley and her partner found a private psychologist who specialised in trauma. Hayley raised however, that the first available appointment for this psychologist was a further two months away. Hayley is still engaging with this private psychologist and finds them particularly helpful but would have liked the capacity to access therapeutic supports sooner than she was able to.

The workplace

Hayley was assaulted by a work colleague. Following the assault, she took a leave of absence from work. When she finally spoke to her manager and it was established that it was a work-related incident, they explained to Hayley it would need to be reported to HR. As a result of this, Hayley was incredibly fearful to return to work. She reflected that at the time, she was terrified that people at work might find out and was worried about the repercussions for the person who assaulted her. Hayley found the HR and workplace process incredibly traumatic. She said the information provided to her across the following few months was confusing, conflicting, and complex.

Hayley had not initially disclosed who had assaulted her to HR. At this time, they told her that they could not do anything unless she went to the police or made a report to them. However, further down the track they changed their advice, stating she had to tell them who it was as they needed to protect other staff, and that she could either tell them who did it or they would investigate and interview other staff to try and find out. Due to this approach, Hayley felt forced into telling them who assaulted her. Hayley said she then felt forced by her employer to report the sexual assault to the police.

“The process was completely traumatic, I would often kind of shut down and I would get out of my weekly catch up with HR and be non-functional for a couple of hours. I got angry at them not really knowing what would happen next, or what the process would be. They were always changing their advice about what was going to happen”

Following Hayley reporting the assault to police, her workplace stated that they could not investigate the incident while a police investigation was underway. This was contrary to their prior advice and because of this, Hayley was left in limbo regarding how she would return to work while her perpetrator was still there, and nothing was in place to protect her.

Although the workplace could not do their own investigation while the criminal investigation was in process, they advised that as she had been injured, she needed a return-to-work plan. Hayley was told she was not allowed back at work before she had one. Her workplace required that she seek a return-to-work plan from her GP but gave no guidance on what it needed to include. Hayley said the process around this was incredibly unclear, and she repeatedly provided her workplace medical documentation only to be required to return to the GP for amendments on multiple occasions. The GP requested that the workplace provide guidance on their requirements, but they responded that their requirements were ‘standard’ and that the GP was responsible for ensuring they were met. Hayley said it often felt they were making things up as they went along, and there appeared to be no

process in place on what the appropriate course of action was for either her safe return to work nor the company’s response to the assault

Reporting to police

Hayley reported the sexual assault to police two and a half weeks after it occurred. She went to the local police station with a CRCC advocate. She reflected how having a CRCC advocate there with her was helpful. When she arrived at the police station, they went to the front counter and said they wanted to report a crime and asked her advocate she could speak to someone in a private room. The constable took her into another room and asked her to go through what happened in detail. Hayley was aware there was a specialist team who took sexual assault interviews (SACAT) and so was confused why this constable wanted her to go through the incident with him in detail.

“I said to him, is this going to be the statement because I don’t want to have to do this twice. He responded with ‘you’re dealing with me and this is how it works; you’re going to tell me what happened”.

Hayley felt that the constable didn’t recognise that there could be an emotions or feelings associated with Hayley going through the sexual assault with him. Following her doing so, her matter was then referred to SACAT. A day or two later, Hayley received a phone call from SACAT stating they’d been referred her case. They explained to her that the first step would be a ‘meet and greet’ and organised a time to do this.

Hayley said she liked the detective from SACAT that was assigned to her case. She said that he appeared to be knowledgeable about the subject matter and was empathetic and explained the process every step of the way. She said at the meet and greet they organised a time to do her EIC. She found the meet and greet helpful and informative, and the detective answered all the questions and concerns she had. She said that the detective was experienced and never made her feel rushed at any step.

“At every step with SACAT, they would say it’s up to you what happens next. It’s good and it’s bad. When you’re feeling out of control after a sexual assault, it’s good to feel that knowing nothing will happen without you making it happen at the same time, the only person who benefits in the long run if you stop the process, is the offender. It would have been better if there was an opt out option, rather than an opt in for each stage.”

Hayley reflected that if feels like sexual assault investigations are treated differently to other crimes. Because the victim survivor must okay each step, it feels like each step is harder to take.

“It feels like you’re doing it more to them [the offender] rather than it’s a crime that happened to me and police are acting in response to the offence. It feels more onerous than it should.

It's not up to me what happens in the end [charges and prosecution], it is the justice system's job to take it further, but I did find that really hard at each step."

Hayley found that although she got along well with the investigator, at times during her EIC with the detective, she felt he was judging her with some of her choices and feelings. She found this hard because she wanted to be transparent with the detective, but then felt judged because of doing so.

The police investigation

Hayley said that the process was approximately four to five months between her statement, and the decision police made not to proceed to charges due to a lack of evidence. The process around the decision not to refer to DPP was confusing—Hayley thought that Police were waiting for her to agree to progress to charges, but when she asked them to progress, they advised that the case had been 'closed' due to the evidence availability. She said they did explain this to her; however, it was only explained after she called to check-in and asked them to move forward. She was not advised when the decision was made that they had determined not to take the matter to the DPP for consideration.

Hayley found this particularly frustrating as similar matters that she was aware of, had been taken to the DPP with just as much evidence, if not less than hers.

Hayley noted that there is no avenue to have this decision not to proceed to DPP reviewed by anyone, and if there is, there is no information on this process readily available.

The workplace investigation

Following the conclusion of the police investigation, Hayley's workplace required her to put in a formal complaint to them about the sexual assault—her workplace advised that without a formal complaint they would not take any action to accommodate her workplace safety with respect to contact with the perpetrator. Following Hayley submitting a written complaint, Hayley's workplace commenced a workplace investigation. Hayley reflected that it felt like her workplace had no clear plan on how to manage the incident, the investigation, or support Hayley to come back to work full time in the office.

The workplace took a number of months to complete their investigation, all the while Hayley was working remotely off site. Hayley advised that the workplace investigator was not respectful in his engagement towards her and found him to be very 'heavy-handed' in his interactions. The investigation concluded that Hayley's complaint "was unsubstantiated by the investigation". During the meeting on the day that her workplace provided the outcome of the investigation to Hayley, they would not allow Hayley to speak to her support person privately. This caused further distress to Hayley as the outcome was a lot to take in.

Hayley raised that her main issue was that there was no way to appeal the investigation decision, or any aspects of it, including incorrectly recorded facts and other comments which appeared to be wrong. Hayley raised fundamental issues with some of the information that was incorrect within the report, and there was no avenue to have that corrected. She was not provided with any records of interview for review after her interviews with the investigation team.

When the workplace investigation had concluded, Hayley continued to feel unsafe in her workplace. Despite a number of months passing since her complaint, no plan had been put in place to support Hayley or ensure that she did not need to interact with the perpetrator of her assault. She was taken off high-profile projects they had previously been on together. Hayley first took leave from her work following this, then formally informed her workplace that she did not feel that she could come back to work because she did not feel safe. Eventually, after nearly 2 months off work with no pay and with no apparent plan for work to be made safer. Hayley then she resigned due to ongoing issues with her workplace not understanding the long-term impacts of sexual assault on her and having an expectation she would just get on with things and move forward.

Hayley raised that it felt as if the entire time, her workplace was reactive, and were focused on ticking boxes rather than working out what she may need. The supports available to someone in her workplace who is the victim of sexual assault seem to be focused on moving the victim away from the perpetrator. For example, missing out on projects or trainings that would benefit her career. The perpetrator always got to continue these opportunities, and the solution for Hayley was always that she could miss out. Hayley reflected that the workplace kept reiterating that they could not change the perpetrator's work patterns or duties.

JODIE

Victim survivor finds criminal justice process assisted in her healing.

The disclosure

Jodie contacted the DVCS, a couple of hours after the sexual assault as soon as her perpetrator left her home. DVCS talked her through how she was feeling and encouraged her to get to FAMSAC for medical assessment and treatment. "DVCS were very good at making sure I was physically and mentally okay." DVCS offered to meet Jodie at the hospital and on the way, Jodie rang police and told them what had happened. Jodie said she wanted police to remove him from the house if he was still there when she got back. Jodie said police's response was not very good, they did not offer to come to the hospital to see her or take a statement, and essentially just said, come

to the station to make a statement if you want to. Jodie was disappointed by this response.

Jodie received medical care and attention at the Canberra Hospital from FAMSAC, with the support of a DVCS worker. Jodie said that everyone was really nice, and she was treated with respect. She was slightly put off by there being a male nurse, however, he was also very respectful. She found the process slightly intimidating, but Jodie said she was given clear information about what was going to happen and how the examination would occur.

The following day, Jodie contacted police when she returned home to get some clothes and her offender arrived. Jodie said the police response was not positive, they told her they could not move him on, because his name was on the house. Jodie said she explained to them that she had been sexually assaulted, but felt her concerns were not taken seriously. She cannot remember if they offered to take her formal statement but does not think they did.

Following this, Jodie said she was receiving contact from DVCS quite regularly. Jodie said they found her somewhere safe to stay. Jodie said she was at that point, still trying to get safe and was in flight mode. She made the decision that she wanted to leave the ACT interstate to ensure her safety, before she made a formal report to police about the sexual assault.

The police investigation

Once Jodie had relocated interstate, the state-based rape support service linked her in with a local detective. She found this interaction with the detective positive, but because the sexual assault happened in the ACT, they advised they would need to send the information to the ACT for investigation. A video statement was not offered to Jodie by the interstate investigator and was told that ACT police would need to take her statement.

Jodie did not receive any contact from anyone from ACT Policing's specialist unit, SACAT for over 12 months. She said when they finally did contact her and by the time that she did do her Evidence In Chief (EIC), 18 months had passed. She said by this time, the incident was very mixed up in her head, as she had tried to block the experience out of her mind so to cope with day-to-day life.

"I waited over a year for the Canberra detectives to contact me. I kept thinking, what is going on here? When they did contact me, they said something about losing my paperwork. By the time they did my video evidence it was 18 months later and by that time, I had jumbled it all up in my head to save myself".

Jodie spoke to the EIC interview being incredibly intrusive. She was not prepared for how invasive the conversation was going to be, and she felt embarrassed and humiliated by that process. She felt it was not adequately explained the type of questions that would be asked and why they were going to ask them.

The delay in obtaining her interview meant her memory had been significantly impacted. Jodie reflected that whilst she liked the SACAT detective, she felt at times she was left out of the investigation, and information was withheld from her. She said that they often couldn't tell her things, which made her more confused with what was going on.

Jodie said that there was a significant amount of evidence about the sexual assault that was the freshest recollection of her assault — the conversations with DVCS and FAMSAC. She queried why there was such a heavy reliance on her statement made two years after the sexual assault, when the delay in taking that statement had been through no choice of her own.

The court process

When asked about how the court process went, Jodie said that she did not think the DPP, and police adequately prepared her for the trial.

Jodie felt that the DPP and police were incredibly secretive and felt as if they were not providing her with vital information. She did not feel like she was being updated on the progress of her matter.

"I felt I was left in the dark at times. When I tried to push for more, they would just say, we can't tell you. This was about me having a voice. However, I felt that voice was taken away from me".

For Jodie, the main reason she reported to police, was about finding her voice, and standing up to her long-standing abuser. She felt it incredibly disempowering to have information about a sexual assault that happened to her, withheld from her by the police and the DPP.

"If somebody needs to ask a question, you should give them the answer- if you're not giving them the answer, they're nervous. Yes, it is the perpetrator's case, but it's the victim's as well. It takes a lot to get up and do this. To be left in the dark about this is not nice, not at all."

A few days before the trial commenced, the prosecutor was swapped last minute due to COVID-19. This meant that Jodie had a different prosecutor handling the matter, and that prosecutor only had two days to prepare for the trial. This was incredibly unsettling for Jodie, as she thought she would have the weekend to relax and mentally prepare for the three-day trial, but she spent a good portion of the weekend on the phone to the DPP answering questions.

The trial itself was not a pleasant experience for Jodie. A few days before the trial, she was told that she would give evidence first up and be done by the following day. This did not occur. To further complicate the process, as Jodie resides interstate for her safety, she was organised to give evidence in her local area. Due to COVID restrictions, she was required to give her evidence in a police station. Jodie stated the room

she gave evidence in was loud and distracting. She could hear police on their radios, the gate of the station opening and shutting and the sirens of the cars when they left the station.

“The witness room I have evidence in was so tiny — It reminded me of an old prison cell. My support person had to sit directly behind me just so she could fit”.

During the proceedings, Jodie was able to see her perpetrator on the court CCTV. She said she called the DPP to tell them. But her concerns were not taken seriously.

“I kept saying, I can see him. I can see him. They kept saying, no there are lots of people work in the court. I know what my perpetrator looks like, I could see him on the screen, and it was intimidating. The entire week – I could see him, the impact it had on me was significant, I was distracted, and my evidence was impacted, I couldn’t remember anything”.

Throughout the proceedings, Jodie also saw a woman in the back of the court she did not recognise. She said that every time she answered a question, the woman would sigh and shake her head.

At one point, I excused myself to ask the judge, “Why is that woman shaking her head at me, am I doing something wrong?” The judge even replied, “You should be more concerned about answering the question instead of who’s in the court room.” It turns out it was my perpetrator’s new partner. It felt like she was purposely trying to intimidate me, and no-one was taking it seriously. I felt let down by the court in that regard”.

Throughout the week, Jodie was not regularly updated about how the trial was going by the DPP. She just sat in the police station and waited, and only heard from the DPP when they needed to ask a question. She is unsure why this occurred, and if it would have been different if she gave evidence in the ACT. The matter was originally intended to go for three days and ended up taking seven days. Jodie was required to sit in the remote room at the police station for the entire duration. Jodie prepared herself mentally for three days, she did not prepare herself for seven. She reflected the emotional toll and stress that the extension of time took on her meant she was unable to focus and concentrate, and as a result remember. Ultimately, the DPP ended up withdrawing the charges due to Jodie not remembering.

Jodie does feel that going through this process, despite the outcome was a positive for her healing.

“After the assault, I was in a bad way mentally, PTSD, anxiety. Going through the process was healing for me — I was freeing myself from that in some way and making myself better. I was standing up to him, letting him know finally — he’s got to knock off what he does with women. I had bad DV from him for years. I’ve run and run and run to try and get safety and I’m sick of it now. I still feel like I’ve achieved that outcome.”

When asked if she would recommend the process to anyone else, she reflected the following:

“Yes, for their own mental wellbeing and healing I would, but I would recommend that they push for their rights when it comes with police, and the DPP, and engage the services that can help them. I believe that if the other support services like DVCS and my local rape counselling service weren’t there to help me through this, I might not have been able to do it”.

KATIE

Sexual assault survivor waits a year for police to arrest offender.

The disclosure

Katie never intended on disclosing what had happened to her. After Katie was sexually assaulted, she said she could feel that something was wrong, and had felt frazzled and unable to think straight for an extended period of time. A month after being sexually assaulted, Katie disclosed to her friends’ part of what had happened, she raised it lightly, to see how they would respond. Perhaps if they thought it was normal, she could move on from it. Katie’s friends did not think what happened to her was normal, or okay. She wasn’t shocked by their response, but it scared her, because she knew once she told someone, it cemented for her that she would need to decide if she was going to report to police. Katie reflected that it was validating to have her friends respond so well. She had not disclosed the entire incident, but when she had spoken to them about part of the incident where the offender was boundary pushing, as not being okay, she knew that what had happened to her was not right.

“You feel so crazy, the person who does it normalises it. It was helpful that my friends pointed out what happened was not okay”.

Katie found that she was unable to focus on work following the assault, and when she tried to tell her boss why she was not travelling well, or smiling as much as she used to, the response she received was basically to get over it. Katie reflected that the response by her employer made her angry.

“I have never heard so many bizarre takes on sexual assault before it happened to me. People often don’t know what to say, and say the wrong thing”.

Reporting to police

Katie decided that she would report the assault to police and went to a local police station to report it. When she arrived, she had to wait a long time before she was seen by an officer. Katie reflected that she read every single posted on the walls of the station, there was not one that spoke about how to report a sexual assault, she said that she thinks this would have been helpful. When Katie finally spoke to a police officer,

she said she thought she needed to report an assault. The officer said, ‘you think you do?’, and she stared blankly at him.

She said she mustered up the courage to say these words; of course, she wanted to report. She said that they sent a female police officer to get her, and she began talking to them. When she began disclosing sexual assault, the officer stopped her, and said she would need to disclose that type of crime to a different officer, a specialist in sexual assault.

Katie reflected that she thought that it would be a very quick intake and had not realised it would be a separate team. She noted she isn’t opposed to this being necessary but given how common sexual assault is in the community, she felt it was weird that everyone isn’t trained in taking a disclosure of something so common.

When Katie did finally speak to a detective in the SACAT she said the engagement was positive. What she liked about the detective was that he was very matter of fact and gentle.

“He gave the impression that this wasn’t so bizarre and weird... if you’re going to talk to a man about the violation of the female body, you want to feel comfortable...he was also very good at giving warnings regarding how he would ask questions. He would say, this isn’t my opinion – I believe you – this is just a warning on how we ask the questions. He gave me a speech that there’s nothing I can say that is too gross, strange, or terrifying, he said please don’t feel embarrassed about any detail, we don’t think anything of you. He had a way of making me feel comfortable and making it completely casual. This was good.”

When asked about the process of the investigation, Katie said that the detective was honest that it was going to be tough. But that she could decide at any time she didn’t want things to proceed, and that the choice was hers.

The police investigation

Katie found that she didn’t really understand the investigation process at any point, and although she met with the detective on a number of occasions, she never really knew what was happening and the investigation process was not really explained to her. Katie said it would have been helpful if she was provided something in writing — in an easy form — to read at a later time when you’re in a space to read it and digest the information.

After Katie gave her statement to police, it took the police a year before they contacted the offender to charge him. Katie felt as if nothing had been happening, and when she asked police, they said they couldn’t locate him. Katie felt unsafe throughout that process, because she felt as if she had to keep tabs on him to manage her safety. She said during that year, the offender had threatened to show up at her work, and she felt like she spent a year waiting, watching him live his life free and fine, while she said she felt as if hers was disintegrating.

“Police said they can’t find him but — how can you not find him when he’s not hiding? I truly do not think they looked until I sent them a message when I’d been provided his address and made it clear I was not impressed”

Katie felt conflicted in advocating for herself; that she was taking resources away from others who couldn’t advocate for themselves.

The court process

Katie raised significant concern with regards to bail conditions. Katie was told by police that the offender had conditions including not to drink or use illicit drugs and required supervision by Corrections. Katie said she was given the impression that he would be closely monitored, and regularly checked up on. Katie subsequently learnt a year later from someone close to the offender, that he continued to use illicit substances, drink alcohol and was only drug tested once (where he was given advance notice). Katie felt that she was put under a false sense of safety with these bail conditions, which was dangerous. She believed that there would be checking of compliance with these conditions, which in reality, was not the case. Katie did not apply for a protection order, because of the discussion she had with police that bail was in place, and she would be protected. Katie reflected that bail conditions really shouldn’t be in place if there are not stringent mechanisms in place for all offenders to ensure that they are complying.

Katie found the prosecutor, the prosecutor’s associate and the DPP witness assistant helpful and informative about the process. She again, reflected, that a pamphlet that explained the process in general terms would have been helpful for her to have. This would have ensured that if she forgot things or needed clarity, she had a resource she could refer back to.

When the matter got to trial, she felt well supported through this process. She said that she was treated respectfully by the court staff in the remote witness room suites where she was able to give evidence and was able to have a support person and support animal with her.

She was under-prepared for the emotional toll that cross examination would take on her though. She said cross examination was not only difficult but also at times implausible. It felt strange to her that a lawyer could put things to her that were completely untrue, such as saying that it would be impossible for her to be raped in the position she was in, when in fact, that is exactly how it happened.

Sentencing

Katie found the process of writing a VIS difficult. She felt the limitations in what could or couldn’t be said in a VIS was hard to follow. She felt that such a statement doesn’t really capture your experience of the offence, you can’t speak freely about what happened and you can’t really say anything specific

about the person who harmed you. She said this felt like a weird task. She reflected that she was proud of what she wrote, and tried to take the emotion out of it, because what happened was factual and, she wanted to articulate the harm caused to her. Katie felt though, that if she had used too much emotion in her VIS, it may have been used against her. She noted that she was good at writing and putting her feelings into words but didn't know how someone who isn't good at this modality would be able to articulate the harm caused to them. She felt that examples of approved statements may benefit those who struggle to write them.

Katie did not have any sense of what value is placed on a VIS in court, and she questioned the amount of effect it had when a judge sentenced someone.

The offender was convicted of sexual intercourse without consent. However, the sentence he received was relatively minor. Katie reflected that, given the offender lied to the court and was found to have lied to the court, she thought that there would be a significant sentence to act as both specific and general deterrence. Although the offender was given a few years term of imprisonment, he then only had to serve a few months of time in jail. This type of sentence sets a precedence for other offenders like him. She also noted that the offender had no remorse for his behaviour which was reflected in his pre-sentencing report.

Katie found this outcome highly concerning, given the high level of evidence that was available in the proceeding, where the offender had admitted to the rape. Given the high level of attrition rates, the low prosecution rates, and then the low conviction rates, Katie was shocked at the sentence imposed — despite the statistics her matter is one of the few successful prosecution rates, and the outcome still incredibly lenient.

Therapeutic and crisis support services

Katie cannot remember if at the time she reported to police she was offered a support service to assist her while she made her statement. She was provided with a few counselling sessions from a support agency but, she did not find them useful. She reflected that this is because, going through a court process you need to remember every detail.

She felt the counselling sessions were pointless — because she couldn't really talk about the offences because she didn't want to forget any detail — She said she didn't want to forget any detail of the offending that may have an impact on the court process. Katie felt like her life was suspended during this entire process and was unable to properly access therapeutic supports throughout the period of time.

Katie did however apply for the victims of crime financial assistance scheme. It has been almost two years since she applied for financial compensation, and she is still waiting. Katie raised that there is no point calling it compensation if

you aren't going to compensate people when they need it. Since she applied, she has had to quit work due to the impact of the crime on her, her offender has been sent to jail, served his time, and been released and is out in the community, and she is still chasing her victims of crime compensation.

“If you don't give people the support when they need support — there's no point giving it to them. I have lost my job and can't work anymore. The person awarding the amount for the compensation is the same person I have to chase; you end up being fearful about chasing them in case it impacts on your compensation. He was proven guilty — he is out of jail now — I should be able to put this whole thing to rest — every time I chase it up — I'm reminded this still isn't over for me and I still can't move on. If I got compensation from even a few months of the trial wrapping up. Maybe I could have taken time off — but I couldn't, and I got sick; I didn't have the ability to take time off cos I had no money. Your body just stops. That is really common with traumatic events, years later, you think maybe it's not even related, but it is and it's too late.”

CLARA

Survivor of childhood sexual abuse.

The disclosure

When Clara was six years old, she first experienced sexual assault. Immediately after the assault, she disclosed to her father what had happened. Due to Clara's age at the time, she had no knowledge or understanding of what sexual assault was, and so described to her dad what had happened. Her father immediately called her mother who was at work and her mother phoned police from her office.

Initial police report

At the time of the incident, Clara says that her mother recalls police discouraging her from pursuing the matter. “They basically said to her there is no point doing anything about it because nothing will happen, it won't go to court. Despite the potential for physical evidence”.

Police did not engage with Clara at all when the offence occurred, they had one conversation with her mum immediately after assault over the phone. Clara stated that there was no investigation, police did not attend the address and she later found out (20 or so years later) they never made a record of the incident occurring. Clara reflected that the other issue surrounding this, was that no report to child protection was filed. Clara lived in very close proximity to the offender and a report to care and protection would have ensured that child protection did a thorough child at risk assessment. She also reflected that it would have been an excellent opportunity for early intervention for the offender as well.

Clara highlighted that she was not out of danger and following the incident she continued to receive harassment and abuse by the perpetrator and his associates. A number of years later, Clara relocated from the ACT to enhance her safety.

Upon reflection, Clara states that she feels now, there are a lot of procedures in place that are good, however it is incredibly important that those processes and procedures are followed to enhance the safety and wellbeing of children in particular.

Clara returned to the ACT many years later and found herself consumed by thoughts of her assault.

“It took nine years to feel able and safe to come home. After being back for a while I kept thinking over and over about the assault and it was consuming all my mental energy. I decided I need to address it so I could move on. I knew that my parents had reported it to the police when it first occurred, so initially I thought that I would be in a better position to put a case together because of the initial report”.

Reporting to police for the second time

When Clara decided she would like to make a formal report to police about the sexual assault she experienced as a child, she contacted the Canberra police.

“Initially I called up the police station to make a report. The police officer who answered the phone — said — you know this is not the right number to report to a sexual assault right — I said in response, well no I didn’t, which is why I am calling. They ended up putting me through to the specialist sexual assault team”.

The SACAT encouraged Clara to report to the local police station in the city she was currently residing in, they advised that those police could take a statement, and ACT police would then receive the statement to investigate.

Clara attended her local police station to report the assault. Clara commented that the officer was very sympathetic and compassionate. He was not a member of the sexual assault team but linked her in with a sergeant by phone who was at another station, the sergeant took Clara’s details and said someone from their team would contact Clara to do an interview.

“When I was leaving the station, the initial officer made the effort to say, well done, it’s really brave what you’re doing. That made a really big difference to how I felt actually.”

Clara was contacted by the sexual assault unit approximately one month later to do a statement late in the evening. Clara stated that they did so with very little notice, and she felt caught off guard and unprepared. Clara did say that they offered her the choice if she would like to have a female officer present during her statement, which she declined. That evening, Clara attended the station that and provided her EIC. Clara states she was not made aware that the statement would be filmed until she arrived at the police station.

“The interview was filmed, but I wasn’t told this was going to happen till I got there. I must admit though, that this sergeant was very good at calming me down so that I could explain everything properly without getting upset. As soon as the interview started, I got the impression that his attitude changed. Before the interview it felt as though the Sargent didn’t believe me and I felt a change 10 minutes into the interview where it felt like he then began to believe me.”

Approximately one to two months following Clara doing her EIC interstate, the detective from SACAT in ACT policing contacted Clara to advised they had been assigned to investigate her case. “She was very upfront about the likelihood of it actually going to court. She explained it was going to be a lengthy process and would probably take a year or more., I appreciated her being honest about the process.”

Clara stated police made it very clear that the investigation process was going to be lengthy and advised that due to the lack of physical evidence and her case being historic, that it was unlikely that it would proceed to prosecution.

“If this is the case, then it is almost impossible for anyone with a historic case to find some kind of justice through the court system”.

At the time this was occurring, Clara reflects that the Royal Commission into Institutional Child Sexual Abuse was on, and she found it difficult not to compare her matter to other historical matters being prosecuted without DNA evidence.

Clara stated that eventually, the detective advised that they were going to close the investigation without laying charges. Clara said that at this point, the detective had not formally interviewed potential key witnesses that knew about the incident and felt as if they had not investigated the case to their fullest ability.

Clara went on to attempt to make a complaint to AFP professional standards regarding this and found this process challenging and obstructive. She stated that when she contacted professional standards, they would not take her complaint and advised her to raise the issue with either the case officer directly, or the case officer’s Sergeant.

Clara made the decision to contact with the case officer’s sergeant to raise her concerns regarding the investigation. She states that this interaction was incredibly negative and impacted on her wellbeing greatly. She stated that she did not feel that her concerns were being taken seriously and found the language that the Sergeant used dismissive and triggering. Towards the end of the conversation, the Sergeant told her that they would raise her concerns with the officer, and someone would contact her in a week. No one contacted Clara, in fact it was not until a year later when Clara followed up directly on why this had all occurred.

“The conversation was so bad, I had overwhelming suicidal thoughts and had difficulty holding myself together. After

that conversation, it took about a year for me to feel able to respond. They didn't contact me for a year. They didn't even contact me to tell me even if the case was still open."

Clara reflects that she did not feel she was treated well by these officers. She felt that given they were specialists in the field of sexual assault, she thought they would be aware of the issues that victim survivors might face and should be aware of the trauma-informed language they should use. Clara was able to advocate for herself a year later and have her matter reassigned to an officer in a different team. Clara found her interactions with this new detective positive and found him to be thorough in investigating all avenues of her case and was able to do so in a much shorter timeframe.

Therapeutic and crisis support services

Clara engaged briefly with the CRCC when she was located in Canberra. Through this brief engagement she found her interactions with them mostly positive. She reflected though that she would have benefited from them being able to provide her with information regarding reporting to police and the process of how an investigation is conducted. She stated they were not able to give her information on what to expect. As a result of living interstate, most of the supports that Clara received were from her local rape crisis service. She found this service (which she has regular counselling with) very helpful and beneficial.

Health services

Clara engages with her GP on a regular basis and has stated that they are on the most part good and trauma-informed on how to understand and address her needs. She stated that with her interactions with her GP she has felt respected in their engagement with her.

When it comes to psychiatrists, Clara reflects that they have on the whole have had a limited understanding of trauma from sexual violence. Clara shared that she has in the past experienced problematic and victim-blaming questions from psychiatrists, she stated that this is inherently problematic, given they should understand the impacts of this type of questioning.

EMILY

Survivor of sexual violence in the context of intimate partner violence.

The disclosure

Emily experienced multiple incidents of sexual violence from her husband, in the context of significant intimate partner violence. When Emily fled the relationship several years ago, she moved interstate with her children. Emily's ex-husband continued to threaten and control Emily, so she attended an interstate police station to seek advice. Interstate

police felt there was more to the story, so they explored the history of violence and what else was occurring. Emily made disclosures of multiple sexual offences that occurred during the relationship. Emily explained, "The first time I tried to get supports was by accident. I didn't know I was reporting sexual abuse." Emily commented that in the context of the domestic violence, the sexual abuse was "part of a pattern of behaviours, so it was harder to recognise." Emily reflected that if police hadn't asked her further questions, she may not have disclosed the sexual violence.

Emily recalls that police did not offer her any referrals for support because they anticipated that she would return to the ACT, and that she never heard from them again after making the disclosure. The investigation was referred to ACT Policing and Emily was told to return to the ACT to follow up the report. Emily returned to the ACT and subsequently became very unsafe. Emily said, "I became much more accessible to him," and after a while it felt safer to return to the relationship than to stay separated. This resulted in Emily asking ACT Police to stop the investigation and Emily recalls feeling "vulnerable and exposed".

Emily reflects that following her disclosure, "It was more about what was easy for police and the justice response, than what I needed." Emily commented that because the assaults were considered "historical," it felt like her disclosure "wasn't deemed as super important" and "the urgency was gone." Emily reflected that if services had been offered to her locally at the time of the disclosure, it may have supported her to make more informed choices about her options, and to remain safe interstate.

Health services

Emily stated that no health services were offered by police, but Victim Support ACT linked her in with a counsellor. Emily reflects that the counselling has been really helpful.

Therapeutic and crisis support services

Emily recalls that it wasn't police who linked her in with services. She stated, "Police didn't know where to direct me. If they had known, it would have made me feel more confident in the police response." Emily said it was her girlfriend who connected her with DVCS and DVCS offered her crisis accommodation, food and taxis, and safety planning. Emily stated, "If it wasn't for Victim Support, DVCS, and Legal Aid, I would still be in touch with no one" and described that services have "swept up what police have failed to meet." Emily reflected that having the support of services has given her confidence to pursue further matters with police.

Emily noted that in the last year she has had contact with the following agencies: ACT Police (000, General Duties, Service and Process, Family Violence Unit, SACAT), CYPS, DVCS (crisis team and court support), CRCC, Care Financial, VS ACT

(client services, FVSAP, FAS, and counsellor), Child Support, Centrelink, ACAT, the ACT Magistrates Court, Legal Aid ACT (family, criminal, and civil), Everyman, Witness Assistance Canine Program, Witness Intermediaries, and the DPP. Emily reflected that if you want to go through this process, “You have to be ready to let people in”.

Reporting to police

Emily remembers ACT police attending her house on multiple occasions in relation to domestic violence incidents, but said they never explored what else was happening. She recalls that police never completed a risk assessment with her. Emily reflected, “If police were more interested in my situation or took more time to understand what was happening, I might have disclosed sooner.”

Emily explained that after providing an initial statement to police interstate, her matter was referred to ACT Policing where the assaults occurred. After returning to the ACT, Emily was asked to provide a further statement to ACT police about the sexual offences. She recalls that it was difficult to repeat everything, and she didn’t understand why it was necessary. Emily stated that the officers did not identify as being from a particular unit, such as SACAT. She was in emergency accommodation at the time and remembers two officers taking her phone as evidence. Emily stated it wasn’t clear how long they would have the phone for, and this caused her to feel unsafe and vulnerable. Emily said she wasn’t given a card or a reference number, and no one ever asked whether she was linked in with any services. After a few days, Emily emailed police and said she no longer wanted to pursue the investigation. Emily reflected that she felt very unsafe in the ACT, and eventually returned to the relationship.

Emily explained that police became involved again due to ongoing domestic violence from her ex-husband. Emily reflected that her ex-husband’s “ability to manipulate people” was influencing the police response she was receiving. Emily’s matter was referred to the ACT Policing Family Violence Unit, due to several negative experiences she had with general duties police.

Emily recalls that the Family Violence Unit reviewed the history and encouraged her to revisit the previous sexual assault disclosures from several years ago. She reflected, “the Family Violence Unit were the first people to actually sit down and listen to me. I felt they took my concerns seriously.” Emily stated that these initial experiences gave her the confidence to keep going. However, after some time she felt like nothing was progressing. Emily remembers multiple occasions where police arranged to attend her address for a statement but cancelled at the last minute. Emily said, “They arranged to come to my house at 9am so I took the day off of work and organised the kids, but then two hours later they would call me and say they couldn’t make it.” Emily recalls feeling “unimportant” and said she was “harassing police for six

months” to take a statement and felt worried that they would get sick of her and stop helping.

In relation to SACAT, Emily stated, “Before I got to SACAT I had to be referred to them. At the start I didn’t know I needed to be referred to SACAT, but then once I found out, it still took months to be referred. It was a struggle to get past the FV Team.” Emily remembers feeling unclear about who she was meant to report what to. She said that at one stage, SACAT and the Family Violence Unit both organised to meet with her on the same day. Emily noted that when she finally made a statement to SACAT, she reported multiple physical and sexual assaults. Emily said, “It wasn’t made clear to me that he would be asking questions about everything.” Emily remembers the interview “ending suddenly” and was left feeling like the officer must of had other commitments.

Police investigation

Emily described the timeframe for the investigation as “long” and reflected on the lack of clear information provided to her about what to expect, stating “police went silent” after she reported. Emily remembers leaving the police station feeling really unclear about what would happen next, and stated that since reporting, she has received very few updates. A few months ago, the investigating officer contacted her to advise that nothing would be progressing during the COVID-19 lockdown. Emily reflected that the delays in the investigation have impacted other legal proceedings.

Emily said the lack of communication from the investigating officer has left her feeling “constantly on edge” and “anxious every day.” Emily described that her safety is impacted by not knowing when other witnesses may be interviewed or when charges may be laid. Emily stated, “It seems like all of the big charges are important, but it’s all of the little things that continue to impact me and make me feel unsafe.” Emily explained that in the context of the domestic violence, there have been ongoing incidents which SACAT are not investigating that are impacting on her current sense of safety. Emily has found it difficult to know who to report new matters to.

SUJATHA

Victim survivor advocacy caused police to re-open mistakenly closed case.

The disclosure

Sujatha was sexually harassed in the workplace including being indecently assaulted and receiving a series of sexually explicit communications. Sujatha disclosed the sexual harassment to her supervisor and the HR. Sujatha later disclosed the sexual harassment to her GP.

Sujatha recalled being motivated to disclose the sexual harassment because of its serious nature and her concerns for the safety of other women in the workplace. These concerns

were heightened given that the offender had once told her he had serious mental health conditions and that he had also been the subject of other sexual harassment complaints.

The workplace

After Sujatha's disclosure, the offender took personal leave from the workplace but returned some months later, "he came back to the office, whatever they did with him had been sorted and I don't have the details about that". Problems emerged for Sujatha on becoming aware of his imminent return to a position near her and Sujatha's psychologist advised that she should not be required to work with the offender in the same work area. Sujatha reflects "things started to unravel ... work realised they had to do something with me, and I became a bit of a problem ... I was seen as a problem". The workplace gave Sujatha paid leave for a few weeks, until another position could be found for her. Sujatha specifically noted how difficult it had been working in the same environment as the offender, especially as their offices were close to one another. "When he was returning it became difficult ... where do they put you ... my job was specialised, and they couldn't just move me."

Colleagues also began asking Sujatha questions about what was going on and became unsettled when she couldn't respond, "it was difficult because everything was confidential". Shortly afterwards Sujatha relays "I got moved off ... I got pulled out in a hurry" and she was told she may be put on a redeployment list and required to take further leave while HR tried to find another position for her. This was very unjust as she had done nothing wrong. Sujatha reflects on how difficult it was leaving her colleagues so suddenly and without being allowed to explain why she was leaving "it wasn't handled well at all, people felt like I deserted them ... people felt shaken by it all, they said to me 'you really let us down' ... everyone was still protecting him".

After Sujatha returned to the workplace in a different role, she remained unsatisfied about being the one who was required to move on. She was further concerned about the safety of other women in the office and wanted the offender to be "on the radar". She sought assistance from the Women's Legal Centre who referred her to the Commonwealth HRC. The HRC encouraged Sujatha to lodge a sexual harassment complaint and Sujatha recalls waiting before submitting the complaint to give her workplace the opportunity to sort out the issues first, "I was trying to work with them, but it went on and on ... they were looking to do something with him so I could go back after having been moved around to all these jobs I wouldn't otherwise have taken ... if he had gone somewhere else, I would have been in such a better place". Eventually Sujatha employed a lawyer to assist with the complaint and submitted it. She later withdrew the complaint however, again believing and hoping that her workplace would sort it out, "I withdrew the HRC complaint because work led me to believe

it would be sorted ... I just had in my head that work would do a good job and sort it ... I tried so hard to work 'within the box' at work but I've been let down".

A number of years later Sujatha's previous supervisor inquired how she was going. Sujatha replied, "I'm still so worried about the women back there" and the supervisor responded, "well he's gone, didn't anyone tell you?". Sujatha reflected that despite it taking several years for the offender to be removed from the workplace, at least the other women who worked there were now safe and that her advocacy in this regard had not been in vain.

Sujatha continued working in different roles and remained concerned for the safety of women in her old office with the offender. When she raised with her workplace that she wanted to report the matter to police she recalls "I was treated with a bit of disdain about that".

Sujatha reflects that while her workplace took some initial steps to provide support there was no long-term planning and "when you present with another issue, they're like 'oh no she's back' ... they should be predicting it and planning for it and planning supports in the long term for survivors, to make sure the damage is not getting worse and they can maximise the potential they had before the event". Sujatha feels that workplaces should develop long term recovery plans for victim survivors that don't alter their career path, to ensure that victim survivors are not looked after "just in fleeting moments" and to provide ongoing support when there is staff turnover. Sujatha believes that where an offender in a workplace has mental health conditions, the workplace should ensure the focus is not solely on the offender's mental health at the expense of the safety of other employees.

Therapeutic and crisis support services

Sujatha's workplace provided funding for her to see a psychologist. Sujatha reflects that while "work did the right thing" in this regard, the matter could not simply be resolved by seeing a psychologist. She recalls that interactions with HR left her with the feeling that "if [HR] pay for that, then you should be fine" whereas what was important was that the Employer work with the psychologist recommendations to fix the problem in the workplace for the survivor, not assume that the assistance ended with providing access to the psychologist.

Sujatha found the psychologist that her workplace funded during this initial time beneficial, but after she had a break from the sessions her workplace was reluctant to fund a psychologist again and Sujatha recalls feeling that "it was like, 'you've had your help'". Sujatha later saw another psychologist who provided reports to her workplace which she found helpful as the workplace was required to respond to these reports and Sujatha "got the feeling that butts had been kicked and people were moving on ... at one stage my supervisor even said to me [they] could lose their job".

Sujatha also sought assistance from VSACT throughout these years. She reflects that initially she was not clear about what VSACT could offer but they understood the issue of sexual harassment and they have since offered advocacy services which “has been the best support I’ve had”. While Sujatha appreciates the therapeutic supports, she received during these years, she reflects upon the equally important need for advocacy services as well, “you’re at the bottom of a pit and you need someone to pull you out, not say this is how you live at bottom of pit ... you need someone who knows the system and who can help you get out of it”.

Reporting to police

A number of years later, Sujatha saw the offender several times near both her home and also nearby local offices. She recalls thinking “has he just walked back into another workplace and put women at risk again ... who the hell is giving him a reference? ... is it because of confidentiality that they just don’t know? ... there needs to be something on the record so that employers know”. After seeing the offender near her home, Sujatha recalls she “felt more frightened than usual and started having nightmares again, looking out the curtains at midnight.”

Concerned for her own safety and that of women in the offender’s new workplace Sujatha contacted police. Two male general duties officers attended her home. Sujatha relayed the incidents of sexual harassment to police, and she explained her concerns about the offender routinely being in her neighbourhood. Sujatha recalls the officers initially seemed relaxed until they looked up the offender’s name in their system when “the officer sat bold upright and said, ‘if he comes near your house you need to call 000, get a PPO and think about a security system’”. The officer asked for a copy of an email that had been sent to her and Sujatha replied that she needed permission from her workplace as it was a work document. She recalls she was asked to explain what happened, although police did not ask her to give a statement at that time. Sujatha felt that the officers dealt with her respectfully although nothing eventuated from this initial report, “I have told them and thought the next thing comes from them ... but they didn’t come back to me at all.”

The permission from work regarding the email ended up taking several months for Sujatha to obtain and, in the meantime, police sent Sujatha an email saying there was nothing they can do about the indecent assault in the workplace because the offence occurred some time ago and there were no witnesses.

At the police’s suggestion, Sujatha spoke with both Legal Aid and the Magistrates Court registry about how to get a PPO. She was advised by a Legal Aid lawyer that it would be difficult to get a PPO as there were not sufficient grounds to

establish imminent risk. The lawyer commented that while the time that had elapsed between the sexual harassment made it hard to prove imminent risk, this should not prevent police from taking action to investigate the incidents as a criminal matter.

When Sujatha finally obtained permission from her workplace to give the email to police, she spoke with a police victim liaison officer who advised her that an email would be “a tangible piece of evidence ... and that they will definitely want to take your statement and talk to your workplace.” Sujatha then took a copy of the email to the police station and informed her workplace that the police may contact them.

However, police again responded to Sujatha saying there was nothing they could do regarding the indecent assault or the sexually explicit email. Sujatha recalls “it felt [the officer] was a bit dismissive about it all ... I just thought, get the full picture before you decide there’s nothing there”.

Sujatha wrote to AFP Professional Standards and requested a review of the police decision. Eventually, she received a call from a senior officer at General Duties advising her that the decision not to pursue an investigation was a mistake. Sujatha reflects “I know constables are busy and this is not as serious as rape, and I do hope [the original officer] is ok, but if I hadn’t sent that letter to Professional Standards nothing would have happened, and now it’s being looked at properly ... you start to think you’re going nuts because you have these battles wherever you go ... in the old days you’d say to victims of crime you can go to police, I just assumed they were getting it right behind closed doors ...”.

Police investigation

With assistance from VSACT Sujatha attended the police station again and gave a statement and an investigation into the offences was re-opened. Sujatha requested a female officer which was provided for, and she felt that the matter was being taken seriously.

Sujatha reflected “I feel more comfortable with a woman” and believes that for many victim survivors “responses will come better from women ... women can relate more easily to these offences as it happens to them more often”.

Sujatha feels that her experience with police would have been different if police had made the specialist SACAT unit available for all sexual offences. Sujatha reflects “I was thinking because I wasn’t raped it wasn’t as serious – but looking back on it there was the ability [from general duties] to discount people and not give these offences the serious consideration they deserve”.

SARAH AND PETA

Adult survivor of child sexual abuse denied justice twice.

The disclosure

Sarah recalls that her first disclosure occurred at age seven, when she told her mother, Peta, what had happened to her. Sarah experienced child sexual abuse perpetrated against her by her brother when she was a young child. This was about the time the sexual violence stopped. When reflecting on why she chose to disclose at this time, Sarah explained that because of her age she did not have the words to describe what had been happening to her earlier, although she re-calls experiencing pain associated with the abuse some years prior.

Health services

Sarah recalls that at the time of her first disclosure, there were no service supports available or provided to her as a child. However, as an adult, Sarah was a client of ACT Mental Health Services, and used this service to help support her before she made her first report to police. The experience of disclosing to ACT Mental Health Services was problematic, as Sarah reflects that mental health services treated her experience as a survivor as a psychiatric problem, instead of supporting her to navigate the criminal justice system.

Initial police report

Sarah's first report to police was a largely positive experience. She recalls that when she reported, her case was referred to the SACAT. Reporting for the first time brought Sarah "a little bit of relief", and "at the time, it felt like they took me seriously. I felt believed and supported. They arrested him". Overall, Sarah reflects that she felt respected by Police, but not emotionally supported. She recalls that she was not offered other supports by Police and was not referred to other support services.

Court process (from Peta's perspective)

Peta, as a support person for Sarah, attended Court on the day the offender plead guilty. To this day, Peta reflects on her frustration with the Court for having read aloud Sarah's name in the charge against the offender. Peta left Court that day to tell Sarah that there would be no need for a trial and recalls that Sarah was pleased with that outcome.

In discussing how Peta felt she and her daughter Sarah were treated during the Court process, Peta explains there was no support at the Court for when she heard the guilty plea. She reflects that had her daughter been at Court that day, that she also would not have had any support. Peta remembers the "packed" court room, and not having a separate room to wait.

After Sarah was intimidated to withdraw her statement, the matter did not proceed any further. The offender was never convicted for the offences against Sarah.

Therapeutic and crisis support services

In the later years of Sarah's life and after the first attempt at a prosecution was unsuccessful, she began to experience a significant worsening of trauma symptoms. This caused Sarah to access the CRCC for advice. Sarah was, at the same time, being supported by a mental health support worker. Both CRCC and the support worker encouraged Sarah to report the sexual abuse to Police again.

After the second report to Police, Sarah contacted VSACT. While Sarah was complimentary of her therapeutic experience with VSACT, she reflects that VSACT were not able to help her in her pursuit of justice, because the agency does not have enough legal powers to be able to practically help survivors.

Overall, Sarah and Peta felt let down by the limited practical help support services could provide. Sarah wishes that VSACT could be more of an advocate for her. "I'd like [VSACT] to have powers to go to the top... Some sort of law that would allow Victim Support to go in at higher levels... And say we want answers". Similarly, Sarah reflected that CRCC are limited in what support that they can provide, and that these agencies do not actually help get an outcome in the justice system.

Reporting to police for the second time Many years elapsed before the CRCC and Sarah's mental health support worker encouraged Sarah to go back to Police to try and re-open the case. What followed from the second report, for Sarah, has been one of the hardest parts of her involvement with the justice system.

Sarah and Peta attended a police station together to report the matter for a second time. Sarah understood that her report was sent through to SACAT, but after not hearing anything back for two months, Sarah decided to contact the officer at SACAT herself. The conversation that followed had a lasting impact on Sarah.

"I was told to stop ringing [the officer], and that [the officer] will ring me if anything happens. I was told [my case] was put at the bottom of the pile."

Peta was present with Sarah for this telephone call, and saw the impact that language had on her daughter. Peta explained that Sarah became very depressed and was hospitalised as a result. Communication went backwards and forwards between the Police and Peta, and Police often did not return Peta's calls or messages for an extended period of time. Peta recounts her frustration with Police, in that she had to push for most of the contact to facilitate communication.

Both Sarah and Peta also spoke of their concern and ‘frustration’ about the accuracy of police records. They dispute a date that police records say Sarah attended to make a statement, because on that date she was on her way to hospital to give birth. They also dispute Police references to conversations between them, saying categorically ‘it never happened’. They communicate a shared sense of powerlessness when concrete evidence of Police error was ignored and reflect on their anxiety that the credibility of the case would be impacted by police errors.

Prosecution

Eventually, a joint meeting was held with Police, the Office of the Director of Public Prosecutions (DPP), and Sarah and Peta, to discuss whether the case that was closed all those years ago could be reopened. While Sarah was able to have a support person from the CRCC present with her, as well as Peta, she attended this meeting with many people she had never met and with people she had had largely negative experiences with. Here, the DPP told Sarah they could not do anything to re-open the case since the charges had been dropped. Sarah was also told for the first time that the offender never plead guilty to the offences. Sarah and Peta grew frustrated with what they were told, as Peta had sat in the Court room those years prior when the offender plead guilty, and she heard her daughter’s name read out in Court. Sarah and Peta did not understand why the DPP said they could not reopen the case. Sarah re-calls leaving the meeting extremely disappointed, and as if her pursuit for justice had hit a dead end.

Police investigation

After this meeting, Police reached out to Peta and provided some information that gave Sarah hope for investigating a difference offence by the offender. Sarah, despite feeling hopeful and happy, was confused: “They just told me they couldn’t do anything. But then I thought, maybe we might be able to get justice”.

Peta and Sarah were asked to attend a police station to be interviewed. They were not provided with information as to why they were being interviewed or for what purpose, until both their interviews were finalised. Sarah recalls that she was “really scared, because, like, I did not know what they had up their sleeves. Maybe they got something they can do. They didn’t tell me”. After both Sarah’s and Peta’s interviews, an officer told them that Police will put something together for the prosecution, and that the focus would be on threats and intimidation of a witness. Peta remembers that this officer told them they “felt confident” about this case.

While this gave both Sarah and Peta hope, they never got an update in relation to that investigation again. After two weeks had passed, Peta rang the officer numerous times and did not hear back, until finally, they were told that the case could not

proceed because there was not enough evidence. Peta tried to escalate this to a senior officer, who has never acknowledged or returned any of her emails. Peta recalls how confusing it was that they said they did not have enough evidence, after the comments made to her and Sarah after the interview.

At this point, Sarah said “I don’t feel like I’m important enough for them to help me. He gets away with it... I wanted an outcome. I feel let down by the system as well”.

To this day, Sarah does not understand why a case could not be re-opened when she was threatened to withdraw her statement. Finally, Sarah commented that after everything she had been through, she could not recommend another person to go through the same process she went through.

“I’d like to tell them to go for it, but with my experience, I have no faith whatsoever. I would say I’ve got no faith.”

Reflecting on her experience as a survivor in the justice system, Sarah wished three things to be different. That people had more compassion, that she was able to receive practical help, and for the system to deliver her a sense of justice.

Peta wished for similar things to Sarah, noting that regular and clear communication from agencies is important. She wished that the system had shown more compassion to her daughter, and that Police would respond to enquiries in a fair timeframe.

HEATHER

Survivor of institutional child sexual abuse.

Disclosure

Heather first disclosed to a senior member of the institution about five years after the abuse. She experienced childhood sexual abuse within a religious institution for several years as a young teenager. Heather was met with anger when she first disclosed and the senior member of the institution subsequently told her parents about the abuse, which resulted in her being thrown out of home. Heather recalls she was “told by the bishop that no-one would ever believe me, which mirrored what my abuser was telling me, this was again echoed by my family, so I always felt like there was no point ever reporting”.

This was the only disclosure that Heather made until she met and married her husband. It was not until one of her children became the age that she was when the abuse took place that Heather began the process of reporting to police. Heather was put in contact with the ACT Police by a member of the institution’s professional standards from whom she had sought support and information. Heather recalls “She told me from the outset that she believed me. I always had this thing in my head that authority organisations would be laughing at me, but she did a lot to reassure me around this. The most important thing is being kept in the loop.”

Therapeutic and crisis support services

Heather was offered support services by the institution, as it had been reported internally, however because she was no longer residing in the ACT it all became “too hard and I didn’t receive any information or referrals to local support services”. Heather was offered counselling funded by the institution; however, she was again required to locate her own provider with no information or support on where to begin looking. She was also advised that the funding for counselling was conditional and was revoked at certain points of the process.

Heather accessed crisis services during the time where her counselling was not being funded. Heather was put in contact with a service by ACT Policing after asking for support and was referred to a local crisis service. She recalls “I was transferred 6 times, and every time I had to re-tell my story. I was asked what I was calling about. They asked when I was assaulted, and I said 25 years ago. They told me ‘You do realise we’re only for recent assaults, not for historic matters like you.’ Then I would be transferred again. (The service) told me about their lack of funding and support, and repeatedly told me how busy they were at the moment, and because I was a historic case, my need for any help ‘wasn’t considered acute enough’. I felt like the service wasn’t for me.”

Because Heather lived interstate, she felt that this was a barrier to her being referred to appropriate support services, “I felt that there were things the DPP would usually refer a ‘Canberra Victim’ to, but because I was interstate, the DPP did not make any referrals. It felt like they had a body of knowledge about services that I wasn’t allowed to be a part of.” Heather felt that because she was good at looking after herself, and because of her previous experiences with crisis services, she didn’t bother to ask for any additional support, because it just wasn’t there. For the little support that Heather did receive, she reflects that “We condition victims to be grateful. You have to be really grateful at every point, you are reliant on these structures to hold your abuser to account. It feels like if you are not grateful at every stage, they will stop supporting you.”

Heather was supported by her counsellor through the criminal proceedings, however Heather wasn’t offered any other options for support or provided with contact details for crisis services in the instance where she needed to access support after hours.

Heather felt that there were points where the support worked for her, but that it happened in spite of the systems in place, rather than as part of them. Heather felt that she had to research what support was available to her, as no one in the ACT gave her this assistance “I am left with a feeling of not being treated respectfully, but there were points of respect. The points where I did feel respected were actually the points where the services, I was engaging with were doing what they

were meant to be doing ... Services need to tap into their own humanity and be able to put themselves in the victim’s shoes, and think if this were me, how would I feel?”

Reporting to police

Heather recalls being terrified to report to police, having been conditioned her whole life to fear them. However, after she was first put in contact, police responded quickly and in a positive way. Heather was put straight in contact with members from SACAT as the person from professional standards at the institution had made the initial contact on her behalf.

Not long after her initial contact with police, Heather was interviewed at her local police station by the SACAT officers. The interview went for over twelve hours and the officers told Heather that it was one of the longest statements they had ever taken. They offered to Heather that she could take breaks and put it over to the next day, but Heather was eager to get it completed. Heather recalls that “it was brutal, but it was a good experience in that police were really kind”.

Heather recalls the interview space where she provided her statement was terrible, as was the breakout room next to it. There was no decorating in the room and there was no thought to making it comfortable, “it didn’t feel like somewhere safe you would want your daughter going if she had been assaulted.” Heather was surprised to think that no one had looked at the environments and considered what could have been done to make the people who needed to use those spaces feel like they were cared about and doing something important. Instead, Heather did not feel safe walking in there and “felt like I should have been ashamed to be there — like the victim should be ashamed to be there.” Heather reflects that “if I could change one thing about the whole process, it would be this”.

Police investigation

Heather felt that her interactions with police were incredible at the start and had positive experiences with all the interviews. Heather found the lead detective to be wonderful and recommended her internally to receive a reward, “She was very human. I felt that she knew it wasn’t ok when she couldn’t update me more frequently. She would say that she was grateful that I wasn’t upset with her because so many other victims get upset.”

Heather and her family were told by police not to talk to anyone about the investigation, their evidence or what was discussed in their interviews. This made things very difficult for Heather, as police would not say who they had interviewed. Heather was left feeling very isolated and as though she could not speak with anyone about the matter, even her husband.

The investigation was lengthy, taking almost two years to be completed, and during this time Heather only received three phone calls from police with an update. She was updated once when they interviewed the offender, once when he was charged and lastly when the case was handed to the DPP.

When the offender was arrested and charged before the court, Heather recalls not feeling protected by the conditions that had been put in place and the freedom that the offender continued to have, “I remember thinking that when he was arrested, he would be incarcerated but this wasn’t the case. Nothing was explained to me. I was told he was charged, but not what the charges were or what would happen next. We asked whether he was in jail and they said no. They said they couldn’t tell us anything else about what the arrest was like.”

The court process

Heather felt the continuity of contact and support from the DPP Witness Assistants was very positive and affirming. She reflects “a big thing that the DPP Witness Assistant did was keep me in the loop at regular intervals.”

The prosecutor would often speak with Heather and would use the term ‘running the case’. Heather felt this term removed the “human element”. By using the term ‘running the case’ Heather believes it was apparent that this was the prosecutor’s job and that at times it felt the prosecutor was very removed from the person who had been harmed.

Heather was kept updated about the processes but felt that the information came very late. At one point the trial was scheduled and then had to be rescheduled and she recalls “we would have appreciated more notice”. When the trial was finally listed, Heather recalls there being a lot of rush to organise care for their children, accommodation and work arrangements. Heather feels there was not enough notice between the date of when the trial was listed to when the trial commenced for her and her family to be able to effectively plan everything.

Heather was never informed of what the charges that the offender was facing and “I felt that as the victim, I had no idea what questions I would be asked or what direction they would go in. There were things I wanted to bring up while giving evidence, but I felt that there wasn’t space for this. In retrospect, this really bothers me because it undermined my voracity as a witness. This was all down to the way the process was run, not the information that I actually have.”

The offender was found not guilty of one of the charges and Heather felt that this was because she was not given the space to talk about particular things when she was giving her evidence. “This impacted the evidence I gave because I wasn’t fully sure what they needed to prove. I know there are some things that are done so that victims cannot rehearse anything, but I still wonder whether there are better ways for evidence

to be taken. It sometimes feels like everyone else knows what is going on, but the victim doesn’t know. It’s like trying to trick the victim.”

When Heather and her family attended Canberra for the criminal trial, the DPP organised a hotel for them to stay in. Heather recalls the location of the hotel room was awful and she and her family felt very fearful of running into the offender or his legal representatives. Heather and her family could see the Court and the DPP from their hotel balcony, and it felt like there was no escape for them from this space, “I was either in the remote witness room or in the hotel room and I didn’t feel safe anywhere else.”

There were several newspaper articles that were published from the beginning of the trial, with some including information about what Heather had disclosed whilst giving her evidence. Heather did not feel that the DPP did enough to prepare her to expect the media attention on the matter, “I feel disturbed that the DPP did not provide me with information about the possibility of the media picking this up. I was provided with very little information about what to expect while giving evidence, where I would be staying in relation to my abuser, and how the media might respond to the case.”

“The kindest thing that happened to me in the two days of the trial came from a manager at a restaurant, who had no idea what I had just been through, who gave me a free ice cream. Nothing to do with the [institution], AFP, or DPP stands out in my memories. I feel that is very telling.”

Heather gave evidence in an offsite remote room. She reflects “I remember someone said to me, this is where the youngest and most traumatised survivors give evidence, however I couldn’t see any signals that kids had been there.” Heather recalls feeling intimidated by the environment of the room and while she was giving evidence.

The offender’s family members sat behind the prosecutor in the court room and were directly in Heather’s line of sight on the screen as she gave evidence. Heather, noting that there was a court sheriff and a DPP witness assistant present, could not understand why nobody said or did anything to prevent her from seeing his family while she gave evidence. She reflects “There is the intimidation of being in this environment that you’ve never been in before, there are people looking at you in your direct line of sight who clearly don’t believe you, there are people all around you, there may be other people in the court room that you don’t know about. It was the most intimidating thing I’ve ever done in my life.”

The offender plead not guilty to all of the charges and was ultimately convicted of most of the charges. Heather provided a victim impact statement for sentencing. The prosecutor flagged with Heather that she may be cross-examined at any stage if she decided to do a victim impact statement. Heather

recalls “The prosecutor edited [the victim impact statement] about four to five times prior to sentencing, and that felt disempowering. It didn’t feel good to be told that I could be cross-examined at any time, even after all of that. It should have been a healing process at that stage, and I felt that at that stage, the questioning should have been over. It felt like I was encouraged to complete a victim impact statement but then simultaneously threatened with it ...It felt like my feelings and responses to the assault were being policed.”

Heather chose to read her victim impact statement inside the courtroom, as she wished to address the Judge directly. Heather, her family and supports were made to sit with the offender’s family in the same courtroom and on the same row of seats. Heather reflected that she understood this to be because of the size of the courtroom however she strongly believes that “a victim should be able to enter the court room and read their victim impact statement before the Judge, without needing to be surrounded by the perpetrator’s family, and without feeling unsafe.”

After the sentencing the offender instantly lodged an appeal which the DPP had spoken with Heather about. Heather then received a call a few weeks later to let her know that the offender had dropped the appeal. The offender subsequently made another appeal a number of years later. Nobody informed Heather about this appeal however and she only came across the information by chance in a newspaper article alerting her to the appeal.

After the sentencing Heather was also provided with a paper form to complete to be registered on the Adult Offenders Victims Register. Heather was told by the DPP Witness Assistant to sign and complete the form and email it to the address attached. Heather does not recall being provided with any information about the functions of the Register or receiving confirmation of her registration. She reflects “There seem to be all of these different areas of the justice process, and it seems like no one talks to each other, and this creates risk and retraumatisation [for survivors].”

LOUISE

Survivor finds services are fragmented and police deter sexual assault report being made.

The disclosure

Louise disclosed the sexual violence almost 20 years after the abuse ended. Louise experienced ongoing sexual violence in the context of domestic violence relationship. Part of the reason for the delay in disclosing her experiences was because “I didn’t even realise it was assault, it was my first relationship. I had come from an abusive and dysfunctional childhood.” “I didn’t feel like I could say no, and I didn’t know it was sexual assault until after he had left”.

Throughout and following her relationship breakdown, Louise had journaled and documented her experiences of family and sexual violence. As part of her divorce from her husband, Louise provided some of her journal extracts to her separation and Legal Aid lawyers. Talking with these lawyers who were specialised in Family Violence, was validating for Louise.

Louise had also made some disclosures to her local police about the violence she had experienced to obtain a protection order, as she was feeling unsafe after her husband left. In these disclosures Louise provided her local police station officers with information about the physical violence, emotional abuse and sexual abuse that her husband had subjected her to. Louise felt that her experiences disclosing to police were frustrating, however noted they did provide her with the contact details for the local family violence counselling line. This service was the first that Louise was put in contact with that validated her experiences and explained to her that what she had experienced was indeed sexual assault.

Each of these disclosures were within a month of her husband leaving the home they once shared together.

Health services

Louise saw her GP a few years after her husband had begun sexually assaulting her, because she had experienced bleeding and pain. Louise felt humiliated about seeing a doctor about “stuff going on down there”. Louise describes this experience as humiliating and shameful, “I didn’t discuss my sex life with anyone else and I didn’t know any better that other people weren’t doing these acts behind closed doors”.

More recently, since relocating, Louise has been connected with a support worker through a health service that is not related to the sexual abuse or domestic/family violence that she has experienced. Louise feels that the support worker has been able to provide holistic support options and that they have been able to locate local support services for her that meet her needs. Louise acknowledges that this is interstate, however notes it is an example of how a health service has provided comprehensive, holistic and positive support options.

Louise kept her health records and medical reports that related to the sexual abuse she experienced and feels that if she had not kept these records and reports there would be no evidence because medical records are not kept for longer than seven years. Louise believes that any medical records that relate to disclosures or symptoms of sexual abuse should be kept indefinitely by medical practitioners and health services, and the same should apply to all informal/formal Police communication and reports, knowing it often takes victim survivors years to disclose their abuse.

Therapeutic and crisis support services

Louise experienced referrals to many different support services. Each time she was required to share her experiences with new and different people. Louise had some concerns that each referral to a service included a copy of her journal notes that contained incredibly personal information. “I am worried that people I do not know are reading my incredibly private information, I feel that it is very shameful, I feel embarrassed. Then there is always a fear that they are going to share the information with other people”. Louise found that by being provided with each agency’s confidentiality clauses as to how her private information was held, protected and when disclosed, helped allay some of her fears and concerns. Louise was put in contact with a specialist family violence service, this service ultimately provided in person support when Louise reported to police. Louise did not feel a connection with the person that she had been assigned through the service and she was left feeling that if she didn’t connect with this person, that she would lose all other services and supports that were being provided by that agency. “The smaller support agencies are not funded enough, that if you don’t connect with someone that you don’t have choice about connecting with someone else”. “I felt like I was being abused all over again, I felt like control was being taken away from me” when I felt as though I couldn’t ask to be in contact with a different support worker. Louise felt that there was not a confidential way that she could provide her feedback about her experience with this service, noting it was important for this to be an option for all services as victim survivors may feel they can’t say anything negative at a risk of the services being taken away.

“Where you are in a situation where you rely on strangers to help you, You don’t want to wear out the resources that you have been given. I am really aware of not asking too much, I don’t believe that my situation will change in the next two years and I do need support for that time. I am very mindful of the fact of putting people out”.

Louise was eventually referred to a specialist assault service. When Louise spoke with them, they advised her that there was at least a four month wait on a counselling referral, and she was not provided with any alternative referral options or details about where she could access therapeutic support.

Louise found that as her sexual assault and family violence experiences occurred in multiple locations, she was constantly being ‘passed around’ by the family violence financial support services, who seemed to have differing state program eligibility requirements which “aren’t clear nor transparent”, which she has found frustrating and confusing to navigate and understand. She has yet to receive any financial assistance whatsoever in securing her home premises.

It took some time before Louise was put in contact with VSACT. The service that has been able to fund her counselling, with a specialist provider in her interstate rural area. However, Louise noted that she feels support services do not work well together, with some supporting in one area and the other in another. Louise feels that this often means that people who are no longer living in the state where the crime occurred are left out but are also required to tell multiple people about their experiences.

Louise believes there needs to be some consistency amongst services “whether you walk into a police station, a lawyer’s office or your GP, you are all being given the same information and access to the same support services as someone else” Louise pointed out that she is accessing over 15 different services at the moment, all providing her with some kind of support that relates directly to the crimes that she has been subjected to by her husband.

Reporting to police (interstate)

When Louise reported to police, she did not feel that she could fully disclose the extent of the sexual abuse as the only reporting option was to a male constable at her local police station. Louise’s Legal Aid lawyer ultimately provided copies of Louise’s journal notes to police “which made a world of difference”.

Louise feels that her experience with the local police officers was projecting a bias against her. Louise stated because she lives in a rural town that the officers all knew people in her community, including her husband. All the officers who worked at the local police station were men, and Louise felt that having to speak with them about personal abuse was humiliating and not validating. She felt frustrated with them and as though it was a waste of time.

Reporting to police (Canberra)

Louise initially reported her husband’s abuse to the police several years into the relationship Louise was trying to get information about her options but instead “they put the fear of God in me” and she did not go through with the report. This experience left Louise feeling scared of the process and she didn’t feel comfortable or safe talking to police again.

More recently Louise completed an online report for historical sexual abuse. After not hearing anything or receiving any confirmation that the report had been received, Louise’s case worker from VSACT contacted police to only be notified that there was a system error and her report had not been received properly. Louise questions whether she would have ever heard anything, or whether the matter would’ve been investigated if she hadn’t followed up. “They do not make it easy for victims to report, it is like you are meeting stumbling block after stumbling block. You don’t know who to report to, you don’t have any information.”

Louise feels that the police have made it very clear through their communication that historical sexual assaults do not often get through to court proceedings or to charges being laid. Because of Louise's experience with reporting to police, she doesn't believe that police are the right people to be reporting family violence and sexual assault to in the first place. Louise feels that police rely too heavily on physical evidence and questions 'what if there is no physical evidence, does the matter just fall down'? Louise stated that she has had to be the one in her experience collecting all of the evidence and providing it to police, "the onus is constantly on the victim, it is tiresome. And I can understand why, when the investigating officer contacted me, she said in the email that when people come forward some people just want it noted on the record because they don't have the energy to pursue it any further."

"I can really understand and see why victims of sexual assault do not come forward. The whole process is geared to retraumatise them over and over again, it really is. Unless you have hard evidence of the assault you will not see justice. The system is victimising".

The matter is still being investigated, and Louise is still having ongoing contact with police. When explaining her engagement with police, Louise stated "I would say they have been professional. I think that their job means they have to be professional, but I don't think that translates to them being empathetic".

Louise believes there needs to be an agency that sits between the victim and the police for domestic violence and sexual assault matters. When there is an incident that occurs, this agency could attend with the victim to make their report to police. The service could aid by starting the process for access to appropriate support services and to help the victim survivor with navigating the criminal justice system.

AALIYAH

Survivor of sexual violence denied justice.

The disclosure

Aaliyah is a young university student living in shared accommodation with four other students and she experienced sexual violence from one of her housemates. Aaliyah recalls that immediately after the violence she was in shock and it took time for her to process what had happened. A few days later, Aaliyah first disclosed the sexual violence to her friend Domonic. Domonic was also friends with the offender, and while he was initially supportive to Aaliyah and indicated to her that the offender had actually done something like that before, he later withdrew his support after expressing concerns about his friendship with the offender.

Later on the same day, Aaliyah also disclosed the offence to one of her housemates, who provided her with unconditional

support. Aaliyah reported to police a week or so afterwards and disclosed to other housemates and friends over the following weeks. She recalls "it was sort of a process about how far I wanted to go and who I wanted to tell".

Health services

Aaliyah spoke with several General Practitioners (GPs) about the offence and about concerns for her mental health. She asked to be referred to a psychiatrist, but none of the GPs would refer her to a psychiatrist and only referred her to a psychologist or counsellor. Aaliyah recalls "generally their response when I disclosed was just about putting me on anti-depressants, or sometimes they would refer me to websites or lines to ring and just generalised mental health resources". While Aaliyah felt the GPs were sympathetic, she also felt they tended to "push anti-depressants" and did not really listen to what she needed. Aaliyah later spoke with a friend in the medical profession who referred her to a psychiatrist and this psychiatrist diagnosed her with PTSD and bipolar disorder.

Therapeutic and crisis support services

A friend referred Aaliyah to CRCC and she initially went to the CRCC drop in centre at the university, however "the first time I went there no-one was there and no-one answered the number when I called it so that wasn't great". Once Aaliyah was able to get in touch with CRCC she received ongoing support, including accessing a counsellor and receiving support during the police investigation. Aaliyah reflects that while the counsellor "was very nice" the counselling sessions weren't particularly helpful, and she needed a higher level of support. Despite this, Aaliyah continued to see the counsellor and reports that CRCC never checked in to see how she was going or if the counsellor was a good fit and she had too much going on to try and find another counsellor.

Aaliyah was later referred to Victim Support ACT (VSACT) and requested to see a psychologist. Aaliyah waited for her appointment only to find out that VSACT had arranged for her to see a counsellor not a psychologist as promised. Aaliyah called VSACT after the appointment to express her disappointment. The staff were apologetic and arranged for her to see a psychologist. Aaliyah reflects "I just wish that VSACT had psychiatrists on the books, it would have made things so much easier for me to access the help I needed". Aaliyah also applied for the VSACT Financial Assistance Scheme and was informed it would take a long time to process the application. Aaliyah heard from the Scheme shortly after applying and had an update about 6 months later, but she is disappointed that she has not heard anything from the Scheme in over a year.

Aaliyah reflects upon the large number of services she liaised with during this stressful time of her life, including medical services, therapeutic services, financial assistance, work and study supports, support services to provide advocacy with

police, complaints processes and other services that Aaliyah contacted to advocate for change for victim survivors of sexual violence. She reflects how much easier it would have been to have one centralised support person to identify and coordinate all of these services and ponders how easily she could have just “fallen through the cracks” and dropped out of university. She reflects “coordinating all the admin was like a full-time job and at a time when I was least able to do it”.

Reporting to police

Reflecting on her experiences with police Aaliyah noted “overall I thought there were a lot of problems, I found it to be a really awful experience”.

A week or so after the incident Aaliyah called the Police Assistance Line to report the offence. She was told police would call her the next day however when she missed this call the police instead turned up at her house without notice. As Aaliyah did not have her support person with her and was not ready to give a statement, she arranged another time for police to return.

Police did not arrive at the arranged time however and Aaliyah recalls “I waited eight hours for them to show up, my friend stayed as long as she could, but eventually she had to leave. I rang them every couple of hours, and they kept telling me that they were being called out to different jobs”. By the time the officers arrived it was late in the evening and Aaliyah recalls the female officer who attended “was really great, she seemed really well versed in how to speak to me”. The officers did not take Aaliyah’s statement at this time and a further time was arranged to do so. Aaliyah recalls “the statement was booked in for some time that same month and it was cancelled and rescheduled once or twice ... that was difficult because you try and emotionally prepare for it but you get this feeling that ‘oh I was too busy and we needed to do something else’”. Aaliyah made notes about what had happened because she was worried that the delays could result in her forgetting important details. Aaliyah eventually made a video statement with two officers who she felt explained the process well.

Police investigation

Aaliyah’s matter was investigated by general duties police. Aaliyah recalls the male officer in charge “had never had a sexual assault case before, he told me this, I think he wanted to do well, but I felt like a test case.” She enquired with police about why her matter was not allocated to SACAT and they “gave a bit of an evasive answer, saying it was up to SACAT what matters were taken and it was based on capacity”. She also enquired with CRCC about SACAT who indicated that “they thought SACAT will only deal with matters that involve penetration” and Aaliyah reflects “it sort of implies that it is not serious until penetration occurs, when sexual assault is way more complex than that”. Aaliyah reflects “having a unit

dedicated to sexual offences is a great idea but I was never given this opportunity”.

The investigation took approximately six months. Aaliyah recalls police advised her that they spoke with Domonic because he was the first person to whom she disclosed the offence, but they did not want to talk to the other friends that she disclosed to, including her housemate who she spoke to on the same day as Domonic. Given that Domonic was not very supportive, Aaliyah believes that police should also have spoken to the other friends that she disclosed to and that this would have shown her disclosures were consistent.

When Aaliyah heard that the offender was moving interstate, she informed police so they could interview him beforehand, but police said they could still interview him after he moved. Once the offender moved it took police several months to locate him to interview him and when they did Aaliyah reflects “[The offender] said he didn’t do it and they just said ‘well, he says he didn’t do it’”. Police told Aaliyah they sought advice from the DPP about the matter and “the DPP said no and that was the decision that was made”.

During the investigation, Aaliyah felt frustrated with a lack of information and updates from police and recalls “they were not keeping me updated or being transparent about what their methods of investigation were ... I never got an update on that case unless I rang them, over and over again”. She raised this issue with the officer on multiple occasions, but she recalls “he kept promising timeframes and not doing anything”.

Aaliyah also reflects that there is no transparency about what matters proceed to the court and what matters don’t. She observes “I don’t think they are giving people a chance to go to court, it seems like they will only do this when there is physical evidence” and that “some of the things [the police officer] said were a bit off I think ... he said he did not think my case would go to court as he thought the jury would think there was ‘mixed consent’ ... that was not a nice thing to hear, I thought wasn’t that for a lawyer to argue?”. Aaliyah believes that to prove a sexual offence “beyond reasonable doubt is an almost an impossible standard, and this is particularly true when there are no witnesses or physical evidence” and asks, “if it is so unlikely to happen why does it even exist?”.

Aaliyah requested the police review her matter which they did but the result remained the same. Aaliyah ended up feeling the process was rather futile observing “it was like police reviewing their own decisions”. Aaliyah reflects that without a criminal justice response there is nothing to hold the offender and other offenders accountable and nothing to stop them from offending against others. Aaliyah considered making attempts to caution the offender’s employer about the offence in order to protect others but was warned this would be “defamatory”.

DIANNE

No options for victim agency in the criminal justice system.

The disclosure

Dianne disclosed to a friend, after the incident. Dianne said she “called her on the way home. At that point it hadn’t hit me, the reality of what happened”. A couple of days later, Dianne went for a walk with Isla, and that was when “the emotional response started to kick in”.

Dianne later met another friend of hers and disclosed to her what had happened, where her friend “was the first one to call it rape. It threw me completely. She was the first one I spoke to directly about it being a sexual assault. She has been sexually assaulted before, so she called it what it was”. Her friend encouraged Dianne to contact the CRCC, which she later did before reporting to police.

Therapeutic and crisis support services

Dianne has engaged with two key support services and says she would have benefited from clearer information being provided to her earlier on and ensuring that counselling was available for survivors so that they did not need to be placed on long waitlists when they needed support most.

The CRCC was the first support service Dianne reached out to not long after the sexual assault. When Dianne called the CRCC, it was “really just to get verification that it was rape. Because you don’t ever think you are going to be in that situation, it isn’t what it looks like on the TV, in the movies. And it really can happen to anyone”. Then, the CRCC asked Dianne what she wanted to do next, but it wasn’t until Dianne spoke to her friend Isla that she decided to call the police.

Dianne said she felt absolutely validated and reassured by the person she spoke to at CRCC. However, “they asked me about counselling and accessing counselling, but immediately off the bat told me there was a waitlist, so I was unlikely to see anyone anytime soon”. Dianne agreed to be placed on the wait list, but immediately, Dianne felt that the support she could receive while processing her trauma was limited. “It was a good two or three months before I got to see someone through the rape crisis centre”.

Dianne also felt that a lot of the information she was provided was very generic and would have benefited from clearer information about what options she had. “In that time, you are trying to make these really important decisions about reporting and what to do next while trying to deal with the initial shock of what you have been through... you just need straight to the point information about what your options are.”

Dianne contacted VSACT almost six months after the sexual assault, when a friend of hers mentioned VSACT as a possible

service she could speak to. Dianne reports having had a positive experience with VSACT and has been surprised that VSACT is not one of the main service referrals for survivors. Dianne said that by the time she got to VSACT, she was tired of advocating for herself, and “having [VSACT] available, even to be the liaison between the two [herself and police] ... it’s like, it made it feel a lot more supported. It was really validating for me to know that someone else was speaking for me, and actually that it was [VSACT’s] job to do it.” In particular, Dianne was upset that police were not well informed about the services available and felt that police referrals to support services was a “tick box” exercise. Dianne remembers asking police if they knew there was a waitlist for counselling at the CRCC, and police confirmed they did not know that was the case. This was particularly problematic because this was the only service police referred Dianne to.

Dianne wishes there was earlier, coordinated intervention from support agencies, to ensure that survivors have a positive and beneficial experience when they reach out for support. “If I had been given a list of who I could access and why I might want to access them, maybe it would have been different... that initial response is so important to give people a good experience of what that is, so that more people come forward. If less people feel supported in that initial response, they will immediately have a terrible experience”.

Reporting to police

Dianne wishes her initial police report was handled more sensitively, and that she was given clear information about what her options are in a justice process from the outset.

After reporting over the phone, two female officers attended Dianne’s house to take an initial statement from Dianne. Dianne was asked to go into detail about what had happened, which she reflects on and thinks was strange and unnecessary. At the time, Dianne asked the two officers what her options were, and what the police officers told Dianne left her confused about what decision she wanted to make.

“I was told either I drop it and don’t say anything, or I go down the formal investigation route... My initial response is that I don’t want to ruin [the offender’s] life. That was never my intention. Yes, he did the wrong thing, but I just wanted him to know that [he did the wrong thing]. I wanted him to have this ‘oh my god’ realisation. I wanted it to be on the record so that if it ever happened again, they could keep an eye on him if something similar happened.

None of those things were an option. I was told that the formal investigation was a long-winded process, to which the majority of cases don’t end up going to court or prosecution, but it was really the only option I had left, to do that or let it go.”

The general duties officers contacted Dianne and told her that they could not speak with the offender about what he did, and

that her options were limited about whether police investigate, or not. Dianne was overwhelmed with the weight of the decision she had to make: “I don’t understand how people can put such a massive weight on you to make a decision when you are dealing with the trauma of the rape itself”.

After being encouraged to seek support and report to police, Dianne was faced with two decisions; neither of which she wanted. For Dianne, justice meant that the perpetrator would be spoken to and told that what he did was wrong, and what the impact of his actions were. Instead, police told Dianne that she could either not report the sexual assault and nothing would happen, or she could commence a formal investigation with the aim of going to Court. At the end of it all, Dianne said that “the hardest part ended up not being the rape, but the way the system responded”.

Police investigation

Over a month passed before Dianne decided to proceed with the investigation, and she understood that her case was referred to the SACAT in ACT Police. What followed in the police investigation was a series of events that, in Dianne’s words, dismantled her trust in the investigative process.

Dianne remembers that the general duties officers never gave her a timeframe for when someone from SACAT would contact her, and when they did, it was a phone call out of the blue when she least expected it. This became a common feature of all her communications with police: “they would just call when they are at work, and they’ll call you while you were at work... I wish they had a conversation to ask me how I like to be communicated with. It’s about that respect thing, about people’s lives and people’s jobs, and being able to mentally prepare and be in a safe space”. Dianne said she was often in the position of having to take these calls while sitting in her car in a packed parking lot outside her work.

When Dianne went in to give her formal statement to the SACAT officer, there were numerous factors that removed her agency and choice. There was never a discussion about having a support person from an agency or a choice of male or female police officers. Because Dianne had accessed the CRCC earlier, she had been told by them that she could take a support person, so she chose her friend Isla. When Dianne arrived, she did not know that her interview was going to be video recorded, which shocked her: “You want to have the opportunity to prepare yourself on how you wish to be represented and I didn’t get that choice”. Dianne also reflects about how unprepared she felt for the whole 3 hour long interview, the way they asked questions and what questions they asked.

“Where was his hand, where was your leg?”. All the detail I had been mulling over for months because I didn’t want to forget these things. There wasn’t a lot of reassurance in that

conversation as well. It was just black and white detail. And you know, you are talking very intimate details about your own body. It felt very sterile, really.”

Dianne wishes she had been prepared in some way for that interview: “But instead, we go into the complete unknown in a room full of strangers to tell them really intimate details about yourself”.

For Dianne, the investigation part involving her finished with that interview. The officer asked Dianne about other people who she had disclosed to, which were her friends Isla and Mary. The officer said he would contact both Isla and Mary for a statement. Dianne has since learnt through a complaints process that the officer failed to interview one of her friends, despite following the officer up several times.

Dianne was also told that police would download her phone to capture all the communications she had with the offender. When the officer never contacted Dianne to arrange this, she followed that up as well, which prompted the officer to invite Dianne to the police station. When Dianne went to the police station, she was surprised that the officer sat Dianne down in the foyer of the police station, and asked Dianne to show him the messages while he took photos of her screen.

“So then I had to find all the texts on my phone, see this guys name and scroll all the way to the top. I had to scroll and he would lean over and take the pictures [on his work phone]. It felt weird. Initially, saying [the officer] was going to take your phone and give it back, so I’m not involved. He then asked for pictures of [the offender], so then I had to see those photos of him too.”

All of this made Dianne feel that the weight of responsibility was with her for the investigation as she had to push and ask for things to be followed up.

After several months of not being contacted by police despite being told she’d be contacted in 4–6 weeks, Dianne decided to contact VSACT. At that point, VSACT began to liaise with police on Dianne’s behalf. Within about a week of VSACT becoming involved, the officer called Dianne without any notice. “Again, I was so unprepared because I was at work, I was so angry to hear from him”. VSACT then requested that all communication came through in writing for Dianne: “Then it was in writing, which was a lot better. I can read it on my terms, and at appropriate time, as opposed to having a phone call when it suits them”.

Shortly after this, the officer offered to meet Dianne in person to talk about whether the case would go to court. Dianne said that at this point, it already felt as if the officer had made up his mind that the case would not proceed. At this meeting, Dianne was able to have an advocate and support person from VSACT attend with her. Dianne said that this made a significant difference to her, because she “was able to have

an advocate there, someone that knew the system... to be a support for me and know what my rights are in that situation". When arriving at the meeting Dianne waited in the foyer of the station for a while, when the officer arrived Dianne and her supports were led down corridors. The officer remarked that he hadn't been able to prepare a room for the meeting and they were taken to a room where the officer stated it was where they interview the offenders. Dianne recalls the officer saying this in a blaze manner. "[The room was] super small, cold, dull, dingy room that was really sterile." "He hadn't prepared where I felt safe or reassured".

In this meeting, the officer opened the conversation by saying there is not enough evidence to go to Court, and that he had liaised with the DPP and that they said it would not end in a prosecution. Dianne recalls the police officer had "painted a really dull picture and said there would be no point, it's all of a matter of consent". During this conversation and after Dianne had asked specific questions, she was told that police had spoken to the offender. Dianne was told that the offender had spoken to his lawyer and decided not to speak to police. Dianne was upset that "he [the offender] got a choice to say nothing... to have absolutely no action taken... as far as I'm concerned, absolutely nothing in his life changed and he had no consequences for his actions and got to walk away with no accountability".

At the end of this investigation, Dianne was left with a sense that her case was not as important as the next.

"From [the officer's] perspective and cases he does deal with on a daily basis, he probably looked at my case and said 'that's not as important or serious'. It came across in his attitude that he had no sense of urgency with this one. It makes me think, 'is this how they deal with all cases?'"

The workplace

In the wake of managing the trauma of the sexual assault, Dianne said one of the hardest parts was managing her work at the same time, because "other than your home, work is where you spend most of your time".

One thing that would have made a significant difference for Dianne would be to have access to additional leave, outside of her personal and annual leave. Dianne ended up exhausting all her leave balances throughout the course of the investigation in attending appointments and having time off work to try and recover. When Dianne unexpectedly suffered a physical injury that meant she could not work, she had no personal leave left, and she was concerned about her financial security:

"With [the injury], my fear was that I didn't have personal leave because of the [sexual assault]. That was a trigger. I had used all of my personal leave on what happened. And now I was worried about my finances".

Dianne said that additional leave should be able to cover domestic violence, rape, or a police investigation, to recognise the toll it takes on people who have suffered harm.

CAITLIN

Survivors hopes dashed as investigation opened and closed numerous times.

The disclosure

Immediately after the sexual assault Caitlin questioned the nature of what had happened to her and whether it was really sexual assault. About two hours later she called Lifeline, "you just see Lifeline numbers on buses, that was kind of instilled in me." Caitlin waited 45 minutes to speak with someone and once she got through to someone the call was over in about two minutes. Caitlin sought clarification about whether what happened to her was sexual assault, "in high school I was never educated on consent in my head I knew it had happened, in my heart I didn't want to fully accept it". The person Caitlin spoke with confirmed that what she had experienced was sexual assault and referred her to the National Family Violence and Sexual Assault Counselling Line. Shortly afterwards Caitlin also disclosed to CRCC.

Health services

CRCC called The Forensic and Medical Sexual Assault Care (FAMSAC) unit at Canberra Hospital for Caitlin and when Caitlin attended two female staff members assisted her and helped her to feel safe "they were so kind and sweet and careful and gentle, they explained everything that they were going to do, they didn't just do it".

Therapeutic and crisis support services

Caitlin found CRCC to be initially supportive and helpful. She recalls "they were lovely, really talked me through it ... they let me be how I was, I would cry and scream ... they gave me the option to do a rape kit, I just didn't know about any of this at all."

Caitlin also received support from VSACT. Her early experiences with VSACT felt overly formal and stilted, she recalls the office "is a really scary government building, with security at the front which was overwhelming" and "the original person I spoke with was over professional and there wasn't any heart or compassion".

Caitlin's experiences with VSACT later improved and she has appreciated working with both the VSACT case coordinator and the psychologist that she was referred to, "I now feel heard, and I feel like there is compassion in the workplace ... it feels nice to be heard and that my name hasn't been forgotten, I feel like I am not a name or number on a file". VSACT also assisted Caitlin to liaise with police when she

raised concerns about the investigation and that the police officer was not responding to her emails “I felt like the meeting [with VSACT] was really guided by me ... a really good amount of effort was put in to understand what police were talking about... and language was used that I understood as there was a lot of anxiety around the legal process because I have never been involved in any of this before.”

Reporting to police

Caitlin was supported by a friend when she first attended a police station. She asked for a female police officer and was told there were none on duty. She asked when a female officer would be on duty and was told not until the next day so it would be best to report immediately. The initial interview was “very much note taking, lots of ‘yes and no questions’ and asking of personal details”. The officer told Caitlin she be contacted soon and when she hadn’t heard anything a few days afterwards and she called police to find out what was happening she recalls feeling like “I was an afterthought”.

Police attended Caitlin’s house a couple of days later, this time with a female police officer, and she had to relay what happened to her again, “they took my whole story ... I had already reported to police, but I needed to go back over my story again”.

The following day Caitlin was called by police and told she had to go to SACAT “I didn’t know that SACAT existed I don’t think that a lot of people generally do ... I was not given any information about who they are or what they are, I had to google it.” Three or four days later Caitlin attended SACAT where again there was no female officer available, “The officer didn’t really introduce himself in a way that made me feel comfortable with him, I had already requested a female police officer, they said they didn’t have any, all I wanted was to be around a woman right now I couldn’t believe that there were no female police officers”.

Caitlin recalls the room at SACAT where she gave her statement was uninviting and uncomfortable, “Even the room that I went into was so cold I was freezing ... there were three different cameras on me ... I was crying and there were no tissues in the room, the seats were uncomfortable, I wasn’t offered any water, there was nothing of comfort.” Caitlin recalls the officer kept leaving the room resulting in the interview stopping and starting. She felt like she was the one being arrested, “I was being questioned in a way where I felt like I was not going to be helped ... I really felt like I was being interrogated ... it honestly felt like I was in trouble”.

A support worker from CRCC attended the interview with Caitlin although she found this unsettling “she didn’t really say anything, all she would say is ‘are you alright’ every now and then ... it felt like she had no idea what to do, it was very uncomfortable, and it was like meeting someone for the first

time ... I needed someone to tell me that it was ok, that I didn’t have to go through with it today and I wasn’t given that”.

At the interview Caitlin was not given any information about the investigation, she recalls “I went home from the police station and felt really stupid and very disheartened ... and with no understanding of what would happen next”.

Police investigation

A couple of weeks after providing her statement Caitlin found out through a mutual friend that police had spoken with the offender. She was contacted by the police officer a few days later and the conversation filled Caitlin with a sense of hope that justice would be done. She was told there was enough evidence, that the officer believed that the offender was going to be charged and that basically “we had got him” and Caitlin was provided with information about how the court process worked. Caitlin reflected how different this conversation was from the first meeting with the officer, “it went from impersonal to really personal” and Caitlin trusted the officer, “it felt like such a victory, it happened so fast”.

Caitlin didn’t hear from the officer for a couple of weeks. She tried getting in contact with him several times via phone and email, but he was on leave and she never received an automatic response advising her of his leave or providing contact details for another officer to talk to.

Sometime later Caitlin was called at work and the officer told her that they had now formally interviewed the offender. He told her it would be a quick phone call and explained the offence was too difficult to prove and that police didn’t think there was enough evidence to proceed. During this phone call the officer also told Caitlin she was “possibly confused” about being in a relationship with the offender. Caitlin felt extremely let down by this conversation and that police no longer believed her, she recalls “it felt like they were of the opinion that ‘this is his statement and I believe it over yours, I just have to close the case’”. Caitlin had six hours left of her shift to complete after this conversation, she was not asked if there was a better time to call and she recalled “I went into a really dark place after this phone call”. About a month after the phone call Caitlin received an email confirming that the investigation was closed, “a month after receiving this email was the first time that I tried to take my life during the investigation.”

Approximately a year or so later the offender contacted Caitlin and indirectly referenced the sexual assault. Caitlin informed SACAT about this contact and was allocated the same investigating officer. Caitlin recalls “I didn’t want to be a bother and ask for someone else” although she noted “I needed to take everything he said with a pinch of salt”. Police interviewed the offender again and contacted Caitlin about a month later. Caitlin felt that the offender had “talked his way out of this again” although this time police informed her

that they would keep the investigation open. After that Caitlin contacted the officer every month or so find out what was happening, but police “would always say ‘we are looking into it’ but never provided information about exactly what they were looking at”.

Several months later Caitlin was again called and told there was not enough evidence, and the investigation would be closed, “it felt like I was being called a liar for the second time”.

At this point, Caitlin had a protection order against the offender that recently expired. Within days of the order expiring, the offender again attempted to call Caitlin and he also contacted one of her family members explaining that he would be willing to speak with police. The officer again invited Caitlin to come into the station and said he would try to get the matter to court, and that he would also offer Caitlin a referral to restorative justice which he explained as being offered “to hear the perpetrator’s side of the story”. The officer said he had never done a restorative justice referral before, so Caitlin sought more information from VSACT. She learnt that, given the offence was a sexual assault, restorative justice would not in fact be available unless the matter proceeded to court.

Later that evening Caitlin received an email from the officer informing her the investigation was again closed. Caitlin recalls “my mum was asleep, all of my informal supports are pretty much uncontactable, the only people I could contact were people that I didn’t know like Lifeline I didn’t even get a phone call; it was just an email to cover his arse . . . I have never responded, and he has never followed up to see if I received it or if I am ok . . . at no point did I feel like he cared”.

After having the investigation opened and closed three times Caitlin reflects on why she persisted with reporting to police “why did I keep doing this . . . there was a part of me, whether consciously or not, that I was doing it for [other women], especially my mum and my grandmother . . . we grow up thinking police are the ones we go to when we are hurt or scared . . . there was instilled trust that they are who you always go to”.

MILLY

‘Not enough evidence’ to charge alleged child sex offender.

The disclosure

In the week following the incident, Milly disclosed to her mother Joan and her grandmother that the offender had sexually assaulted her. Milly was sexually assaulted at a family BBQ when she was five years old by her cousin who had just turned 18. Milly did this by showing them what had happened on her child’s doll. Joan felt that her daughter seemed

ashamed when she was disclosing, and Joan was left feeling that she needed to probe to try and get information from her.

In response, Joan confronted the offender’s mother over the phone demanding atonement. But that never came. Soon after, the offender relocated back to the family’s homeland not to be seen for many years. The situation had a cataclysmic impact on the family, as ties between them were severed from this point onwards.

In the years following, Joan and her husband struggled with what to do next. They were committed to seeking justice for Milly but afraid of how going through the system would impact her. In early 2021, at a community religious gathering, Milly, now aged 12, saw the offender for the first time in seven years. Her response was palpable, Joan witnessed that Milly became highly anxious and agitated, the offender and his family fled the church immediately.

In response, Milly’s grandparents felt that it was now time to involve the authorities and they were the first to make a statement to police. Not long after, arrangements were made for Joan’s parents and Milly to make a statement.

Therapeutic and crisis support services

Joan noted that all appropriate supports were put in place when they were reporting to police, including an intermediary and debriefing support from the Canberra Rape Crisis Centre. Joan said when she felt she was getting emotional through the process, they were always there and supported the family to feel comfortable.

After the first meeting with police, CRCC contacted Joan and offered her counselling. Joan said that this was great at the time but that as the police investigation concluded she was never contacted by them again and felt there was no follow through. They were also unable to provide counselling support to Milly because of her age and didn’t provide the family with other options about where to find support.

Joan said that she was never offered a referral to VSACT for Milly or any other member of the family. Joan wished that she had been given the option about where to be referred to. Joan stated that she was only notified about VSACT after the investigation concluded when she was in contact with a lawyer. Since being put in contact with VSACT, Joan said that they have been able to provide her and Milly with counselling support. “They give me a nice call; you hear their soothing voice. They explain things in detail and, that, I am very appreciative”.

Reporting to police

Joan and her husband had talked about taking Milly to report to police, however “we kept looking at different cases and things, we received lots of different information and we felt let down that things would fall through the cracks. My husband and I saw that there were not many cases that went to court

and the person was found guilty. We did not want her to have to go through the trauma again, having to go through the system.”

Joan approached Milly approximately seven years after the incident occurred, “I became anxious because she is 5 ½ years old, what will happen with her story if she needs to tell her story?”. Joan didn’t want Milly to feel that she and her husband had let her down as parents by not reporting to police. Milly’s grandmother wanted Milly to know that they had not forgotten what had happened to her and they explained that they had been trying to consider her wellbeing the entire time. “We reported to police roughly seven years after the incident occurred, the first 5 years after were the hardest.”

Joan advised the family felt well supported in the early part of their journey in reporting to police and that “a weight had been lifted off our shoulders that this step was made”. Police advised that there would likely be enough evidence to charge the alleged offender.

Police investigation

Within a few weeks, the police were back in touch with Joan and her husband. They advised they were attempting to get a statement from the offender’s and his family.

A few weeks went by and Joan received another call from police to attend the station for a meeting. At this meeting, they were told that the offender and his family refused to make statement and that there was insufficient evidence to proceed with the investigation. Joan and her husband were devastated as they saw their initial fears of involving police starting to become a reality. “I don’t think you [the police] did enough. I promised my daughter that I am not going to stop. I want this justice to be done. Doesn’t matter if he is charged for five days in jail. I just want him to feel he can’t escape this and can’t do this to somebody else.”

Joan questioned “why is there police, they are supposed to protect the victims. You are the police, how are you not able to make the offender make a statement when something like this has happened” to a child. Joan felt that the family were not provided with any information about why the investigation had closed because of the lack of evidence. Joan would have liked to have known more information about what there was not enough evidence for. When police closed the investigation, Joan said “it feels like they want to protect themselves, that they don’t want to make a wrong decision” about charging someone when they think that there is not enough evidence.

After this meeting, Joan and her husband attempted to follow up with police but faced great difficulty. Information promised to them was not provided and they were repeatedly told that the investigation was closed but could be opened anytime. Police also mentioned a restraining order and that there may be a possibility of charging the offender on technicality if he ever breached the order.

“In the beginning, they gave us so much hope. My vibe was that they would do everything that they possibly can, and I do not think that they did enough”, it feels like “there is no follow through, they have done the investigation and it has been dismissed”. Joan reflected that aside from the investigation process, she had no other options available to her “there is no other way to charge the offender because you can only go through the police, and they are the ones who push it to the prosecution”.

If Joan could change one thing about this experience, she would’ve liked more information about supports and the criminal justice process in writing, more information about police decision making and why things aren’t progressing to charges and more communication from police in general, both verbal and in writing.

Committed to seeking justice for Milly, Joan and her husband consulted several criminal lawyers about what their options for reviewing decisions made. They were also referred to VSACT where they were provided justice advocacy and counselling services.

The investigation into the sexual assault Milly experienced remains closed, but Joan and her husband are committed to continuing to advocate for justice.

APPENDIX 3 VICTIM SURVIVOR CONSULTATION THEMES

Note: The themes discussed below arise from consultation interviews with 17 victim survivors of sexual violence. Interviews were conducted with victim survivors who had previously reached out to ACT Government or support services to indicate their interest in reform work. These consultation interviews represent only an initial stage in the project's victim survivor consultation process. Future consultation processes will be accessible to the broader community so that all victim survivors who wish to participate in this process have the opportunity to be heard using a range of formats and approaches.

INTRODUCTION

Many victim survivors of sexual violence shared a collective desire to improve the justice system and the therapeutic and advocacy services that operate to support them.

Victim survivors want the justice system to hold offenders to account so they cannot offend against other people in the future and to send a clear message to the community that sexual violence is not acceptable. Yet victim survivors consistently recount a lack of faith in the justice system to achieve these goals and describe their engagement with the system as retraumatising.

Victim survivors want support and justice services to be responsive, timely and trauma-informed, yet there are significant gaps in services, in particular in regard to provision of counselling and advocacy services. Victim survivors describe these gaps as stemming from lack of funding, limited collaboration between services and the absence of trauma-informed practice.

Many victim survivors that participated in the consultation, did so because they wanted to better the experience of future victim survivors. Of a number of matters that were reported to police, a reoccurring theme was that the individual wanted to ensure that this did not happen to another woman at the hands of their perpetrator. Women wanted to send a message that what happened to them was not okay, but to ensure that the offender could not easily do this again. The motivation for reporting for a number of women was around safeguarding future victim of sexual violence.

While some of the comments provided by victim survivors are critical of specific agencies, this report doesn't seek to lay blame but to try and better understand the flaws and gaps in the system from victim survivors' perspective.

PRIMARY PREVENTION

The need for education in all areas of the community

Victim survivors universally report the need for better understanding of sexual violence amongst the broader community. This includes education that dispels myths around sexual violence, education on how to respond to disclosures of sexual violence in a respectful and trauma-informed way, and education about how victim survivors can seek support and what options they have for pursuing justice.

In particular, victim survivors raise the urgent need for ongoing and contemporary education about sexual violence in schools, universities and other educational facilities.

"In high school I was never educated on consent in my head I knew it had happened, in my heart I didn't want to fully accept it".

"I wanted them [the counsellor] to hear what I was saying and be actively engaged in what I was saying. I didn't like feeling like I had to remind them what happened to me. I needed them to say yes what you experienced was sexual assault and it wasn't ok. I feel that actively listening and validating a person's emotions is really important."

Victim survivors also report some specific need for education about consent. One victim survivor explains that while the message 'no means no' is important there should be a duty to recognise and respond to other verbal and non-verbal forms of communication that also indicate 'no', such as the 'freeze' response.

Education is also required to counter myths in the community that facilitate sexual violence, including that men 'always want it' and women 'always need to be convinced', that offenders are deviant and that 'good guys' don't rape, that women use accusations of sexual violence as a weapon against men (for example, 'as a scorned lover' or if they regret sex), and that 'good victims' respond, report and recollect events in particular ways.

SUPPORT SERVICE RESPONSE

Responding to disclosures of sexual violence can cause further harm

Victim survivors who had positive experiences of disclosing sexual violence to support services and others report feeling believed, supported, and validated in this experience.

“They [FAMSAC] were completely delightful. The Dr was very sincere, and I felt really cared for. I didn’t find the physical examination particularly difficult. They talked me through everything at the time. It took quite a long time, partly because they weren’t rushing me.”

“You feel so crazy, the person who does it normalises it. It was helpful that my friends pointed out what happened was not okay.”

“Both of them [friend and partner] comforted me, and were also saying various combinations of, it’s not your fault, you didn’t do a bad thing, they did a bad thing. You don’t have to feel guilty or ashamed.”

However, some victim survivors report that the response to their disclosure caused further harm and they reflect on the importance of the person they disclose to having the skills to respond appropriately. One victim survivor recalls contacting Lifeline and waiting on the phone for over 45 minutes before speaking with someone only for the conversation to last just a few minutes after she disclosed the sexual violence.

A BETTER RESPONSE FROM SUPPORT SERVICES

Victim survivors want to engage with support services and counsellors who specialise in sexual violence and highlight the importance of CRCC’s role in crisis support at a time when victim survivors are acutely in trauma.

“[CRCC] were lovely, really talked me through it... they let me be how I was, I would cry and scream... they gave me the option to do a rape kit, I just didn’t know about any of this at all.”

However, victim survivors reported long waiting lists for counselling support, as well as a lack of qualified trauma specialists. Several victim survivors report that CRCC advised them that due to limited capacity they could not be provided with ongoing counselling support for several months and they were not offered any alternative supports or services in the interim period. One victim survivor reports being informed by CRCC that she could not access ongoing support as she was still receiving support from DVCS, despite the fact that DVCS was only providing court updates. Many victim survivors report that the delays in receiving therapeutic support extend their recovery time and their ability to heal and move forward.

“I called CRCC — and I was told I was a high priority person, that I would have to wait at least three months to get any counselling. I was not given suggestions about other services that may assist me, and they did not offer to advocate with police on my behalf.”

“... they asked me about counselling and accessing counselling, but immediately off the bat told me there was a waitlist, so I was unlikely to see anyone anytime soon”.

“It was a good two or three months before I got to see someone through the rape crisis centre”

“I was transferred six times, and every time I had to re-tell my story. I was asked what I was calling about. They asked when I was assaulted, and I said 25 years ago. They told me ‘You do realise we’re only for recent assaults, not for historic matters like you.’ Then I would be transferred again. [The service] told me about their lack of funding and support, and repeatedly told me how busy they were at the moment, and because I was a historic case, my need for any help ‘wasn’t considered acute enough’. I felt like the service wasn’t for me.”

“I felt that there were things the DPP would usually refer a ‘Canberra Victim’ to, but because I was interstate, the DPP did not make any referrals. It felt like they had a body of knowledge about services that I wasn’t allowed to be a part of.”

“They [VSACT] got me in with someone a little bit quicker, but who wasn’t particularly appropriate. The counsellor didn’t have the background in trauma, which was what I needed. So, I saw this counsellor two or three times and then stopped.”

Victim survivors also highlighted the need for advocacy support in the justice system, particularly given the many challenges they face in seeking justice as noted above. Some victim survivors view the need for advocacy support to be just as important as therapeutic support.

“... you’re at the bottom of a pit and you need someone to pull you out, not say this is how you live at bottom of pit... you need someone who knows the system and who can help you get out of it”

“having [VSACT] available, even to be the liaison between the two [herself and police]... it’s like, it made it feel a lot more supported. It was really validating for me to know that someone else was speaking for me, and actually that it was [VSACT’s] job to do it.”

“[being] able to have an advocate there [with police], someone that knew the system... to be a support for me and know what my rights are in that situation [made a significant difference]”.

“I felt like the meeting [with VSACT] was really guided by me... a really good amount of effort was put in to understand what police were talking about... and language was used that I understood as there was a lot of anxiety around the legal process because I have never been involved in any of this before.”

In particular, victim survivors pointed to the need for support and advocacy when reporting and providing evidence to police, however there were mixed views on how this support was provided.

“I was really upset that day, it’s really hard to have to do that statement. It’s a really hard thing to do — knowing you’re being filmed and she [the CRCC worker] was just a support. She was a really comforting person.”

“... she [the CRCC worker] didn’t really say anything, all she would say is ‘are you alright’ every now and then it felt like she had no idea what to do, it was very uncomfortable, and it was like meeting someone for the first time ... I needed someone to tell me that it was ok, that I didn’t have to go through with it today and I wasn’t given that”.

Victim survivors also report a lack of responsiveness and timeliness from Victim Support ACT’s financial assistance scheme, with some victim survivors waiting years for a decision. Victim survivors point to the need for the scheme to be faster, more streamlined and easier to access.

“If you don’t give people the support when they need support – there’s no point giving it to them. I have lost my job and can’t work anymore. The person awarding the amount for the compensation is the same person I have to chase; you end up being fearful about chasing them in case it impacts on your compensation. He was proven guilty – he is out of jail now – I should be able to put this whole thing to rest – every time I chase it up – I’m reminded this still isn’t over for me and I still can’t move on. If I got compensation within even a few months of the trial wrapping up, maybe I could have taken time off – but I couldn’t, and I got sick; I didn’t have the ability to take time off ‘cos I had no money. Your body just stops. That is really common with traumatic events, years later, you think maybe it’s not even related, but it is, and it’s too late.”

One victim survivor recalls difficulties accessing the scheme because the sexual violence occurred across different jurisdictions. She recalls being constantly “passed around” by financial support services with different eligibility requirements that “aren’t clear nor transparent” and which she found confusing to navigate and understand.

Other victim survivors reflected on the unfairness of needing to prove injury under the scheme, even when there has been a conviction of sexual assault and the victim survivor is trying to move forward with their life. Some victim survivors consider this to be systems abuse as injury from sexual assault should be presumed. Victim survivors recommend if there is a sexual assault conviction there should be consideration of automatic payments of financial assistance.

CENTRALISED INFORMATION AND RESOURCES

Victim survivors reflect feeling overwhelmed by the number of different agencies they are often required to engage with during this traumatic time. Many victim survivors regularly engage with various medical services, therapeutic services, financial assistance services, work or study support services, police, the DPP, the court system, advocacy services, government agencies, complaints processes and others. Victim survivors reported the need for a central point of contact to assist them to identify and coordinate all of these services.

“... coordinating all the admin was like a full-time job and at a time when I was least able to do it”.

“There seem to be all of these different areas of the justice process, and it seems like no one talks to each other, and this creates risk and retraumatisation [for survivors].”

Victim survivors further report a lack of physical and online resources to help them navigate support services and the criminal justice system and note the benefit of a singular resource that explains legal concepts, and which can be referred back to at different points throughout their recovery.

“If I had been given a list of who I could access and why I might want to access them, maybe it would have been different... that initial response is so important to give people a good experience of what that is, so that more people come forward. If less people feel supported in that initial response, they will have a terrible experience off the bat.”

MULTIPLE GATEWAYS TO FACILITATE HEALING

Victim survivors require different responses to facilitate healing and they report the need to broaden supports available to assist recovery. There is a need for multiple ways for victim survivors and their families to recover and heal. Victim survivors express interest in less formal supports, such as support groups led by the community, where or other victim survivors where the focus is on victim survivors having a shared experience and connecting with one another and others supports, including fitness sessions, music, or dance classes. Some victim survivors also spoke about the need for expansion of therapeutic supports and facilities for victim survivors and their families to access in order to heal and recover from the longstanding impacts of sexual violence.

“It [the STOP Campaign] was really supportive and helpful — the director is great at creating a supportive environment for survivors to connect. By participating in the STOP Campaign, it gave me a place to share my story in a safe way.”

Victim survivors also reflected on the importance of having supports available to meet the needs of different communities, including children and young people, Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, people with disability and people from LGBTQI+ communities, and for these supports to be developed and co-designed together with these communities.

ENGAGEMENT WITH POLICE AND PROSECUTORS

Accessible information about how to report to police

Victim survivors raise the need for accessible information about pathways to report to police and to understand what happens after reporting. This includes options for reporting in person, over the phone or online, and information about General Duties officers and pathways to the SACAT. In particular, victim survivors report a lack of accessible information about SACAT, including information about when matters are referred to SACAT and when they are not.

“They do not make it easy for victims to report, it is like you are meeting stumbling block after stumbling block. You don’t know who to report to, you don’t have any information.”

“In that time, you are trying to make these really important decisions about reporting and what to do next while trying to deal with the initial shock of what you have been through... you just need straight to the point information about what your options are.”

“I didn’t know that SACAT existed I don’t think that a lot of people generally do ... I was not given any information about who they are or what they are, I had to google it.”

“[Upon enquiry to police about SACAT they] gave a bit of an evasive answer, saying it was up to SACAT what matters were taken and it was based on capacity.”

A better response from police

Many victim survivors reported interactions with police where they felt disrespected or judged by officers. Several victim survivors reflect that these interactions almost deterred them from reporting and pursuing an investigation altogether.

“The conversation [with police] was so bad, I had overwhelming suicidal thoughts and had difficulty holding myself together”

“I went home from the police station and felt really stupid and very disheartened ... and with no understanding of what would happen next”.

“I would say they have been professional. I think that their job means they have to be professional, but I don’t think that translates to them being empathetic”.

Victim survivors pointed to an urgent need for police to have specialised and ongoing training about the nature of sexual violence so they can provide a trauma-informed response to disclosures of sexual violence and understand the dynamics of sexual violence when investigating matters.

“... from my experience what I felt was they aren’t really given much training. The officer just had no idea how to speak to me. I don’t think it is too much of an ask if you are a police officer to know how to speak to victims”

“[the male officer in charge] had never had a sexual assault case before, he told me this, I think he wanted to do well, but I felt like a test case”

In particular, victim survivors raised concerns about the ability of offenders to manipulate and influence police response in sexual violence matters and the importance of officers being trained to identify and avoid collusion with the offender.

“It felt like they [police] were of the opinion that ‘this is his statement and I believe it over yours’

“[the offender] has an ability to manipulate people”

Victim survivors also reported that some acts of sexual violence, for example, sexual harassment and acts of indecency, appear to be minimalised by police, despite the complexity and harm caused by all forms of sexual violence. Having these matters remain with General Duties officers rather than SACAT left some victim survivors feeling that the offences perpetrated against them were considered less important and not worthy of the specialist response they deserved. There was strong support amongst victim survivors for a specialist response for all forms of sexual violence.

“... looking back on it there was the ability [from General Duties officers] to discount people and not give these offences the serious consideration they deserve”

“... it sort of implies that it is not serious until penetration occurs, when sexual assault is way more complex than that... having a unit dedicated to sexual offences is a great idea but I was never given this opportunity.”

“Then while they were leaving – they told my wellbeing coordinator that because there wasn’t penetration it wasn’t going to go to the sexual assault unit and was going to stay with them, and the male officer would be the investigator. I was a bit taken back by this.”

Some victim survivors reported that they were required to tell their story multiple times to different officers, for example, when their matter was referred to another officer or when a General Duties officer referred the matter to SACAT. Not only was the victim survivor’s trauma compounded by the need to repeat their story, but in some cases, there were also considerable delays in referrals and no clear timeframes for when referrals would be made.

“Before I got to SACAT I had to be referred to them. At the start I didn’t know I needed to be referred to SACAT, but then once I found out, it still took months to be referred. It was a struggle to get past the FV Team.”

“They took my whole story ... I had already reported to police, but I needed to go back over my story again”

Some victim survivors report better experiences once their matter was referred to SACAT.

“... at the time, it felt like they took me seriously. I felt believed and supported. They arrested him”.

“She [SACAT officer] was very human. I felt that she knew it wasn’t ok when she couldn’t update me more frequently. She would say that she was grateful that I wasn’t upset with her because so many other victims get upset.”

“He [SACAT officer] gave the impression that this wasn’t so bizarre and weird... if you’re going to talk to a man about the violation of the female body, you want to feel comfortable... he was also very good at giving warnings regarding how he would ask questions. He would say, this isn’t my opinion – I believe you – this is just a warning on how we ask the questions. He gave me a speech that there’s nothing I can say that is too gross, strange, or terrifying, he said please don’t feel embarrassed about any detail, we don’t think anything of you. He had a way of making me feel comfortable and making it completely casual. This was good.”

However, victim survivor experiences with SACAT appear to depend on the individual officer involved and other victim survivors report their engagement with SACAT left them feeling that even the specialist officers were not able to engage in a trauma-informed and respectful way.

“I was being questioned in a way where I felt like I was not going to be helped ... I really felt like I was being interrogated ... it honestly felt like I was in trouble”.

“Even the room that I went into was so cold I was freezing ... there were 3 different cameras on me ... I was crying and there were no tissues in the room, the seats were uncomfortable, I wasn’t offered any water, there was nothing of comfort.”

“... There wasn’t a lot of reassurance in that conversation as well. It was just black and white detail. And you know, you are talking very intimate details about your own body. It felt very sterile, really.”

A dominant theme that arose for nearly all victim survivors was the importance of having the option to speak to a female officer. However, several victim survivors were not given this option, and some were refused the opportunity to speak with a female officer even when they asked.

“I had already requested a female police officer, they said they didn’t have any, all I wanted was to be around a woman

right now I couldn’t believe that there were no female police officers”.

“I feel more comfortable with a woman”

Victim survivors also report the frequency of officers raising the difficulties in prosecuting matters to victim survivors in order to provide transparency about the pathway ahead. For some victim survivors this includes seeking their consent to each and every stage of the investigation process. While some victim survivors report this as helpful, others felt it placed additional pressure and responsibility on them at a time when they least needed it.

“At every step with SACAT, they would say it’s up to you what happens next. Its good and it’s bad. When you’re feeling out of control after a sexual assault, it’s good to feel that knowing nothing will happen without you making it happen, at the same time the only person who benefits in the long run if you stop the process, is the offender. It would have been better if there was an opt out option, rather than an opt in for each stage.”

“I don’t understand how people can put such a massive weight on you to make a decision when you are dealing with the trauma of the rape itself”

Lengthy timeframes for investigation and prosecution

Many victim survivors reported significant delays in investigations, including delays of several months or years, and collectively reflect on the need for a faster and more efficient police response.

“They didn’t contact me for a year. They didn’t even contact me to tell me even if the case was still open.”

“Police said they can’t find him but how can you not find him when he’s not hiding? I truly do not think they looked until I sent them a message when I’d been provided his address and made it clear I was not impressed.”

Victim survivors raised concerns about the impact of these delays on the collection of evidence and justice outcomes. One victim survivor recalls that after she initially spoke to police she did not hear from them again for a year and this impacted her memory and the evidence that could be obtained.

“I waited over a year for the Canberra detectives to contact me. I kept thinking, what is going on here? When they did contact me, they said something about losing my paperwork. By the time they did my video evidence it was 18 months later and by that time, I had jumbled it all up in my head to save myself.”

Another victim survivor recalls the investigation taking over two years during which time she only received three phone calls from police with an update. When the matter was referred to the DPP she also recalls the court updates taking excessive periods of time to come through and being updated only at the last moment.

“... we would have appreciated more notice”.

Victim survivors reflected on how significant delays in investigation and court proceedings compound trauma by making it difficult or impossible to ‘move on’ and heal.

“It doesn’t go away — you can’t put it from your mind and can’t move on with your life. It is why a lot of women don’t go through with these things. I feel like the toll on me is greater than the toll on him.”

“A month after receiving this email was the first time that I tried to take my life during the investigation.”

Burden for victim survivor to provide evidence to aid police investigation

Some victim survivors reported being asked by police to obtain evidence of the sexual violence for the investigation and feel this responsibility should instead sit with police. Victim survivors reflect on the burden they feel in needing to collect evidence to aid the investigation or to follow up with officers about providing evidence.

“So then I had to find all the texts on my phone, see this guy’s name and scroll all the way to the top. I had to scroll and he would lean over and take the pictures [on his work phone]. It felt weird. Initially, saying [the officer] was going to take your phone and give it back, so I’m not involved. He then asked for pictures of [the offender], so then I had to see those photos of him too.”

“The onus is constantly on the victim, it is tiresome. And I can understand why, when the investigating officer contacted me, she said in the email that when people come forward some people just want it noted on the record because they don’t have the energy to pursue it any further.”

The need for regular updates and communication with victim survivors

Victim survivors reported difficulties in accessing regular updates about the investigation’s progress and reflect that in some cases this compounds their trauma and stress. Some victim survivors reflect that the need to continually follow up to obtain updates is burdensome and that they felt they were viewed as an inconvenience by police for asking for updates.

“I asked if I could have updates, what he said to me was, he asked me what my motives were for wanting updates. I kind of just shut down, I couldn’t speak anymore. I had a friend with me who had to take over the call because of it. I was too upset to even speak”

“I was told to stop ringing [the officer], and that [the officer] will ring me if anything happens. I was told [my case] was put at the bottom of the pile.”

“I felt I was left in the dark at times. When I tried to push for more, they would just say, we can’t tell you. This was about me having a voice. However, I felt that voice was taken away from me.”

“They were not keeping me updated or being transparent about what their methods of investigation were ... I never got an update on that case unless I rang them, over and over again”.

Victim survivors who did receive regular updates from services and agencies reflect more positively about their engagement with the system.

“A big thing that the DPP Witness Assistant did was keep me in the loop at regular intervals.”

Some victim survivors also report the challenges when police contact them unexpectedly while they are at work or other engagements and they would like some input into how and when police communicate with them.

“... they [the police] would just call when they are at work, and they’ll call you while you were at work... I wish they had a conversation to ask me how I like to be communicated with. It’s about that respect thing, about people’s lives and people’s jobs, and being able to mentally prepare and be in a safe space”.

Transparency regarding complaint and review processes for victim survivors

Victim survivors lament the lack of transparency and accessible information about police decision-making processes and their reasons for closing investigations. Some victim survivors advised that when the investigation was closed, they were informed by police that there was not sufficient evidence to proceed but they question whether police had pursued all avenues to obtain evidence. Other victim survivors report they felt that the reasons provided by police for closing the investigation were improper in that they pre-empted court outcomes.

“... some of the things [the police officer] said were a bit off I think ... he said he did not think my case would go to court as he thought the jury would think there was ‘mixed consent’... that was not a nice thing to hear, I thought wasn’t that for a lawyer to argue?”

Many victim survivors reported being advised by police that there was very little chance of prosecuting the offender and this led some victim survivors to question the point of having a justice system at all.

“... I was told [by police] that the formal investigation was a long-winded process, to which the majority of cases don’t end up going to court or in prosecution...”

“I don’t think they are giving people a chance to go to court, it seems like they will only do this when there is physical evidence”

“... if it is so unlikely to happen why does [the justice system] even exist?”

“... we kept looking at different cases and things [when considering whether the report to police], we received lots of different information and we felt let down that things would fall through the cracks. My husband and I saw that there were not many cases that went to court and the person was found guilty. We did not want her to have to go through the trauma again, having to go through the system.”

Some victim survivors report that police informed them that prior to closing the investigation they had sought advice from the DPP and the DPP advised that the matter should not proceed.

“[police informed me] the DPP said no and that was the decision that was made”.

“... it feels like they [police] want to protect themselves, that they don't want to make a wrong decision”

“[police] painted a really dull picture and said there would be no point [after consulting the DPP], it's all a matter of consent”

Many victim survivors were unaware about options for review of police decisions, including to raise complaints to AFP Professional Standards or the Commonwealth Ombudsman. This meant that many victim survivors felt pressure to resolve concerns directly with the officer they were concerned about. Victim survivors highlight the need for information to be provided about what they can and cannot do if they are dissatisfied with a police decision. Victim survivors who requested their matters be reviewed by AFP Professional Standards had mixed experiences, with one victim survivor commenting on the futility of an internal review process and another receiving a response that the decision not to pursue an investigation was a mistake.

“[Professional Standards] was like police reviewing their own decisions”

“If I hadn't sent that letter to Professional Standards nothing would have happened, and now it's being looked at properly ... in the old days you'd say to victims of crime you can go to police, I just assumed they were getting it right behind closed doors ...”

ENGAGEMENT WITH THE COURT SYSTEM

Legal assistance for victim survivors

Where matters proceed to court, victim survivors lament their lack of voice and limited participation rights in court proceedings.

“I felt that as the victim, I had no idea what questions I would be asked or what direction they would go in. There were things I wanted to bring up while giving evidence, but I felt that there wasn't space for this. In retrospect, this really bothers me because it undermined my voracity as a witness.

This was all down to the way the process was run, not the information that I actually have.”

“This [not knowing what the charges were] impacted the evidence I gave because I wasn't fully sure what they needed to prove. I know there are some things that are done so that victims cannot rehearse anything, but I still wonder whether there are better ways for evidence to be taken. It sometimes feels like everyone else knows what is going on, but the victim doesn't know. It's like trying to trick the victim.”

“He has a right to defend himself and is innocent till proven guilty, I understand that. But I feel like I am the one on trial. He gets to choose to sit there and not have to be a witness if he doesn't want to be. The burden is all on me.”

Victim survivors reported a need for legal assistance, so they know what to expect with legal processes and how to protect their best interests. One victim survivor reports she consulted private criminal lawyers about her options for review of the police decision to close the investigation.

Improvements to monitoring of bail compliance

Victim survivors raised the importance of being informed about bail conditions and having bail conditions properly enforced, given that this impacts their safety and the offender's accountability. However, several victim survivors raise concerns about not being informed of bail conditions or bail conditions not being enforced, which result in false expectations and safety concerns. For example, one victim survivor reports that alcohol and drugs were prohibited under the bail conditions, but the offender continued to use alcohol and drugs and was only directed once to undertake urinalysis and even then he was provided with advanced notice of this.

“I remember thinking that when he was arrested, he would be incarcerated but this wasn't the case. Nothing was explained to me. I was told he was charged, but not what the charges were or what would happen next. We asked whether he was in jail and they said no. They said they couldn't tell us anything else about what the arrest was like.”

Victim impact statements

Victim survivors reported that the strict rules and limitations around the provision of a victim impact statement create barriers in sharing how the sexual violence impacted their life. Some victim survivors do not understand the benefit of victim impact statements and question the real weight that victim impact statements have in sentencing.

“The prosecutor edited [the victim impact statement] about four to five times prior to sentencing, and that felt disempowering. It didn't feel good to be told that I could be cross-examined at any time, even after all of that. It should have been a healing process at that stage, and I felt that at that stage, the questioning should have been over. It felt like

I was encouraged to complete a victim impact statement but then simultaneously threatened with it ... It felt like my feelings and responses to the assault were being policed.”

“... a victim should be able to enter the court room and read their victim impact statement before the Judge, without needing to be surrounded by the perpetrator’s family, and without feeling unsafe.”

One victim survivor reported feeling conflicted about whether to write a victim impact statement as she felt the offender would take gratuitous pleasure in hearing how the sexual violence had impacted her. There was support for the idea of legislated ‘presumed harms’ as this could take the pressure off victim survivors to prove to the court how impacted they were by the sexual violence.

Victim survivors lament their lack of agency when explaining the broader context of sexual violence in family and domestic violence in their victim impact statement, and this results in the sexual violence falsely appearing as if it was a one-off incident.

“The victim impact statement I found really difficult to do, the restrictions around it were hard and, on the day I had to submit it, further things were taken out of it. Part of what the DPP said to me was if you leave some of this in, his side can question you. I felt like they took out bits that were too upsetting or offensive to him. You can’t reference anything outside of the actual charges that he’s been found guilty of. In a domestic violence relationship, these things don’t happen in isolation.”

Sentencing penalties do not reflect community expectations or the severity of the crime

Victim survivors collectively stress the need for the justice system to hold individual offenders to account and to also send a message to the community that sexual violence is not acceptable. Victim survivors consider that suspended or partially suspended sentences and reductions to sentences for pleading guilty do not adequately reflect and represent the severity and ongoing long-term impacts of the offence on victim survivors and their families. “The sentence was woefully inadequate. I would have liked at least five years, that creates a bit of accountability for his behaviour. He has referred previously to the Canberra jail as a holiday camp. I don’t feel that justice has been served. Women are safer and the community are safer when he is in jail”.

“It is important that the courts hold people to account for the way they have taken other’s livelihoods and innocence away from them.”

One victim survivor reflects that she felt that the discount the offender received for pleading guilty in the middle of the trial was overly generous given that she still had to show up to court and give evidence at great personal cost and that time had been spent on the court process, including impanelling a jury

and development of legal arguments. Other victim survivors consider that suspended or partially suspended sentences are not adequate to represent the severity of the offence.

“Well, if he only has to do seven months in jail, it shows the community and his friends the offending can’t have been that serious, otherwise he would have gone to jail for longer, seven months is not long for a sexual assault.”

There was support for the maximum penalty for sexual violence to be increased to better reflect the severity of sexual violence offences and the harm caused. Some victim survivors reported that their knowledge of inadequate sentencing was the reason they did not report to police at all, as the potential outcome was simply not worth the retraumatisation of engaging with the justice system.

LACK OF FAITH IN THE JUSTICE SYSTEM

A lack of faith in the current justice system

Many victim survivors revealed they have lost faith that justice will be obtained for sexual violence offences and most victim survivors report they would not encourage others to report sexual violence to police.

“The hardest part ended up not being the rape, but the way the system responded”.

“I’d like to tell them [other victim survivors] to go for it, but with my experience, I have no faith whatsoever. I would say I’ve got no faith.”

“I can really understand and see why victims of sexual assault do not come forward. The whole process is geared to retraumatise them over and over again, it really is. Unless you have hard evidence of the assault you will not see justice. The system is victimising.”

“I don’t feel like I’m important enough for them [the police] to help me. He gets away with it... I wanted an outcome. I feel let down by the system as well”.

Victim survivors report being retraumatized from their engagement with the justice system and that many people working in the justice system, including police, lawyers, and judicial officers, do not have the knowledge or skills required to engage with them in a trauma-informed and respectful way. Victim survivors point to the need for those working in the justice system to have a deeper and more nuanced understanding of sexual violence and the ongoing harms that are caused to victim survivors including the potential for systems abuse. c

“I kept saying, I can see him. I can see him. They kept saying, no there are lots of people work in the court. I know what my perpetrator looks like, I could see him on the screen, and it was intimidating. The entire week — I could see him, the

impact it had on me was significant, I was distracted, and my evidence was impacted, I couldn't remember anything"

"In the court system — victims need to be heard. In my experience if I don't feel safe emotionally that should be taken seriously, if I feel someone is trying to intimidate me, that should be taken seriously."

"The shame is his, but the shame is often put on the women throughout this process. The path I was on, the places I was going, the life I was living is gone, and you can never go back to that."

"There is the intimidation of being in this environment [the court] that you've never been in before, there are people looking at you in your direct line of sight who clearly don't believe you, there are people all around you, there may be other people in the court room that you don't know about. It was the most intimidating thing I've ever done in my life."

"At one point, I excused myself to ask the judge, "Why is that woman shaking her head at me, am I doing something wrong?" The judge even replied, "You should be more concerned about answering the question instead of who's in the court room." It turns out it was my perpetrator's new partner. It felt like she was purposely trying to intimidate me, and no-one was taking it seriously. I felt let down by the court in that regard."

Exploring alternative avenues for justice

Some victim survivors reported that they did not want to proceed with a formal investigation, but they still wanted the offender to acknowledge and understand that their actions were wrong, or they wanted information about the offender's actions to be recorded to assist police to safeguard future victim survivors should the offender re-offend.

Victim survivors lament the lack of alternative options beyond the court system and reflect on the need for consideration of new approaches, for example, broadening the scope of restorative justice or implementing a Sexual Assault Reporting Option (SARO) form similar to the NSW scheme, which is an alternative way to report sexual violence that does not initiate a criminal investigation but provides police with information that could be used to target recidivist offenders.

"I was told either I drop it and don't say anything, or I go down the formal investigation route... My initial response is that I don't want to ruin [the offender's] life. That was never my intention. Yes, he did the wrong thing, but I just wanted him to know that [he did the wrong thing]. I wanted him to have this 'oh my god' realisation. I wanted it to be on the record so that if it ever happened again, they could keep an eye on him if something similar happened."

"None of those things were an option. I was told that ... [a formal investigation was] ... really the only option I had left, to do that or let it go."

SEXUAL VIOLENCE IN DIFFERENT CONTEXTS

Sexual violence in the context of intimate partner violence

Many victim survivors experienced sexual violence as part of a broader pattern of intimate partner violence. Police investigations into sexual violence in this context raise additional challenges for the victim survivor, including the victim survivor's need to manage ongoing safety concerns. A lack of communication from police about how an investigation is progressing in this context (for example, communication about when witnesses are interviewed, or charges are laid) has the potential to threaten the victim survivor's safety.

"It seems like all of the big charges are important, but it's all of the little things that continue to impact me and make me feel unsafe."

"[Not knowing about the investigation made me] constantly on edge ... anxious every day."

Victim survivors raised the urgent need for police and other justice agencies to receive specialist training about the dynamics of sexual violence in the context of intimate partner violence, so that it can be viewed and investigated as part of a pattern of ongoing abuse, rather than as a one-off incident. Sexual violence in the context of intimate partner violence can also be harder to recognise, so victim survivors point to the need for police and support services to be trained to ask questions in an appropriate and trauma-informed way to aid disclosure of sexual violence.

"[The sexual violence was] part of a pattern of behaviours, so it was harder to recognise."

"I didn't even realise it was assault, it was my first relationship."

"I didn't feel like I could say no, and I didn't know it was sexual assault until after he had left [the marriage]".

Victim survivors reported challenges in having to report to multiple police officers when sexual violence occurs in the context of intimate partner violence, sometimes including the Family Violence Unit, General Duties officers and SACAT. Victim survivors reflect feeling as they are being passed back and forth between different units of police and find it difficult to know who to report new incidents of violence to.

"Before I got to SACAT I had to be referred to them. At the start I didn't know I needed to be referred to SACAT, but then once I found out, it still took months to be referred. It was a struggle to get past the FV Team."

Sexual violence in the workplace

Victim survivors who experience sexual violence in the workplace also face unique challenges in progressing their recovery and seeking justice. There is urgent need for workplaces to have training about the nature of sexual harassment and sexual violence, to have measures in place to reduce and prevent sexual violence in the workplace, and to create safe future working environments for victim survivors that do not disadvantage their career prospects.

Victim survivors raised the need for clear and safe pathways for reporting sexual violence in the workplace and for alternative pathways beyond reporting to immediate supervisors. Some victim survivors call for workplaces to mandate reporting of psychological injuries that were sustained at work from sexual violence to WorkSafe.

“The process was completely traumatic, I would often kind of shut down and I would get out of my weekly catch up with HR and be non-functional for a couple of hours. I got angry at them not really knowing what would happen next, or what the process would be. They were always changing their advice about what was going to happen”

Victim survivors also reported the need for workplaces to recognise the long-term impacts of sexual violence and to work with victim survivors to make long-term plans for their safety and recovery. This includes flexibility in working arrangements so that they can manage ongoing safety concerns, attend appointments with therapeutic and medical services and engage with the police and justice agencies. Some victim survivors express concerns about depleting all their personal leave and call for options for additional leave to be available for sexual violence victim survivors in similar fashion to family and domestic violence leave.

“It is a challenge for victim survivors who need to work to survive but need flexibility from their workplace due to their trauma, and that flexibility is not provided.”

“... when you present with another issue, they're like ‘oh no she's back’ ... they should be predicting it and planning for it and planning supports in the long-term for survivors, to make sure the damage is not getting worse and that they can maximise the potential they had before the event”.

“With [the injury], my fear was that I didn't have personal leave because of the [sexual assault]. That was a trigger. I had used all my personal leave on what happened. And now I was worried about my finances”.

Victim survivors also noted the importance of fostering a future safe working environment for victim survivors that does not disadvantage their career prospects. One victim survivor reports that her workplace required her to continue working in close proximity with the offender and that when concerns

were raised about this, she was the one who had to leave her position and relocate to a different position.

“I got moved off ... I got pulled out in a hurry”.

“... things started to unravel ... work realised they had to do something with me, and I became a bit of a problem ... I was seen as a problem”.

“... they were looking to do something with him so I could go back after having been moved around to all these jobs I wouldn't otherwise have taken ... if he had gone somewhere else, I would have been in such a better place”.

Victim survivors also reflected on the challenges arising from workplace requirements to keep reports of sexual violence confidential. For example, one victim survivor reports that concerns about workplace confidentiality slowed down the police investigation as there was a need to wait for workplace approval before she could share evidence or documents with police.

There is further concern that workplace confidentiality requirements prevent disclosure of the offender's conduct to future workplaces and this enables the offender to continue offending.

“has he just walked back into another workplace and put women at risk again ... who the hell is giving him a reference? ... is it because of confidentiality that they just don't know? ... there needs to be something on the record so that employers know”.

APPENDIX 4 INSIGHTS FROM CULTURALLY AND LINGUISTICALLY DIVERSE COMMUNITIES SEXUAL ASSAULT PREVENTION AND RESPONSE



INSIGHTS FROM CALD COMMUNITIES SEXUAL ASSAULT PREVENTION & RESPONSE

Report for the Office for Family Safety | September 2021

PREPARED BY

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THE SUMMARY

Thank you for the opportunity to consult with CALD communities on sexual assault on your behalf. We are pleased to present this report to you which details the insights offered by participants during our consultation. We are very grateful to the participants for openly sharing their thoughts and experiences with us.

Section 1 of this paper provides a background to this consultation and the process that we used to gather insights. Section 2 provides demographic data about the participants to contextualise the insights that we obtained.

We found that CALD communities can have vastly different experiences when it comes to being able to define sexual assault, with a spectrum ranging from little to no understanding of sexual assault to a deep, nuanced understanding and ability to identify it. Participants showed that there are no set criteria which can be used to determine where a CALD person or community falls on this spectrum and we were cautioned against making presumptions. We found that CALD people can also have very different views about what is considered to be sexual assault, ranging from a lack of recognition of sexual assault in marriage to the belief that commonly accepted behaviours are a type of sexual harassment. We also found that there can be vast differences in how language is used by CALD communities to discuss sexual assault, including an inability to even translate the term 'sexual assault' into some languages.

While there were some positive experiences with service providers and the justice system, we found significant issues across the board. These include a lack of cultural competency by services, a deep mistrust of police and the judiciary (which are seen as not considering the needs of CALD people) and a fear that reporting


sexual assault will only reinforce negative stereotypes about diverse communities. These are just some of the issues which create difficulties for CALD people who want to access services or the justice system after experiencing sexual assault. Further insights are detailed in Section 3.

We asked our participants to provide suggestions for how these systems can be improved. Their thoughts demonstrate that while there are systemic issues, there are many ways to make things better. Education for service providers, frontline staff, communities, and young people were the most common suggestions. We were also told that more needs to be done to ensure that CALD people are included in senior policy roles and on advisory boards. Further recommendations that were provided by participants about how CALD people's access to services and justice can be increased are contained in Section 4.

We hope that you find these insights to be useful. It is our hope that this report can provide vital information to the Sexual Assault Prevention and Response Steering Committee and Working Groups, and that they ultimately assist the ACT Government to increase and improve access to services and the justice system for CALD people.

Yours sincerely,

Amne Alrifai



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19 September 2021

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1. THE CONSULTATION

BACKGROUND

The ACT Government committed to working in partnership with stakeholders and the Canberra community to deliver an effective, decisive and evidence-based approach to preventing and responding to sexual assault in Canberra.

On 28 April 2021, responsible Ministers, all political parties, the Directors-General of all relevant ACT Public Services Directorates, the Chief of Police and representatives from the non-government sector came together to make a clear commitment to taking action to prevent and respond to sexual assault in Canberra. All political parties are committed to being a part of this work to ensure progress is made with a united front.

A program of works is underway, which includes three working groups which harness the skills, knowledge, and expertise of members of the community to help bring about real change for Canberra's community in this space.

CALD CONSULTATIONS

In August 2021, Avicenna Consulting was commissioned by the ACT Government's Office of the Coordinator General for Family Safety (OFS) to consult with culturally and linguistically diverse communities (CALD) in the ACT to gain a better understanding of four themes:

- understanding of sexual assault
- barriers to seeking assistance or accessing justice
- whether services and support systems are helpful
- how systems can be improved.

Originally, the consultation was designed to take place in a 'kitchen table' format. A kitchen table discussion is one in which a small group of people (up to 10) share their views about an issue. In our conception of the model, the discussion takes place over lunch, enabling a more open and relaxed discussion. Those in attendance are given the opportunity to share their opinions in a safe and respectful environment.

Consultations were due to take place in two sessions – one on 16 August and the other on 23 August, with each session involving 10 participants. However, on 12 August the ACT entered a seven-day lockdown which was then extended a further two weeks. This meant that an in-person consultation was no longer possible.

Participants were asked if they were still available to participate in an online discussion with us. Almost all participants were available and willing to participate in this new format. Sessions were held on 23 August and 2 September. Out of the 25 people that indicated that they would attend, 17 participants attended the online consultation sessions.

Each session ran for 90 minutes. Sessions were recorded, enabling detailed notes to be taken about the discussion. During the consultation, the participants were led by the facilitator through a discussion covering the four themes. An agenda for the consultation sessions is included in [Attachment A](#).

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2. THE PARTICIPANTS

Participants were asked to complete a survey prior to joining the discussion. This enabled us to collect background information. Most participants completed the survey.

AGE

Of the participants who joined us:

- 57% were aged 21-30
- 21% were aged 31-59
- 22% were aged above 60.

GENDER

Only 1 participant was male. It is important to note that several men were invited to each of the sessions. While several men told us that they would be attending, only one attended.

BIRTHPLACE

65% of participants were born overseas.

Places of birth included:

- America
- Cyprus
- Germany
- India
- Lithuania
- Malaysia
- Pakistan
- Venezuela

LANGUAGES SPOKEN AT HOME

Over 90% of participants spoke a language other than English at home. The other languages spoken at home included:

- Arabic
- Cantonese
- French

- Hindi
- Japanese
- Lithuanian
- Malayalam
- Mandarin
- Spanish
- Urdu

OCCUPATION

Participants had a range of occupations.

These were:

- counsellors
- cultural liaison officers
- executive managers of non-profit organisations
- health professionals
- legal professionals
- policy advisors
- public servants
- researchers
- university students
- social workers

ORGANISATIONS

Participants were also asked to identify whether they were representing an organisation. Represented organisations were:

- Canberra Multicultural Community Forum
- Health Care Consumers ACT
- HelpingACT
- Legal Aid ACT
- Multicultural Advisory Council
- Women with Disabilities ACT
- Women's Legal Centre

3. THE INSIGHTS

This section discusses the insights that we obtained from the consultation sessions. Insights from across the two sessions have been grouped together under the following headings:

- definitions – how sexual assault is defined by the participants, the factors that they thought needed to be taken into consideration when defining sexual assault, and the purpose of defining sexual assault
- culturally-specific experiences – the experiences of participants in how their own culture or the culture of people they know or provide services to influence definitions and perceptions of sexual assault
- barriers to accessing support and justice – the barriers that CALD people have experienced in accessing support and justice after a sexual assault.

Participants expressed diverse and sometimes opposing views. Participants sometimes agreed with both ends of opposing views as experiences differ based on the individual circumstances. We have represented the diversity of different CALD communities or different members of the same CALD communities in the discussion.

We have used the term ‘victim’ throughout the discussion below to refer to those who have experienced sexual assault. While it is acknowledged that some prefer the term ‘survivor’, the participants overwhelming referred to those who have experienced sexual assault as being ‘victims’ and we felt it was important to reflect this language in the discussion below.

DEFINITIONS

Key elements of the definition

Participants suggested that sexual assault involves **unwanted** sexual activity that takes place against someone’s will and/or with **force**, irrespective of the nature of the **relationship** between the offender and victim:

- unwanted – participants reiterated the importance of the ‘unwanted’ nature of sexual assault, irrespective of when the behaviour becomes unwanted. That is, a sexual interaction may begin with consent, but the moment this consent is withdrawn and the behaviour is unwanted, it becomes sexual assault.
- force – the use of ‘force’ is strongly linked to sexual assault. Participants said that while some types of force are obvious, others such as manipulation, coercion, or pressure are not as obvious. Participants noted that how a CALD person perceives and responds to this force is dependent on the individual and may be informed by past trauma or culture.
- relationships – participants made it clear that a sexual assault can occur irrespective of what the relationship is between the offender and victim, noting that consent can be withdrawn even in a relationship or marriage and by gender.

The participants highlighted that sexual assault results in the loss of autonomy over one’s own body.

The importance of language

Participants suggested that in some cultures, anything to do with sex, sexuality, or sexual activities is not discussed and there may be no direct interpretation for the term 'sexual assault.' In these circumstances, participants felt it was important for sexual assault to be discussed through the lens of power and an abuse of power rather than through stringent legal terms or by direct reference to sexual acts.

Participants from several backgrounds agreed that there are sometimes no words to describe the terms 'sexual assault' or 'consent' in their own languages, making it difficult to translate information from English. Participants acknowledged that some translators have the cultural understanding of these differences in language and use soft interpretations and appropriate euphemisms when working with victims of sexual assault.

"There are many cultures where when you translate information, there just isn't a translation for a particular word. This is unfortunate because while each word should have a translation, it's not the case... Interestingly, the translator has to find other soft words to convey the meaning gently.

– Community leader

The word 'sexual' itself was identified as uncomfortable or even grotesque in some languages, leaving service providers feeling like they were walking on eggshells when discussing sexual assault with their clients. One participant noted that her sensitivity and discomfort with the topic could be due to her own upbringing because these topics were considered taboo.

"When I'm working with women from [own cultural background], I can quickly gather information about the forms of family violence and what they have gone through. When I get to the point where we're talking about whether there has been any sexual coercion, the style changes and it's like you're walking on eggshells. You have to soften the language in order to bring out the information and make them feel comfortable to disclose. It's not necessarily because I feel uncomfortable – although, maybe that's part of it because culturally, I'm not brought up to talk about these issues – but the gentle approach helps the person open up a bit more."

– Service provider

There were also references made to the literacy proficiency of CALD communities in their own languages. Participants suggested that some CALD people may struggle to engage with materials that are translated into their own language because of limited or no literacy skills.

Understanding power

Participants felt that a better understanding of power structures that exist in our society (and in different diverse cultural communities) and how these acts cement power structures is important for discussing sexual assault in CALD communities. This is because sexual assault is often used as a tool for the perpetrator to gain a sense of power and humiliate their victim. There was also a sense that sexual assault reinforced patriarchal influences on relationship dynamics across diverse communities.

"It's about power. It's the power imbalance. The power of one person over another. And this is something that is not often addressed..."

it's about how much respect a man pays you and the dignity that you're afforded."

– Counsellor

Sexual assault in a public vs private setting

Participants suggested that some CALD communities are more likely to be able to recognise and define sexual assault when the perpetrator is not known to the victim. That is, they may not recognise sexual assault in a marriage but could recognise it when the perpetrator is a stranger. This is due to cultural expectations about how partners interact with one another, which are described further below.

The difference between harassment and assault

Participants distinguished between sexual assault and sexual harassment. Some participants indicated that sexual harassment would be conduct that does not involve physical contact but that sexual assault would involve physical contact. During discussions, participants noted that the line between harassment and assault is a fine and complicated line to draw and is highly dependent on individual experiences and past trauma. Sexual harassment was described as an action that can come off as unwanted flirting or attention. Sexual assault was distinguished as a physical advance where no consent was provided or consent was withdrawn.

Social media & virtual abuse

Participants indicated that definitions of sexual assault should consider social media and other online forums. For example, the role that sharing explicit photos can play – both photos of the victim and unsolicited photos being sent to a victim. Participants were particularly concerned about young

people who may not understand that this is a form of harassment.

"The internet is a horrific place. When Tinder came out, it didn't have an age restriction. We were 13-year-old girls being like 'I matched with my friends!' or 'Will you match with me!' We didn't know it was a dating app. We thought it was a game and suddenly people were talking to older men. We've been on the internet and talking to random people - being exposed to this [sexual] language and not knowing how to connect it to the things that are happening to us."

– Community member

Participants had a significant discussion about virtual forms of abuse, with many feeling it represented a grey area, particularly when deciding whether online activities would be 'harassment' or 'assault'. Participants found it difficult to define which type of unwanted sexual attention or abuse in online spaces fell into the definition of harassment and/or assault. Others suggested that the key element in determining whether an action or response could constitute sexual harassment or assault was how a person may perceive the behaviour, noting that patterns of behaviour or past trauma may contribute to perceptions.

The purpose of using a definition

Participants felt that sometimes it was difficult to determine whether a behaviour would constitute sexual harassment or assault. Participants suggested that definitions that distinguish between sexual harassment and assault would be useful in a legal context for helping to measure the degree of illegal behaviour and for assisting with the setting of charges for an offender. However, participants strongly felt that how

one chooses to describe or identify their experience – particularly when they come from a CALD background – should not determine how a person, service, or the justice system responds to the behaviour. Participants indicated that how a person identifies their experience is highly complex and may not fall within the standard terms or descriptions that are used by others.

CULTURALLY-SPECIFIC EXPERIENCES

Lack of recognition of sexual assault

Participants discussed vast differences between different CALD communities and even within a single group when it comes to an ability to recognise or define sexual assault. Some suggested that CALD communities can generally identify sexual assault and/or harassment. For example, younger CALD women who have spent most of their lives in Australia or were born here were identified as being more familiar with the colloquial understanding of sexual assault. On the other hand, older CALD women or those who spent more time overseas may not have this understanding.

Other participants shared experiences from their own communities and communities that they work with which indicated that there can be a failure to recognise or accept sexual harassment and/or assault in some CALD communities. Participants suggested sexual assault can be so common that it is normalised in an individual's country of origin. This normalisation is then brought to Australia and influences the views that CALD people have about sexual assault.

"In terms of my experience and in working with CALD women – particularly recently

arrived migrants and refugees – very few will go out of their way to report sexual assault in and of itself. It just doesn't happen. Oftentimes, where a light is shone on the fact that a woman has been sexually assaulted, it's in the context of a broader dynamic of family violence and coercive control. That's what they reach out to get help for."

– Service provider

Several participants spoke of a lack of recognition of rape or sexual assault within a marriage or relationship. That is, in some cultures, the concept of 'consent' being necessary between a couple was completely unheard of or deemed as unnecessary because simply being in the relationship was the consent. Participants often suggested that this type of thinking was pervasive in older CALD people or those who have recently arrived in Australia.

Some participants suggested that determining whether women can identify and define sexual assault is not as simple as linking it to the age or place of birth of a CALD woman. Participants spoke to a variety of experiences around the recognition of sexual assault amongst CALD women. For example, sometimes young women born in Australia have difficulty defining and understanding sexual assault while older, recently arrived migrants may be able to clearly do so. Participants indicated that these differences mean that assumptions should not be made by service providers or justice systems when interacting with victims.

Identifying sexual assault

Participants discussed how cultural perceptions play an important role in whether and how victims identify or describe sexual assault. For example, women who

believe that they must engage in sexual activities with their husbands, even if they do not want to, may be negatively affected by this behaviour but may not consider it to be sexual assault because it is taking place in the marital bed.

Hearing the implication behind the words

Participants suggested that victims of sexual assault may never have the specific words or ability to label their experiences as sexual assault. Rather, an individual may only allude to their experiences in a way that makes sense for them.

“A lot of the times there’s acknowledgement [by the victim] that something isn’t right or [the perpetrator] hasn’t behaved correctly. I feel like we’re almost fighting the wrong fight by trying to force everyone to articulate their experience as ‘sexual violence’ or ‘sexual harassment’ and to use the right words to describe what’s going on, rather than allowing people to use the words that describe their experiences best for them. Systems and structures should work out the services that match with the victim’s descriptions.”

– Service provider

For this reason, service providers, the police and justice system may need to be more open to recognising when a person needs help – even when the ‘right’ words or clinical terms are not used to describe their experience.

Culture and the ability to say ‘no’

Participants suggested that even if women can identify when behaviour constitutes sexual harassment or assault, cultural expectations may be a barrier for women

being able to say ‘no’ to particular behaviour. This can be due to a social expectation to not reject advances from a partner or because of the use of coercive control.

Participants spoke of women ‘accepting’ sexual assault by their partners as a way of escaping other forms of family and domestic violence. That is, they would go along with unwanted sexual contact to appease their partner, keeping themselves and their children safe. In these circumstances, women can identify the sexual assault but feel unable to say ‘no’ for fear of further violence. Participants suggested that some cultural expectations which suggest that women should stay in violent or abusive relationships to maintain the family unit may therefore contribute to women suffering sexual assault at the hands of their partner.

Participants indicated that religion plays a role in these situations, indicating that in some religions, women are socialised to believe that men and/or their husbands are close to God or are the ‘lord of the house’ and should be obeyed as an act of worship. Participants said that this can sometimes result in women not believing they have an ability to say no to sexual activity.

Perception of behaviours/images as being more sexual in nature

Participants indicated that sexual imagery and actions across cultures may look or be perceived differently, particularly within more conservative communities. For example, one person may consider a kiss on the cheek to be a friendly social engagement where another person from a different culture may interpret this action as unwanted, sexually intimate, or a form of harassment.

This misalignment between cultures and broader society can mean that there is a difference between what different communities consider to be sexual harassment and assault. The kiss on the cheek example caused much discussion among participants who struggled to determine whether this type of interaction would be a form of sexual assault or not. Participants felt this example demonstrated the type of non-violent behaviour which reflected a broader social entitlement that men may believe they have over women's bodies, irrespective of the culture of the offender or victim.

"The response [by perpetrators] is indicative of a broader social entitlement to women's bodies. That response of 'oh, it's a really odd thing for you not to want me to kiss you' and that shock factor or someone not paying attention to the fact that you have a boundary – that underlying behaviour is related to men's views of women's bodies."

– Community leader

Another example was the sharing of images of women in a form of online abuse. Where one type of image being shared online may be acceptable in some cultures, in others, it may constitute harassment. Participants gave examples of men sharing pictures of the victim that may not be disparaging for most women but would be problematic for women from some cultures and therefore considered a form of harassment and/or assault. Participants felt that the perceptions of victims must therefore be taken into consideration when determining whether the actions of a perpetrator are intended to be sexual harassment or not, particularly when the perpetrator shares the same culture.

Ultimately, participants felt that even when the behaviour appears to be broadly socially acceptable, it can become sexual harassment or assault once a person continues these behaviours or advances after a person has asked them to stop. Participants noted that it can be difficult for women from culturally diverse backgrounds to assert their bodily autonomy. In some situations, it was noted that even when women ask for these types of interactions to stop, men may actively or accidentally ignore these boundaries due to broader social acceptance of these behaviours or a belief that the victim is overreacting to the behaviour.

Opinions about the victims

The participants discussed the perceptions that some communities have about victims of sexual assault. Participants indicated that some cultures place the onus on women to not dress or behave in certain ways to avoid unwanted sexual attention or advances. As a result, when women are sexually harassed or assaulted, there can often be a perception in their cultural community that it must have been the victim's behaviour that in some way caused the assault. These instances of victim-blaming were described as very isolating for victims who may struggle with feelings of shame and/or an unwillingness to seek support from both formal and informal avenues.

Participants also suggested that in some cases, culture and religion are conflated in a way which sees women (or members of the broader community) feeling that their experiences are due to a lack of obedience to a deity or lack of adherence to religious rules. Participants reflected while men would be breaching religious rules when sexually assaulting women, the blame still falls on the

victim. Participants stated that community and religious leaders play a key role in managing community perceptions and the perceptions that victims may have about themselves. They also suggested that these leaders can help to change or clarify perceptions about acceptable behaviour.

The experiences of young women

Participants shared experiences of being young and not knowing that their experiences were 'wrong', unsafe, or a form of sexual assault. For example, there were discussions about older men taking advantage of the young women sexually and the victims were not aware that this was a form of sexual assault or harassment until they were much older. For some of the participants, this experience was worsened by their cultural understanding of the sexual urges of men; that is, the idea that men cannot control themselves when they are around a younger woman, making the victim feel like it was their fault for being in a position of 'tempting' the perpetrator.

Participants told us that younger CALD women may struggle to seek help from their families when they experience sexual assault. This is because even when they understand and have the language to explain their experience, victim-blaming is common and permeates conversations, dissuading victims from seeking help.

"We're a lot more able to talk about these things [than our parents are]. We're more sexually liberated than our parents. But, the big issue is that the more toxic traits of the culture seeps into the language. So, while we have the words to describe what is happening, there is still an underlying idea that 'it's your fault.' While I might have the

language, the understanding isn't there. We can't talk to our parents because we don't know how to connect the words to the things that are actually happening to us. We're living an entirely different life to the one our parents live."

– Community member

Young participants also told us that younger CALD victims of sexual assault may not receive the emotional support needed to deal with the trauma of their experience. These two factors leave young people feeling isolated or unwilling to seek help.

The experiences of older women

Participants suggested that older women in their communities have their own quiet ways of reaching out to other women for help.

"I remember my mum sitting with women her age. They used to talk to each other about all sorts of things. As a kid, I didn't know what it was. My mum in that period – I'm even in the 1960s and 1970s – she used to be the peacemaker when families were falling apart, including when sexual violence was occurring. They talked about it, but it wasn't done in an open manner."

– Community leader

Participants suggested that older women sometimes discuss these highly personal matters in small groups or one on one with a trusted confidant. Euphemisms are used to ensure that men or children within earshot of the conversation are not able to understand what is being discussed. This enables women to seek comfort or support from their peers.

Recognition of sexual assault of men

"I know that the percentage of women who are or will be sexually assaulted is very high,

but we should not neglect that there is also sexual violence that occurs against men.”

– Community leader

Participants told us that in some cultures, the sexual assault of a man by another person is

often not recognised. This is due to cultural expectations about how men are expected to behave and the idea that men cannot be victimised.

BARRIERS TO ACCESSING SUPPORT & JUSTICE

Language

One of the most common barriers to accessing support services and justice was the language barrier. Participants felt it was difficult to provide support to CALD people who did not speak English or spoke English as a second language. Some indicated that translation services can be very useful in these situations. Other participants indicated that they do not feel that all translators are helpful when the language that a translator uses to discuss sexual assault is not nuanced or specifically tailored to meet the needs of a CALD person and their culture.

Culture

Participants discussed how CALD people may find it easier to seek help from professionals that they identify with out of a concern that someone outside of their own culture or religion may not understand them or may judge them. On the other hand, some participants suggested that seeking help from someone outside of their own culture may be preferable so that victims do not feel that their story will be exposed within their own community.

Young participants noted that ‘cultural etiquette’ has prevented young CALD people from seeking help when they experience sexual assault due to the idea that sex and sexual assault must be kept private. For example, participants gave anecdotal

examples of women leaving workplaces, instead of reporting sexual assault by a colleague because of a sense of shame felt for disclosing something that should not be discussed, based on a cultural belief.

Immigration status

Participants suggested that migrant and refugee women are often reluctant to seek help for dealing with domestic and family violence because of their immigration status. Anecdotes were given by participants about women who were on a partner visa being worried about seeking help because their partner was the perpetrator. The consultations demonstrated there is a general misunderstanding by women and community members about the rights that non-citizens have to seek help or access services.

Fear of judgement

Another major barrier to accessing justice is the fear of judgement and ostracisation that victims face when they seek support. There is a concern that seeking help is the same as making their experience public.

When the perpetrator is a family member or partner, there is a hesitancy to bring shame to the extended family.

“There is a reluctance of utilising the court process to get justice. There are negative

cultural perceptions about a woman who chooses to go down that path. It's a source of shame to her and her family... A lot of women try to avoid it. They want help, but they want to avoid the court process."

– Service provider

When the perpetrator is not a family member, there is fear that the family and broader community will judge and blame the victim and/or their family for putting themselves in the situation.

Fear of the perpetrator

Participants suggested that very few CALD women will report their experiences of sexual assault or sexual violence, particularly when the perpetrator is a partner. Many of the participants suggested that this is often due to the fear of repercussions from the perpetrator. Participants suggested that women experiencing sexual assault at the hands of a partner are likely to be experiencing other forms of abuse, such as domestic violence, financial abuse or verbal abuse, and would go along with the sexual assaults to stop their partner from getting violent or abusing them in other ways.

Participants suggested that the police and/or service providers are more likely to be told of an experience with sexual assault or violence when a victim is seeking help for family or other forms of violence. In the experiences of some participants, even when women are being supported for family violence, they may not report the sexual violence or the extent of the sexual violence that they are experiencing. Participants suggested that whether a victim is forthcoming about their experiences is highly dependent on the response of the first responder (either service provider or police officer) who

interacts with the victim. Participants spoke of varied experiences interacting with police, with some noting there was a disparity in the training of police officers when it comes to responding to victims of sexual assault (particularly migrant and refugee women).

Participants also noted victims were sceptical about how their safety could be guaranteed once an offender knew that they had been reported. Younger participants in particular questioned whether intervention orders can genuinely protect a victim in a jurisdiction as small as the ACT, where the relocation of a victim may not create enough distance from a perpetrator.

Mistrust of authorities

Trust in authorities that deal with reported cases of sexual assault can also be a barrier to CALD people accessing services. This can come in multiple forms. Participants gave examples of individuals disclosing to police their experience of sexual assault for the purpose of a recorded statement only, with police then prosecuting the situation further against the wishes of the victim.

On the other end of the spectrum, there were people who felt that the police response was inadequate and resulted in a high amount of trauma for no real benefit. Participants suggested that the high rates of domestic violence in Australia and the perception that the police and justice system do not do enough to prevent violence, protect victims and punish perpetrators means that CALD people do not trust the system.

"I'm sorry to say this – I live here, this is my country and I am an Australian citizen – but I have to say...I have seen in the news and read articles about domestic violence and sexual

assault. The perpetrator runs away with a slap on their hand. If we are running forums to improve the laws and legislation, that has to actually change. Otherwise, how are we going to help migrant women to improve their accessibility and the information they have if when they come forward to name and shame a perpetrator... we see the person gets away with a slap on the hand. What's the point? Really, what's the point?"

– Community leader

There was scepticism about whether any strengthening of consent laws would make a difference for victims because it was felt that the problem was with policing and the response to reports rather than any definitions about what was or was not legal.

"When I saw what the topic of this forum was, I felt a sense of scepticism that changing consent laws would lead to better outcomes for people who experience sexual violence because at the moment we have pretty clear, black and white definitions about what is and isn't acceptable behaviour. But how is that enforced? How are survivors able to access any forms of recourse or justice? Police have failed victim survivors."

– Community member

In addition, participants spoke about the distrust of policing institutions in the context of the broader negative interactions between the police and CALD communities. Participants felt that over-policing, violence towards CALD people, and the targeting of particular communities by the police has resulted in a fracturing of trust. Participants felt that much more needed to be done to improve how policing is carried out so that CALD people feel that the police are there to help them as well.

"The relationship between police and migrant and ethnic communities is fractured. That's not as a result of people not feeling like they can come forward and speak to police. I think it's as a result of a lot of systemic violence enacted by the police and state institutions [against CALD communities]."

– Community member

Not all mistrust of authorities is caused by the actions of our local systems. Participants suggested that trauma associated with negative experiences with authorities overseas stays with people who migrate to Australia and can be passed on to Australian-born children. This then influences how people see authority figures in Australia.

"There is a lack of trust. We don't trust our authorities in our countries. It's hard to trust them – everyone from police to the judges. Everyone. People come [to Australia] with that seed in their head."

– Community leader

Young CALD people were also prone to mistrust of authorities due to stories that are shared through social media domestically and overseas. This results in a mistrust of police and the judiciary in the ACT.

Not wanting to harm the perpetrator

Some participants indicated that victims are unwilling to access support services out of fear that their report would harm the perpetrator. Participants suggested this may be the case when the perpetrator is the victim's partner or someone from within their own community.

"A lot of women don't disclose because they don't have confidence that there will be an appropriate response. So, what's the point in"

disclosing?... Even when they do disclose, they're not talking about everything. They want to protect the reputation of the person they are talking about, especially if they're talking to someone within their own community. They don't want to say 'my husband is doing all these awful things.' As a result, the person hearing that may think 'it's not that bad.' But it is bad and the person isn't sharing the full extent of what's going on."

– Service provider

Participants suggested that some victims of sexual assault do not seek help or report their experiences to authorities because they will not want to see the offender prosecuted through the justice system. Younger participants in particular suggested that this lack of control over the process by a victim created a sense of disempowerment because the choice about how they respond to their experience was taken away from them.

Not wanting to harm the community

Another barrier came in the form of a perception that the justice system and broader community hold negative or racist views about CALD communities. Victims may be unwilling to disclose their experiences of sexual assault by someone from their own community for fear of further stigmatising their communities or driving up statistics about sexual assault or family violence in their communities.

Cultural competency

There was broad consensus from participants that long-standing cultural competency issues with service providers in the ACT need to be addressed. Participants quipped that if service providers are not seeing many CALD people, it means that the services are not culturally appropriate.

"If people aren't engaging with the service, that's a sign that it is not culturally appropriate... There's something in the way that structures are fundamentally set up that means that people don't engage with services in the first place."

– Community leader

Participants suggested that in many instances, CALD women who experience sexual assault only access services when their situation reaches a crisis point, and they require emergency access to protection, housing, or financial support. In these circumstances, service providers find it particularly difficult to offer a culturally appropriate service.

Participants gave examples of the type of culturally-specific support that women may need. For example, women may be going through a traumatic psychological process of reconciling their cultural or religious views with the fact that they are leaving a relationship or seeking help. They may need help from a religious leader who can help them to understand their rights in their own religion and that it is okay to leave a violent situation. While these services are unlikely to ever be provided through a service provider, participants felt that it would be useful for providers to have access to a network of cultural and religious leaders who can provide support.

"Generally, when women do engage with services, it is because they're in absolute crisis and there are immediate threats to safety. Immediate concerns are housing, accessing finances and other basic safety needs being secured. A lot of what I hear is that there are other elements of the experience where – no matter how well trained the service providers

are – they won't be able to engage with them. Questions like 'Did I do the right thing by leaving this marriage?' or 'How do I reconcile myself with my faith when faith was used as a tool of abuse throughout my experience with violence?'... These are things that people can be overwhelmed by."

– Service provider

Issues with service providers

Participants indicated that there can be issues with victims seeking support from a service provider who shares the same cultural background. One participant told a story of a woman seeking help from a service provider who shared the same cultural background, only for that person to tell other members of the community about the victim and her experience. In another instance, a woman presented herself to a multicultural women's service to access counselling to deal with sexual violence in her marriage. The counsellor advised her that she should go

home to make the marriage work. The woman had to access multiple services before she was put in touch with a legal service provider that supported her and helped her to get a divorce from her husband. There was a concern that this was not a rare occurrence.

Participants also shared negative experiences with women seeking support from doctors who mishandled their situations. For example, a participant told the story of a woman who sought assistance in confidence from her doctor because she was being assaulted by her husband. The GP then broke this confidence by having the victim and the perpetrator sit together to discuss this situation with the doctor. Participants suggested that this was not best practice and while doctors may be on the frontline when it comes to receiving first disclosures from victims, they are not always equipped to handle these situations.

4. THE RECOMMENDATIONS

SEXUAL ASSAULT REFORMS

This section discusses the suggestions that participants made for resolving the issues raised during the discussions, particularly in relation to improve access to services and justice for CALD people who experience sexual assault.

More than just acute help

Participants suggested that many services for victims of sexual assault are focused on an acute emergency response. Participants suggested that Canberra needs to provide better long-term support for victims who are managing their trauma and life after leaving a dangerous situation.

"You say, 'ok, I've had my three emergency counselling sessions and I have these pamphlets – now what do I do? Who's going to help me through the rest of this process?'"

– Community member

Some participants noted that the careers of CALD women have been damaged when they experience sexual assault in the workplace as they face consequences when they report the perpetrator or when they leave the situation, so specialised support would be useful for helping victims to overcome their experiences.

Some participants suggested that the establishment of case management services

tailored to Canberra's larger culturally diverse groups would help service providers to improve their service delivery. Others suggested that further research and advocacy on behalf of CALD communities was needed.

"What would be really great is if there were case management services for the more dominant culture groups that we could work closely with and do case management together. We could give the speciality legal and safety planning support and the cultural questions that require the specialist knowledge could be provided for with more collaboration."

– Service provider

Training trusted professionals and cultural leaders

Participants suggested that many women go to a trusted figure or professional to first disclose a sexual assault. This frequently includes GPs or health professionals. It is important that people who form these points of first disclosure are properly and regularly trained to manage reports of sexual assault in a way that aligns with best practice. This type of training should also be provided to community leaders who are likely to be approached by members of their community for support.

Training service providers

Service providers, frontline staff, and all parts of the justice system should receive cultural competency training to ensure that there is a better understanding of the fact that people from different cultures will see and respond to experiences of sexual assault and harassment differently.

"There's a disparity in terms of training and knowledge that police officers have in terms

of family violence and family violence experienced by migrant women. First instance responses by police are varied."

– Service provider

Participants noted that there will never be a complete understanding of how all cultures manage and respond to sexual assault. However, training for service providers will go a long way to ensuring that victims receive the right support when trying to navigate support and justice systems.

"I'm not sure how I feel about the idea of one service ever being able to be perfect for all cultural backgrounds. The goal isn't to be perfect...it's for service providers to be aware that they can seek more information and establish connections with the different cultural groups. Being linked in with people from the community is a way of ensuring that advice can be sought about a specific situation when the need arises."

– Community member

Educating the Canberra community

Participants suggested that more information needs to be provided to the community about sexual assault and how people can seek help for themselves or someone they know. Information should include help for managing culturally sensitive situations.

"The first person you go to is someone you trust. You might have doubts about going to the police or a crisis centre, so you go to someone you trust. General awareness needs to be better. If people are upskilled, they can help you go to a good service."

– Community member

Participants also suggested that culturally sensitive information about defining sexual

assault and available support services should be created for diverse communities. This information should be developed with the support and help of members from diverse communities. Participants noted that it would be important to craft information for specific communities rather than rolling out a standard suite of translated information, noting that while not all cultures could be catered for, targeting the larger groups would be a good place to start.

“We supported a woman [who had been sexually assaulted] to go to the police. We went through that entire process but we didn’t know at which point we weren’t helping anymore and actually were playing a detrimental role. It impacted the court case because we were still involved and no one told us how we can continue to support the woman, without interfering in the formal process, while the court case was still underway.”

– Community member

Some participants suggested that CALD communities have been asking for training on how to identify sexual assault, seek help, or help members of their community who are victims or perpetrators.

“We get a lot of requests from women within different communities. They say ‘I get approached by women in the community [who are experiencing sexual assault] because we support each other, but we don’t know how to support them.’”

– Service provider

Educating migrants

Participants noted that migrants receive a lot of information when coming to Australia and that information about sexual and domestic

violence should also be provided to migrants in the language that they speak and in a way that is culturally appropriate. Participants suggested that this information should be provided directly to migrants before they arrive in Australia wherever possible. This was suggested as a way of ensuring that men or extended family members do not keep this type of information from their migrant partners.

Educating children and young people

Participants highlighted the importance of ensuring that children are educated on these topics in an age-appropriate way in the school environment. Participants felt that this would result in a greater awareness across the community because children and young people learn things quickly and would have an intrinsic understanding of their own culture to share their knowledge with family members.

Participants also felt that this would improve broader community awareness about sexual assault and the rights that people have to bodily autonomy because children are likely to go home and discuss what they learn with their parents and families.

Strengthening and expanding the law and legal options

Some participants wanted to see improvements to legislation, noting there was a need for the police and justice system to demonstrate that perpetrators would be held accountable to the fullest extent of law.

In addition, participants felt that a restorative justice approach should be embedded within the justice system to respond to sexual assault and violence. Participants wanted to see this focusing on truth telling and the

personal experiences of victims in a way that overcomes racial stereotyping and archetypes of CALD people and communities. Participants wanted to be seen and heard by the justice system in a way that enables them to heal.

Including CALD women in all levels of policy and decision making

Participants strongly felt that the voices of CALD people – particularly CALD women – were not being heard by the government.

“Ensuring that women of CALD backgrounds are in positions – whether it’s on a board, a government board or any other type of organisation that deals with these issues – is crucial. Ensuring that there are CALD women involved in discussions; it goes to the crux of

good stakeholder engagement. You must have the people in your organisation that are liaising with people who are part of the problem you are working on. That will go a long, long way. Having that diversity gives people who are making decisions another way to look at something.”

– Community leader

Participants suggested that women of CALD backgrounds and diverse people needed to be actively recruited to policy areas and advisory boards that are dealing with sexual assault. They felt that consultations with diverse communities would not replace the benefits that could be gained through ongoing representation of CALD people.

ADDITIONAL COMMENTS

Some participants raised additional comments about the way that the ACT Government consults with CALD communities. We present those insights below for the benefit of the OFS and other agencies who wish to consult with the ACT’s CALD communities:

- some participants felt that CALD communities are not sufficiently consulted with by the ACT Government and that this is a systemic issue.
- some participants felt that the government was using the skills of CALD communities on a voluntary basis when the community lacked capacity for this. That is, some of the participants provide a large amount of volunteer services to support their communities while trying to balance this with their own lives. As a result, they were stretched and had limited capacity to do more work. They felt that if the government wanted to use their expertise, people should be paid for their insights or time.
- some participants wanted to see a greater acknowledgement of the expertise and insights that CALD community members can offer. They wanted to see an active recruitment of CALD people into positions where decisions are made.
- participants wanted to see much more engagement with CALD communities taking place after hours (evenings or on weekends) so that more people could make the time to participate.

ATTACHMENT A – AGENDA FOR CONSULTATION DISCUSSIONS

Item	Description and questions to prompt discussion	Duration
Welcome and introductions	<ul style="list-style-type: none"> Welcome to attendees Acknowledgement of country Introduction – Amne and Avicenna Consulting Short introduction from attendees 	20 minutes
Definitions	<ul style="list-style-type: none"> What is sexual assault? <ul style="list-style-type: none"> Who can be sexually assaulted? Are there forms of sexual assault that are culturally specific? What does your community understand about sexual assault? What do the women in your lives know about sexual assault? What do the men in your lives know about sexual assault? Is a young person's experience of sexual assault different to that of older people? 	35 minutes
Community openness	<ul style="list-style-type: none"> How open is your community in talking about sexual assault? What barriers are there for people sharing their experiences with sexual assault? 	
Services	<ul style="list-style-type: none"> Do you know about the sexual assault services available in the ACT? Has anyone you know accessed these services in the ACT? <ul style="list-style-type: none"> Were their needs met? What did the organisation do well? What could be done better? Was the organisation understanding of your cultural needs? What could SA services do better to encourage people from your community to access these services? Where do people who experience sexual assault go to for help? Do you feel confident you could access services and services? Is there enough awareness about sexual assault services in your community? What are the barriers to accessing services? 	30 minutes
Justice system	<ul style="list-style-type: none"> How do people in your community feel about the police? Would people in your community seek assistance from the police in response to sexual assault? How do people feel about the judiciary? Courts, judges? Would people in your community trust the judiciary to deliver justice? What barriers do people have to accessing the justice system? 	
Wrap up	<ul style="list-style-type: none"> Thank you to attendees 	5 minutes

APPENDIX 5 RECOMMENDATIONS REGARDING THE CRIMES (CONSENT) AMENDMENT BILL 2021 AND THE CRIMINALISATION OF STEALTHING

RECOMMENDATION 1

Dr Paterson refer the Crimes (Consent) Amendment Bill 2021 (Bill) to the ACT Human Rights Commission, to provide advice on any human rights implications raised by the Bill.

On 21 June 2021, Dr Marisa Paterson MLA released the Crimes (Consent) Amendment Bill 2021 (the Bill) on exposure. The Bill proposed amendments to the *Crimes Act 1990* to introduce an affirmative communicative model of consent. This Bill proposes significant changes to the legislative model of consent.

As a human rights jurisdiction, the ACT is expected to develop law that aligns with and promotes human rights. The Bill may have significant implications for the protection and enjoyment of human rights in the ACT.

It is recommended that the Bill is drafted with extreme precision and care and subject to scrutiny, to ensure the Bill achieves what is intended and does not create unintended discriminatory harms or inconsistencies within the legislative scheme. To ensure that the Bill does not threaten or conflict with human rights, and to avoid the creation of unintended and potentially discriminatory harms, the Bill should be subject to human rights scrutiny.

RECOMMENDATION 2

That the words used in any amending Act in relation to the definition of consent be consistent with the existing terminology in the *Crimes Act 1900* (ACT).

It is recommended that the words used in any amending Act in relation to the definition of consent be consistent with the existing terminology in the *Crimes Act 1900* (ACT). For example, currently section 67 refers to sexual intercourse (defined at section 50(1)), while the Bill refers to “a sexual act” in some areas and “the act” in other areas. Further, in the Bill’s second draft, section 67(1)(b) refers to “participates in the act”, noting that in other jurisdictions, different words have been used.

RECOMMENDATION 3

Government considers introducing a dedicated subsection on consent which would be an effective community educative tool. It is noted that the NSW Law Reform Commission (NSWLRC) recommended the creation of a new subdivision in the *Crimes Act 1900* (NSW) to group all the laws dealing with consent together (Recommendation 4.1).

This would assist in addressing misconceptions or assumptions about sexual violence and consent in the community. This also aligns with the community’s expectations that sexual violence is not tolerated in any form, that the government respond to sexual violence appropriately, and victim survivors be meaningfully supported.

RECOMMENDATION 4

Government considers including a provision to provide explicitly for circumstances where there may be a withdrawal of consent (Recommendation 5.3 of the NSWLRC) to clarify circumstances where consent is withdrawn.

Recommendation 5.3 of the NSWLRC report states that the Crimes Act 1900 (NSW) should provide that a person may, by words or conduct, withdraw consent to a sexual activity at any time before or during the sexual activity, and sexual activity that occurs after consent has been withdrawn occurs without consent.¹

The NSWLRC report recommends that the following regarding withdrawal of consent:

- A person may, by words or conduct, withdraw consent to a sexual activity at any time before or during the sexual activity. Sexual activity that occurs after consent has been withdrawn occurs without consent.
- A person who does not offer physical or verbal resistance to a sexual activity is not, by reason only of that fact, to be taken to consent to the sexual activity.
- A person who consents to a particular sexual activity is not, by reason only of that fact, to be taken to consent to any other sexual activity. For example, a person who consents to a sexual activity using a condom is not, by reason only of that fact, to be taken to consent to a sexual activity without using a condom.
- A person who consents to a sexual activity with a person on one occasion is not, by reason only of that fact, to be taken to consent to a sexual activity with
 - that person on any other occasion, or
 - another person on that or any other occasion.²

The Crimes Act should more clearly recognise that consent can be withdrawn at any time before or during sexual activity.

RECOMMENDATION 5

The drafters consider substituting ‘consented to’ at section 67(2)(b) to ‘at a different time or place consented to,’. Currently ‘at a different time or place’ only relates to ‘the same act with the same person’ under section 67(2)(b)(ii).

The Bill does not provide that consent is not to be inferred, in relation to an act with another person on another occasion, as recommended by the NSWLRC (Recommendation 5.6).

¹ NSW Law Reform Commission, *Consent in Relation to Sexual Offences*, Report 148 (September 2020), [5.3].

² NSW Law Reform Commission, *Consent in Relation to Sexual Offences*, Report 148 (September 2020), [5.1].

RECOMMENDATION 6

Government scrutinise section 67(2)(a) of the Bill to identify if this section adequately addresses the circumstance where a person initially consented, by way of words or act, but subsequently freezes and does not communicate that they are no longer consenting.

To address the ‘freeze response’, government scrutinise section 67(2)(a) of the Bill to identify if this section adequately addresses the circumstance where a person initially consented, by way of words or act, but subsequently freezes and does not communicate that they are no longer consenting.

It is recommended that government consider if further amendments are required to clarify the circumstances where a person does not consent to ensure law reform in this area can achieve its intended effect.

RECOMMENDATION 7

Further careful drafting and scrutiny, as well as consultation with key stakeholders, such as Meridian, A Gender Agenda and ACTCOSS, is recommended to ensure the Bill does not create inadvertently discriminatory consequences.

This Bill proposes significant changes to the legislative model of consent. It is recommended that it is drafted with extreme precision and care and subject to scrutiny, to ensure the Bill achieves what is intended and does not create unintended discriminatory harms or inconsistencies within the legislative scheme.

The Bill retains the current framework that a person is not taken to have consented if they are mistaken as to the identity of the person (section 67(1)(h)) or participate in the act, due to fraudulent misrepresentation of any fact made by someone else (section 67(1)(i)). This amends the original drafting of section 67(1)(h) and section 67(1)(i). However, both drafts may result in inadvertently discriminatory consequences, particularly for members of the LGBTQI+ community.

RECOMMENDATION 8

Drafters consider whether to include a provision to clarify the matters triers of fact must and must not consider in making any finding regarding the mental element of knowledge of non-consent.

The NSWLRC recommended clarifying the matters triers of fact must and must not consider in making any finding regarding the mental element of knowledge of non-consent (Recommendation 7.7). This was not explicitly adopted by the Bill.

RECOMMENDATION 9

To recognise the circumstance of people living with disability who require supported decision-making, the inclusion of a provision that a person who assists with assisted or supported decision-making in line with existing law is not guilty of an offence if they assist that person with decisions regarding consent, is recommended.

It is vital that any reforms to the law of consent be inclusive, align to human rights and not create further discriminatory disadvantages for the vulnerable in our community. The current drafting of the Bill may potentially have discriminatory impacts for people with a disability, given the notion of decision-making that it introduces.

STEALTHING

RECOMMENDATION 10

Further law reform in relation to the law of consent should maintain a provision which explicitly includes stealthing as a factor negating consent.

Stealthing is the non-consensual removal of a condom during sexual intercourse. A recent study by the Melbourne Sexual Health Centre and Monash University highlighted the prevalence of stealthing, finding that one in three women, and nearly one in five men who have sex with other men, reported being victims of stealthing.³ Stealthing risks physical and psychological health and can cause immense trauma for victim survivors.

Recently, stealthing has gained greater community awareness and condemnation, as a form of sexual assault.

The recently passed *Crimes (Stealthing) Amendment Bill 2021* (Stealthing Bill) expressly criminalises stealthing under ACT criminal law by providing that consent is negated if it is obtained by an intentional misrepresentation by the person about the use of a condom.

Upon reform of the law of consent, a provision which explicitly includes stealthing as a factor negating consent should be maintained. It is important the drafting of discrete factors which negate consent does not inadvertently cause other actions to be deemed to not negate consent, due to their omission.

3 *Crimes (Stealthing) Amendment Bill 2021* (ACT) Explanatory Statement

APPENDIX 6 RECOMMENDATIONS THAT RELATE TO LAW REFORM (RECOMMENDATION 23)

PENALTIES FOR SEXUAL OFFENCES

- a Legislative maxima for sexual assault offences, to align with current practice in other Australian jurisdictions more closely.
- b For identified serious sexual offences, the ACT Government introduce a rebuttable presumption that a custodial sentence should be imposed, unless exceptional circumstances apply.
- c Introduce a legislative presumption that Intensive Correctional Orders and suspended sentences are not to be imposed for serious sexual offences.

Perpetrators found guilty of committing a sexual offence in the ACT are less likely to go to prison than in other jurisdictions and, if they do go to prison, this will likely be for a shorter period.¹ They are also more likely receive a more generous non-parole period, compared to other jurisdictions.²

In this context, victim survivors often feel that sentences perpetrators receive are insufficient and fail to adequately recognise the significant harm caused to them or deliver them justice. This is also out of step with community attitudes regarding sexual assault as one of the most serious crimes.

These lower penalties may reflect that the ACT's legislative maxima for sexual assault offences are comparatively lower than other jurisdictions in Australia. Although legislative maxima are not the sole determinant of sentencing outcomes, they are an important yardstick in determining the appropriate sentence to reflect the seriousness of a matter. Legislative maxima also have a significant role in communicating how the government views the seriousness certain offences. As the High Court has determined, when the legislature raises the maxima, they are sending a message to the courts that sentences should increase.³

Increasing legislative maxima for sexual assault in the ACT to align with practices from other jurisdictions would send a message to victim survivors, the judiciary, and the community that the ACT Government recognises the gravity of sexual offending and the harm caused to victim survivors and that penalties should be proportionate to this harm. This is important to support victim survivors and to foster primary prevention initiatives focused on developing community attitudes that reject sexual violence. Creating greater jurisdictional consistency in sentencing maxima would also help to ensure that victim survivors can expect to receive the same amount of support across Australia, no matter where the sexual offence took place.

There are a range of sentences that the court may impose for sexual offences. However, for certain serious sexual offences (including sexual intercourse without consent, sexual intercourse with a young person, maintaining a sexual relationship with a child or young person under care, and course of conduct (where the course of conduct is made up of instances of sexual relations with a child (see sections 54, 55, 56 and 66B of the *Crimes Act 1900* (ACT)) non-custodial sentences may fail to be adequately proportionate to the seriousness of the perpetrator's conduct or the magnitude of the harm caused to the victim survivor.

Further, Intensive Corrections Orders (ICOs) and suspended sentences may also be unable to adequately recognise the harm caused or the gravity of the offending, given they are inherently more lenient than custodial imprisonment and carry lesser punitive effect.

Yet despite this there have been some cases in the ACT where the court has imposed either a non-custodial sentence, an ICO or a suspended sentence for perpetrators found guilty of such serious sexual offences.^[4] This is concerning, given these identified sexual offences are recognised by the community and the ACT Government as among the most serious and damaging types of offences. Current practices suggest that sentencing outcomes are not consistently reflecting this.

SENTENCING SUBMISSIONS

- a The rule established in *Barbaro v The Queen* [2014] HCA 2 be overridden.

The decision in *Barbaro v The Queen* [2014] HCA 2 (*Barbaro*) limits the ability of both parties to make submissions regarding the appropriate sentencing range. Limiting such submissions has been criticised as potentially leading to an unnecessary increase in appeals based on manifestly inadequate or excessive sentences. Protracted appeals may continue to traumatise victim survivors and do not provide closure.

Some jurisdictions (including Queensland) have introduced legislative reform to overturn *Barbaro* and make it clear that both parties may make submissions in sentencing regarding appropriate sentencing range.

ADMISSIBILITY OF EVIDENCE

- a Reform to make clear that evidence of prior family violence between the parties is relevant and admissible in sexual assault cases, provided this evidence is not unfairly prejudicial to the defendant.
- b When evidence of prior family violence between the parties being relevant and admissible in sexual assault cases it should also explicitly apply to people with disability, in care relationships and residential settings, highlighting the findings of the ongoing Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, noting the different dynamics.

These reforms align with the wider interpretation of domestic and family violence in other jurisdictions which acknowledges the specific circumstances of people with disability, including carer and paid support worker relationships, and relationships between residents of residential settings such as group homes.

The available research suggests a significant percentage of victim survivors of sexual assault also experience domestic and family violence. Specifically, ABS data reveals that, in 2020, 37 per cent of sexual assaults reported nationally were related to domestic and family violence, while the figure in the ACT was 27 per cent.⁵

Accordingly, evidence of prior domestic and family violence between the parties is important in sexual assault trials. Such evidence can assist the factfinder to better evaluate the true nature of relationship between the parties and why the victim survivor reacted as they did, which is vital to counter any misunderstandings of why someone acted in a particular way in response to sexual violence.

However, it is currently somewhat unclear whether evidence of prior domestic and family violence is admissible in all cases of sexual assault. Under the common law parties can apply to adduce this evidence where it is relevant and not unfairly prejudicial, meaning it can be admitted in certain sexual assault cases. However, this is not widely or consistently understood or practiced.

It is necessary to make clear that evidence of prior domestic and family violence between the parties is relevant in a sexual assault trial. Legislative reform clarifying this will support prosecutors to apply to adduce such evidence more frequently.

This would also have important normative and practical effects for how police investigate sexual assault matters by assisting them to know what information may be relevant and informing what questions they ask at the initial stage of evidence-gathering. Currently, the lack of clarity regarding whether prior domestic and family violence is relevant in sexual assault trials means evidence of this may not be

gathered at the initial EIC interview stage of sexual assault reports. It can be too late to rectify this once the case has progressed to the DPP, without compromising the credibility of the witness to the jury or having to seek an adjournment, which may not be granted.

In addition to legislative reform, further education and training may be necessary to address the general lack of knowledge among police regarding the admissibility of prior domestic and family violence (which is broader than sexual violence) in sexual assault matters. It is important to ensure that domestic and family violence is not overlooked as directly relevant when investigating sexual assault because of a perceived separation between sexual violence crimes and domestic and family violence. This training should be trauma-informed and address the nature of sexual assault and how victim survivors may present and respond to reporting

PRESUMED HARMS

- a The ACT Government review whether legislative reform is the most appropriate mechanism to introduce a rebuttable presumption in sentencing for sexual offences that the offending caused certain harms for the victim survivor.

Increasing legislative maxima in isolation will not ensure that sentences adequately reflect the harm sexual violence incurs for victim survivors or the community's expectations for sentencing of sexual offences. Providing increased education to stakeholders in the sentencing process is also vital to reforming sentencing outcomes, as discussed.

This education may lead to the slow development of a set of presumed harms, in cases of sexual offending, in the common law. The emergence of principles of presumed harms in relation to sexual offences against children has caused judges to take account of certain harms and consequently increased the severity of sentences whilst also ensuring that cross-examination of the victim survivor is not conducted in way which attempts to explore areas the set of presumed harms have addressed (for example in matters of consent).⁶

The development of a discrete set of presumed harms for all sexual offences would be beneficial, to ensure victim survivors are adequately acknowledged in sentencing, regardless of how they presented or whether a victim impact statement was submitted. Having a set of presumed harms would also protect the victim survivor from being subject to the potentially retraumatising experience of having to adduce expert evidence to prove the harm caused. While the prosecution is free to present such evidence, if available, they could still rely on the presumption of harm, if the victim survivor chose not to go through such a process. Finally, introducing a set of presumed harms would limit potential revictimisation through the court process, by ensuring that cross-examination and submissions do not go outside these parameters.

To ensure that such presumed harms are developed in a timely manner to reflect the community's expectations and the legislature's policy position with clarity, legislative reform is recommended to introduce a set of rebuttable presumed harms. Introducing a set of presumed harms through statute, rather than relying on the evolution of the common law, would also ensure clarity and timeliness to such reform.

MANDATORY CLOSURE OF THE COURTROOM

- a That a presumption be introduced that the courtroom be mandatorily closed when a victim survivor witness is giving evidence in a sexual assault matter, either live or by recording, Provisions regarding the mandatory closure of the courtroom to also apply in a civil family violence proceeding, if the family violence application has been made based on a sexual assault and if the same protections would apply in a criminal setting.

In a sexual assault trial, a vulnerable witness or child will record their evidence prior to trial in a closed courtroom. However, when this recording is played at trial, the courtroom will remain open, unless the prosecution makes an application for the courtroom to be closed. Additionally, when an adult victim survivor gives evidence, they will do so in a remote witness room, but the courtroom remains open, unless the prosecution applies to close the courtroom. This means members of public can attend and watch victims give evidence live or recorded.

This situation may risk the victim survivor's safety or make them feel uncomfortable or unsafe when they give evidence. Such procedural elements of the criminal trial process may contribute to retraumatising victim survivors and discouraging victim survivors from proceeding to prosecution. Introducing a presumption that the courtroom should be closed rather than requiring the prosecution to apply for the closure would support victim survivors' privacy and safety as they engage in this difficult process.

However, the closure of the courtroom must still maintain the victim survivor's capacity to speak of their case openly after the trial, so that they are not silenced. Currently this capacity is not restricted by the closure of the courtroom on application, as media can still be present, and victim survivors can speak after the trial is concluded. Victim survivors are only restricted from speaking openly about their case if the defendant is not convicted.

To ensure consistency across the criminal and civil systems, reforms to protect victim survivors when giving evidence in a criminal trial should also be introduced to protect victim survivors giving evidence in civil matters, particularly family violence proceedings involving sexual assault. Currently, the victim survivor may be able to give evidence remotely or in

a closed courtroom in a family violence proceeding, but this is discretionary, meaning victim survivors do not have the same security of choice when deciding whether (or how) to proceed in the civil system. Ensuring consistency across the civil and criminal systems would align with the *Respect@Work* report's recommendation that special measures be available in civil proceedings, in the same way that they are available in criminal proceedings when dealing with the same content.⁷

BAIL

- a That s55, 55A, 56 and 66B of the *Crimes Act 1990* (ACT) be amended to provide that the presumption of bail does not apply.

Currently, the presumption of bail does not apply to specified offences listed in Schedule 1 of the *Bail Act 1992* (ACT). This includes sexual intercourse without consent and sexual intercourse with a child under 10 (ss 54 and 55 of the *Crimes Act 1990* (ACT) respectively). However, other similar sexual violence offences are not included in Schedule 1, meaning the presumption of bail still applies to them. It is unclear why they are not listed.

SEXUAL ASSAULT COMMUNICATIONS PRIVILEGE

- a The court rules be amended, to provide that additional notices are to be attached to subpoenas dealing with confidential counselling notes for victims of sexual assault

The sexual assault communications privilege seeks to protect the public interest in ensuring victim survivors can access confidential therapy and counselling without those communications being disclosed at trial. This enables individual victim survivors to access counselling without delay due to ongoing criminal proceedings and seeks to prevent deterring other complainants from seeking counselling or reporting sexual offences.⁸

Confidential counselling notes are privileged and that it is highly unlikely confidential counselling notes made between a counsellor and a victim survivor of sexual assault, particularly a child victim survivor, would be admitted at trial. However, despite this privilege, stakeholders in the sector report a lack of clarity and awareness about their rights and obligations regarding the disclosure of confidential counselling notes. This may discourage some victim survivors from seeking counselling.

Further, therapy for child victim survivors may be delayed and therefore compromised, pending the outcome of criminal proceedings. This is because:

- Therapists have been informed that therapy risks disrupting the child's memory of events and might thereby undermine the quality of their evidence at court. At the

same time there has been considerable research on the impact of delays in proper therapeutic intervention on a child's development

- of a concern that the counselling notes may be subpoenaed, as evidence in a criminal trial.

In relation to cases involving an adult victim survivor, there is also a lack of clarity concerning the admissibility of communications between a counsellor and a victim of sexual assault.

The Australian Law Reform Commission (ALRC) noted that in practice the sexual assault communications privilege may not achieve its purpose as in many jurisdictions the restrictions did not prevent defence lawyers from issuing subpoenas requiring the production of counselling notes.⁹ Counsellors who are unaware of the privilege may produce such records rather than going to court to resist a subpoena.¹⁰ Additionally, some victim survivors were not informed of the subpoena of their counselling notes and reported feelings of violation due to the legal processes associated with seeking disclosure of their records.^[11] The ALRC concluded that such issues may arise because although the privilege is legally that of the participants in the counselling process, the documents belong to the counsellor and their professional obligations and interests may differ from the victim survivor's wishes and interests.¹²

Recognising this, the ALRC recommended that the interests of complainants in sexual assault proceedings be better protected by requiring that parties seeking production provide timely notice in writing to the other party and to the complainant and that any such notice be accompanied by a pro forma fact sheet on the privilege with contact details for legal assistance.¹³ Subpoenas should also be issued with a pro forma fact sheet on the privilege.¹⁴ The ALRC further recommended the development of training and education programs about the sexual assault communications privilege and responses to a subpoena for judicial officers, legal practitioners and counsellors.¹⁵

JURY DIRECTIONS ABOUT MISTAKEN BELIEF REGARDING CONSENT

- Section 80D of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) to ensure that in a sexual offence proceeding, the jury considers whether the defendant's mistaken belief as to consent was reasonable in the circumstances.

Currently, under section 80D of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT) in a relevant sexual offence proceeding, the judge must direct the jury that they may consider whether an accused's mistaken belief that a person consented to a sexual act was reasonable in the circumstances. This means juries have discretion whether or not to consider this element, potentially leading juries

to not consider whether a mistaken belief was reasonable. This would allow potentially unreasonably held beliefs to evade criminal responsibility.

Amending this section to direct the jury that they must consider whether such a mistaken belief was reasonable in the circumstances would ensure that unreasonably held beliefs regarding consent would be considered by the jury. However, it is important that amendments to jury directions do not dictate the outcome of the jury's decision, but only direct them as to the issues that they must consider.

THE DEFENDANT'S LEVEL OF INTOXICATION

- Legislative reform to clarify that in a sexual assault trial, the defendant's level of intoxication is irrelevant to any assessment made by the factfinder as to the defendant's recklessness regarding the element of consent

Intoxication is not a defence to an allegation of sexual offence. However, when a jury is asked to consider the element of consent in the ACT, it is entitled to consider whether and how the defendant's intoxication affected whether they were reckless in deciding complainant was consenting. This is somewhat anomalous. Further, taking intoxication into account in the assessment of recklessness can be confusing for juries, given intoxication is not a defence and given they do not specifically know the effect of intoxication upon the defendant. In other jurisdictions, including Queensland and NSW, the jury cannot consider the defendant's level of intoxication in this assessment.

Legislative reform is required in the ACT to make clear that the defendant's level of intoxication cannot be considered by the jury in their consideration of the defendant's recklessness. Such amendment is also important for community education and messaging. Allowing the defendant's intoxication to be considered when assessing their recklessness regarding consent may promote a public message that intoxication justifies such recklessness. It is important that the law be extremely clear that this is not the case.

THE WORDING OF OFFENCES

- Amend the title of the offence 'Sexual relationship with child or young person under special care' (*Crimes Act 1900* (ACT) section 56) to remove the term 'relationship'.

The title of the offence 'sexual relationship with child or young person under special care' (*Crimes Act 1900* (ACT) section 56), specifically the use of the term 'relationship', fails to reflect the reality that the conduct this offence refers to is persistent sexual abuse of a child.

The term 'relationship' may imply that a child can consent to such persistent abuse when they cannot. This misconception has been reflected in sentencing remarks and media coverage

and can create misconceptions in the broader community regarding the meaning of consent. Amending the title of the offence is a clear and early indicator that this conduct refers to persistent sexual abuse, which is important for primary prevention and community education.

Language also matters for victim survivors to process what has happened as part of their recovery and their future understanding of relationships. Referring to persistent abuse as a relationship increases the risk of further victimisation of survivors later in life as they work through the models of attachments desecrated by the perpetrator during their formative years. Removing relationship from the offence's title give weight to the victim survivor's validation and would drastically change the media's coverage, even if the elements of the offence remained unchanged.

The language of 'relationship' is societally and psychologically damaging for victim survivors and the community. Recognising this, many jurisdictions have amended the naming of this offence to use terms such as 'persistent sexual abuse of a child or young person' to better reflect that this conduct is child sexual abuse and is not a consensual relationship with a minor.

It is important to note that this amendment does not propose that the elements of this offence should be changed, merely that the framing of the offence be altered through the removal of the term 'relationship'. Engaging in a relationship is a key element of the offence and is defined under section 56. Section 56 was recently amended by the *Royal Commission Criminal Justice Legislation Amendment Act 2020* to include a relationship as part of the elements of the offence and to amend the title to remove the term 'maintaining'. Much attention was put into defining 'relationship' as part of this process. These amendments were made following the decision of *KN* where the Supreme Court recognised that section 56 did not include a relationship as an element of the offence, which is important in assessing the gravity of this conduct.

Amending the language of the elements of the offence may have implications which change the law and what must be proved. Noting this, the current amendment should be limited to amending the title of the offence, not the elements. In due course, the government should consider whether the term 'relationship' should also be removed from the elements of this offence and from other similar provisions.

WORKPLACE AND PERSONAL PROTECTION ORDERS

In relation to the *Personal Violence Act 2016* (ACT):

- a Amend the Act to include the provision of 'special interim' personal and workplace protection orders (PPO and WPO), consistent with the provisions that are currently available in the *Family Violence Act 2016* (ACT) when there are ongoing related criminal proceedings
- b Consideration be given to expand the legislation so that there is capacity for both individuals and trade unions to apply for Workplace Protection Orders.

Interim orders for WPO and PPO matters are only 12 months in duration. This presents challenges when there are related criminal matters which are unlikely to be finalised before the expiration of the order. For example, applicants or respondents may be required to give evidence under a civil rather than criminal standard. Further, civil matters may be adjourned rather than set for hearing pending the finalisation of the criminal matter, which may lead to the expiry of the order if the criminal matter is not resolved within 12 months.

To avoid these challenges, the scheme for special interim orders for Family Violence Orders (FVO) should be replicated for WPOs and PPOs. Where there are related criminal charges in an application for an FVO, special interim orders can be made to adjourn the finalisation of the civil matter until after criminal matter is finalised. Except under specific circumstances the court must not decide the application for the final order until all related charges are finalised.

Ensuring that special interim orders for WPOs and PPOs may continue beyond 12 months in particular circumstances would be beneficial for both applicants and respondents. Applicants would have more certainty regarding the orders in place and would be confident that the orders would not expire until the finalisation of the criminal process. Defendants would be able to preserve their right to silence and not have to engage in civil proceedings or give evidence, where the civil burden of proof, the balance of probabilities, applies.

Further, it is problematic that only an employer can apply for a WPO. The issue arises where an individual has used violence in relation to one or more workers in a workplace, but the employer is unwilling to apply for a WPO.

In this circumstance, while the worker would likely qualify for the grant of a WPO, there is no individual with standing to make the application. The police are not able to seek a WPO on behalf of a workplace in the same way they can on behalf of an individual, nor do trade unions have standing.

One or more applicants who experience violence at work can still apply for PPOs, but the orders are limited to ensuring the safety of the particular individual applicant rather than the workplace as a whole. The application

of the “least restriction” principle requires that the order not protect others in the workplace unless this is directly necessary for the safety for the applicant or does not impede on the freedom of the respondent in any way. The application of this principle means that it is unlikely that an order excluding the respondent from the workplace will be made, because the safety of persons other than the individual is not a factor under consideration.

In the context of acts of sexual assault or gendered violence occurring in the workplace, there is the substantial issue that often complainants are not believed or that employers investigate from a position of non-belief, which can be exacerbated by workplace power imbalance between involved parties. Where a more junior employee makes a complaint about the more senior employee the employer may be less likely to believe the complainant and therefore also less likely to take steps like seeking a WPO for the protection of both the employee in particular and the workplace in general.

Therefore, there should be capacity for both individuals and trade unions to apply for WPO. It may be that this power would be exercised rarely, insofar as most responsible employers when faced with an act of violence in the workplace will take appropriate steps to exclude the perpetrator, including if necessary, by seeking a WPO (having regard to their obligations under the WHS Act). However, there may be circumstances where it would be used, where the employer has refused to apply or take appropriate protective steps, being a recalcitrant employer who is acting outside of their WHS obligations and failing to take reasonable steps to protect the health and safety of their workplace.

WORK HEALTH AND SAFETY ACT

In relation to the Work Health and Safety Act:

- a At section 19 include an obligation upon the employer to provide a workplace free from acts of gendered violence and sexual assault; and
- b At section 35 consider including psycho-social injuries in the definition of notifiable incidents.
- c It is recommended that consideration be given to extending the application of the Regulations set out in r21A and 21B, and Part 6.4, to all work environments where there is a principal contractor and sub-contractors, to the extent possible and relevant, rather than being limited to the construction industry.

Section 19 of the Work Health and Safety Act sets out the primary duty of care to provide a safe workplace, and a number of sub duties directly reflective of this obligation and which are seen as the necessary components of a safe workplace. This includes a duty to monitor the health of

workers, the duty to provide appropriate amenities, the duty to have safe systems of work.

Inclusion of a general duty to prevent gendered violence in section 19(3) would be consistent with the other duties set out and an appropriate signifier of the seriousness of the hazard caused by gendered violence, insofar as it is not possible to provide a safe workplace unless it is free from acts of gendered violence.

The inclusion of such an obligation will tend to ensure that employers take obligations to prevent gendered violence seriously and that acts of gendered violence are investigated and prosecuted.

The policy justification of the notifiable incident provision is to ensure that employers are required to declare incidents of a particular degree of seriousness to the regulator in order to ensure that those incidents are investigated. A range of consequences flow from the notification of an incident including an obligation to preserve the site of the incident in order to facilitate investigation.

However, the current definition of notifiable incident is limited to physical injuries of the kind most likely to occur in industrial workplaces (e.g. amputation of a limb), and also based on a historical notion of work which does not capture many kinds of contemporary workplaces.

This means the current definition of notifiable incident is too narrow to capture the type of psycho-social injuries likely to result if someone is sexually assaulted in the workplace notwithstanding the seriousness of those injuries.

Making psychosocial injuries reportable will emphasise the significance of prevention of gendered violence in the workplace, including sexual assault by ensuring that injuries are properly investigated by the regulator and employers who are responsible for workplaces where such injuries occur are held accountable by the regulator. Further, adequate data of the incidence of such injuries will be retained by the regulator.

The inclusion of psychosocial injuries in the list of notifiable injuries also has preventative effect, insofar as it will lead to employers treating the risk of those injuries and the need to prevent them more seriously.

There are a wide range of industries and workplaces where use of labour hire and subcontractors is prevalent. These industries often feature micro businesses at the base of the supply chain which often lack basic human resource and workplace safety competency.

Therefore, even if industrial and WHS law is reformed to better address gendered violence and sexual assault occurring in workplaces, small businesses at the base of these types of supply chains will not in fact adopt or implement appropriate practices to give effect to those reforms. However, because

of their position in supply chains, there are usually larger businesses in those supply chains (the principal contractors) who do have appropriate levels of legal and WHS competence to ensure compliance, however at present they are not legally required to do so.

In contrast in the construction industry the WHS Regulations require principal contractors to take steps to ensure the health and safety of all persons engaged on any project they control, including the employees of subcontractors, by consultation and by developing safety plans for the entire workplace.

ENDNOTES

- 1 Anthony Williamson Deputy Director of Public Prosecutions Head of Crown Chambers — DPP, Presentation to Law Reform Working Group, 31 August 2021.
- 2 Anthony Williamson Deputy Director of Public Prosecutions Head of Crown Chambers — DPP, Presentation to Law Reform Working Group, 31 August 2021.
- 3 *Muldock v The Queen* [2011] HCA 39.
- 4 Cases provided to the Law Reform working Group including: *R v Page* [2021] ACTSC 207 (SCC 171 of 2020).
- 5 ABS, *Recorded Crime — Victims, 2020* (ACT Specific data).
- 6 *R v Horton-Hegarty* [2018] ACTCA 22
- 7 AHRC 2020, *Respect@Work: Sexual Harassment National Inquiry Report*.
- 8 Judicial Commission of NSW, *Sexual Assault Trials Handbook* [9-200]; ALRC 2010, *Family Violence — A National Legal Response* ALRC Report 114 [27.10].
- 9 ALRC 2010, [27.108], [27.116].
- 10 ALRC 2010, [27.108], [27.116].
- 11 ALRC 2010, [27.108], [27.116].
- 12 ALRC 2010, [27.135].
- 13 ALRC 2010, [27.13], Recommendation 27–8.
- 14 ALRC 2010, [27.13], Recommendation 27–8.
- 15 ALRC 2010, [27.138], Recommendation 27–9.

APPENDIX 7 TOWARDS AN ACT SEXUAL VIOLENCE PREVENTION AND RESPONSE

PURPOSE

This evidence and concepts paper has been developed to underpin the development of a draft ACT Framework to Prevent Sexual Violence, as part of the Sexual Violence Prevention & Response Strategy project initiated in 2021.

It provides the concepts, definitions, data, research and approaches that fundamentally support the key recommendations put forward by the Sexual Violence Prevention Working Group. This working group comprises of key community and public sectors experts whose experience, research, and provision of social, education and community services – including supports to victims/survivors, perpetrators and identified priority populations and communities – has informed the recommendations being made to Steering Committee.

This focus on sexual violence prevention is located within the broader frame of understanding, preventing and responding to sexual violence in our community. The Sexual Violence Prevention Working Group recommends that the work of Response, Law Reform and Workplace working groups and the Aboriginal Consultative Committee be framed as an integrated and wholistic approach to sexual violence.

The Prevention Working Group recommends the Steering Group links and integrates the key principles, recommendations and strategies from all the working groups across the Sexual Violence Prevention and Response Strategy to ensure they amplify one another effectively.

A wide range of literature has been considered by the Prevention Working Group, including from the AIHW, ABS, research reports and peer-reviewed journal articles, and sexual violence prevention and response strategies from other Australian jurisdictions.

Some overarching documents and frameworks that should be considered fully in their own right as underpinning an ACT sexual violence prevention strategy include:

- *Change the Story* series www.ourwatch.org.au
Our Watch website includes a number of evidence reviews and practice guides, including.
 - Our Watch 2015, *Change the Story: A shared framework for the primary prevention of violence against women*
 - *Change the Story: Three Years On* 2019
 - *Changing the picture: a national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children* 2018.
 - *Men in Focus: unpacking masculinities and engaging men in the prevention of violence against women*
- *ACT Wellbeing Framework* — www.act.gov.au/wellbeing
- *National Principles for Child Safe Organisations* www.childsafe.humanrights.gov.au
- *Engaging Men: Reducing Resistance and Building Support*
- Flood M, O'Donnell J, Brewin B, and Myors B 2021, *Engaging Men: Reducing Resistance and Building Support*. Melbourne: Eastern Health, Eastern Domestic Violence Service and Queensland University of Technology
- *Pride in Prevention Evidence Guide*
- *Prevention of family violence and sexual violence in LFGBTIQ communities* www.rainbowhealthvic.org.au/new/launch-pride-in-prevention-evidence-guide

THE PREVALENCE AND IMPACT OF SEXUAL VIOLENCE

Sexual violence is defined as:

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.¹

A further detailed definition and description is set out in the Appendix.

1 WHO 2020, *World Report on Violence and Health*.

The vast majority of sexual violence is perpetrated by men. Male perpetrators were 97 per cent of sexual assault offenders recorded by police in 2018–19.²

Prevalence high rates of sexual violence in Australia in recent decades³ show:

- one in five Australian women have experienced sexual violence and more than half have experienced sexual harassment since age 15⁴
- one in 20 men have experienced sexual violence and one in four have experienced sexual harassment since age 15⁵
- one in six women and one in nine men have been physically or sexually abused before age 15.⁶

Sexual violence and negative sexual experiences carry significant health, social and economic cost,⁷ and can have a devastating impact on individuals, their families and communities. Long-term physical and emotional health, the capacity to undertake education, contribute to society and otherwise lead a fulfilling life can be severely affected,⁸ and the incidence of premature death increased.⁹

Sexual violence occurs in the context of complex yet modifiable social and environmental factors. Gender inequality and accompanying rigid stereotypes about gender (masculinity and femininity), gender social roles, sexuality and relationships, sit at the core of all sexual violence.

PREVENTING SEXUAL VIOLENCE

Despite its prevalence and impact, sexual violence is not inevitable and can be prevented. A strong body of research now exists that assists us to understand the drivers and reinforcers of violence against women broadly, and to inform our approach to prevention of sexual violence.

2 AIHW 2020, *Sexual assault in Australia*.

3 See, e.g. Patton W and Mannison M 1995, 'Sexual Coercion in High School Dating', 33 *Sex Roles* 447; ABS 1996, *Women's Safety Report*, 5; Young, M, Byles J, and Dobson A 2000, 'The Effectiveness of Legal Protection in the Prevention of Domestic Violence in the Lives of Young Australian Women', 48 *Trends and Issues in Crime and Criminal Justice*, 1; Flood M and Hamilton C 2003, 'Youth and Pornography in Australia: Evidence on the Extent of Exposure and Likely Effects' (Discussion Paper No 52, The Australia Institute) 47; AIC 2002, 'Sexual assault, male offenders by age, rate per 1000,0000 persons, 1995–96 and 2000–01.' *Australian Crime: Facts and Figures 2001*; Anthony Smith et al., *Secondary Students and Sexual Health: Results of the 4th National Survey of Australian Secondary Students, HIV/AIDS and Sexual Health* (2009) 32; ABS 2006, *Personal Safety Survey*; AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*.

4 AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*; P. Cox 2015, *Violence against women in Australia: Additional analysis of the ABS' Personal Safety Survey 2012*.

5 ABS, *Personal Safety Survey 2016*; AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*.

6 AIHW 2019, vii.

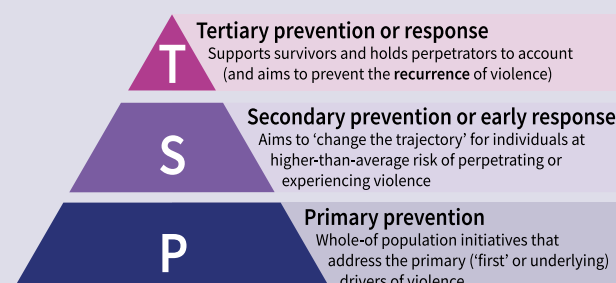
7 ANROWS, 'Are we there yet? Australians' attitudes towards violence against women and gender equality', *2017 NCAS Summary Report*, <www.anrows.org.au/NCAS/2017/for-stakeholders/>.

8 Boyd C 2011, *The impacts of sexual assault on women*, ACSSA Resource Sheet 2.

9 Taylor et. al. 2012, 'Sexual trauma in women: The importance of identifying a history of sexual violence', *Australian Family Practitioner*, Vol. 41, No. 7. p.538–41.

And we have access to a growing body of practice and evaluation information in Australia and internationally that informs prevention of future violence, addressing the social conditions that support violence, and respond better to those who experience violence.

Figure 1: Primary, Secondary and Tertiary Prevention



Source: P.34 <<https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2019/11/07042017/Putting-prevention-into-practice-AA-web.pdf>>.

Much of the work to prevent violence has been informed by public health and health promotion theory and practice. Health promotion recognises that there are three key stages at which actions can be taken to address poor health:

- Actions can be taken after a negative health outcome to avoid it happening again. This is known as tertiary prevention or response.
- Actions can be taken at moments of risk to stop the negative health outcome from happening or to reduce the severity. This is known as secondary prevention or early intervention.
- Actions can be taken before the negative health outcome occurs to stop it from happening at all. This is known as primary prevention or simply 'prevention'.

While intervening in and responding to existing violence is essential, a primary prevention approach is necessary to stop sexual violence from occurring in the first place and reduce the prevalence of violence in the long-term. Prevention is different from but complementary to early intervention and response work, and all three approaches are necessary to form a comprehensive approach to sexual violence, and gender-based violence against women.

Table 1 – Sexual Violence Prevention continuum

Primary prevention	Early intervention (secondary prevention)	Response (tertiary prevention)
Primary prevention includes preventing sexual violence / assault before it occurs, including initial perpetration and victimisation; tackling the underlying causes of sexual assault and abuse; and increasing protective factors that promote pro-social behaviour such as respectful relationships.	Early intervention and identification involve the early detection of risks for victimisation and perpetration; the immediate response after sexual violence to deal with the short-term consequences and responding to those at risk of victimisation; and preventing re-occurrence or progression of sexual assault.	Tertiary prevention includes responses after sexual violence has occurred; preventing or improving consequences and impacts for victims of sexual violence; providing support for victims; providing behaviour change programs for perpetrators; and policing and criminal justice systems.

Source: *Prevention, early intervention and support for Aboriginal and Torres Strait Islander people who have experienced sexual violence (Qld).*

Change the Story: A shared framework for the primary prevention of violence against women, which has been endorsed by all states and territories as an evidence-based and shared framework for primary prevention work, uses a socio-ecological model to explain individual behaviour in a social context that includes organisational, community, systemic and social levels and sets out the key actions needed to prevent it from occurring. It is for these reasons that our primary recommendation is that the ACT Government develop and implement a long-term strategy to prevent sexual violence in the ACT.

Change the Story and associated evidence and practice reviews produced by Our Watch is one of a set of foundational resources that inform and underpin this ACT-specific paper and should be read and comprehended in its entirety. Parts of this paper draw heavily on that evidence base, especially in the review of effective prevention approaches.

This resource positions sexual violence as one of several significant and impactful forms of violence against women. The Prevention Working Group has actively considered the ways sexual violence is one form of wider violence and discrimination against women, and also how sexual violence has its own dynamics, experiences and therefore responses that are distinct from other forms of violence. The Prevention Working Group notes that positioning sexual violence exclusively under the umbrella of violence against women can risk losing these distinctions. This can result, for example, in failing to address the needs and experience of male, gender-diverse and non-binary victim/survivors. An intersectional analysis demonstrates that gender is a key factor and driver of sexual victimisation, but that age, ability and a combination of health literacy and social capital are also factors in who is

targeted by perpetrators of sexual violence to a significant extent. And any prevention framework needs to actively address prevention work with men and boys, given the majority of sexual violence is perpetrated by adult men against children, young people, women and other men.

In Australia, we have seen that more specific sexual violence prevention and response can be marginalised or subsumed in public policy and funding by the necessary and important focus on family/domestic violence.

THE GENDERED DRIVERS OF VIOLENCE AGAINST WOMEN, INCLUDING SEXUAL VIOLENCE

Factors associated with gender inequality are the most consistent predictors of violence against women and explain its gendered patterns. These factors are termed the gendered drivers of violence against women.

The gendered drivers arise from gender discriminatory institutional, social and economic structures, social and cultural norms, and organisational, community, family and relationship practices that together create environments in which women and men are not considered equal, and violence against women is tolerated and even condoned. The following particular expressions of gender inequality have been shown in the international evidence to be most consistently associated with higher levels of violence against women:

1. Condoning of violence against women
2. Men's control of decision-making and limits to women's independence
3. Rigid gender roles and stereotyped constructions of masculinity and femininity
4. Male peer relations that emphasise aggression and disrespect towards women.

Primary prevention approaches are focused on addressing these underlying drivers in order to stop violence before it starts. These drivers are central to the Sexual Violence Prevention Strategy being proposed by the working group.

SETTING THE FOUNDATIONS FOR EFFECTIVE AND SUSTAINABLE PREVENTION WORK

Prevention efforts require **a strong prevention infrastructure** to provide the leadership and coordination necessary to drive broad, deep and sustainable social change that addresses the drivers and reinforcers of sexual violence, and to embed long-term gender equality, social equity, and anti-violence approaches into the ongoing work of established agencies, organisations and networks. This infrastructure includes:

- mechanisms for coordination and quality assurance

- an expert workforce and robust evidence base
- political, sector-specific and civil society leadership which is supported by adequate resourcing
- policy and legislative reform
- shared monitoring, reporting and evaluation frameworks
- public education and communication measures.

Prevention efforts will be most effective if **all sexual violence prevention and response stakeholders** both take advantage of their own specific opportunities, and work in collaboration or partnership with each other to ensure different prevention efforts and consistent and mutually reinforcing. Different stakeholders have different responsibilities, expertise and capacities, as well as varying spheres of influence and opportunities to take action. Government has the unmatched capacity to coordinate, drive and resource such efforts.¹⁰

SETTINGS FOR PREVENTION WORK

Prevention efforts will work across the different **settings and environments** in which people live, work, learn, socialise and play including:

- education and care settings for children and young people
- universities, TAFEs and other tertiary education institutions
- workplaces, corporations and employee organisations
- sports, recreation, social and leisure spaces
- art and cultural spaces
- health, family and community services
- faith-based contexts
- media
- popular culture, advertising and entertainment
- public spaces, transport, infrastructure and facilities
- legal, justice and corrections contexts.

Effective primary prevention work includes comprehensive, multi-pronged strategies that operate across settings, to drive and reinforce shifts in the attitudes, behaviours, practices and policies that drive violence against women broadly, and sexual violence specifically.

Effective prevention complements robust response systems that establish accountability for people who use sexual violence, protect victims/survivors from further harm, and communicate publicly the message that sexual violence is unacceptable. Primary and secondary prevention efforts can be expected to increase demand for response services due to high levels of underreporting of sexual violence.

10 Marson K 2019, "Ignorance is not Innocence: Safeguarding Sexual Wellbeing through Relationships and Sex Education", *Fellowship Report*, The Winston Churchill Memorial Trust Australia.

EFFECTIVE PREVENTION APPROACHES

Primary prevention efforts aim to reach everyone in order to have the greatest impact¹¹. This requires an inclusive universal approach, engaging people in all demographic groups.

Best practice approaches:

- tailor initiatives to the audience and community context
- focus specific and intensive effort with communities affected by multiple forms of disadvantage and discrimination
- be inclusive
- work across the life course.

International evidence on effectiveness of violence prevention interventions draws on **both proven and promising models/techniques**.

These include:

Direct participation programs

- Programs that engage and involve men, women, children or young people at the individual, relationship or group level to critique gender norms and build the knowledge and skills for equal, respectful, nonviolent relationships; improve access to the resources required that support such relationships; improve connections to social networks and institutions; and support people to prevent or address the impacts of other factors linked to violence against women such as child abuse.
- Promising practice in this area also includes:
 - Peer education programs
 - Media literacy programs
 - By-stander skills building
 - Parenting support programs
- These programs work most effectively in conjunction with organisational development programs.

Community mobilising and strengthening

- Mobilising and supporting communities to address violence and the social norms that make it acceptable.

11 NOTE: A significant component of the literature on sexual violence prevention and evaluation of effectiveness is focused on adolescents and young adults in school and college/university settings, and the evidence base is largely derived in developed economies. In recent decades, there have been two major spikes in evaluation research in the late 1990s and around a decade later. The origins of these studies can subtly reinforce that sexual violence is exclusively an issue for young adults, and frame 'effectiveness' implicitly in social, cultural, legal and political contexts that may not apply elsewhere. Guidelines and reports by international agencies (such as WHO, UNESCO, UN Women) and aid and development NGOs are one source of evidence and practice guidance with a more global perspective and more intersectional perspectives.

Communications and social marketing

- Use of a range of communications media to raise awareness and challenge contributing attitudes, behaviours and social norms across mainstream media, social media, community forums and community arts projects.
- These are effective when implemented in a sustained way, across a range of platforms, and combined with direct participation/group education interventions. Single component communications campaigns (e.g. advertising without other supporting activities) have been shown to be ineffective.

Civil society advocacy

- Building collective momentum to raise awareness and encourage government, organisations, corporations and communities to take action. These have proved critical to enduring and effective policy development in preventing violence against women.
- Promising practice in this area includes:
 - Skills training and capacity building for organisations and community members to advocate for gender equality and prevention of violence against women.
 - Leadership programs that identify and support influential, nonviolent individuals to promote gender equality and the prevention of violence against women.

Sustained sexual violence prevention effectiveness and impact will also:

- Seek opportunities to combine evidence-informed techniques across multiple settings (amplifying impact)
- Respond to emerging issues and changes in the implementation environment (audience, community)
- Avoid repetition of isolated one-off projects and interventions, and those that are delivered inconsistently with the social/cultural norms addressing drivers and reinforcers of violence
- Sustain interventions that are demonstrating success over time through evaluation and monitoring.

As in the health promotion and community development fields, 'innovation' should be understood as the attempt to apply evidence-based and evidence-informed approaches that are adapted/tailored to the audience and community context and informed by a robust theory of change. Understanding the factors that enable and the barriers that limit intervention effectiveness in different contexts is essential to extending and applying successful approaches in new settings and with new audiences. There will not be one sole effective intervention that applies universally.

Strengthening the evidence base for successful approaches and intervention models requires a well-resourced and ongoing evaluation and monitoring framework. Over time, this enables prevention approaches to evaluate promising practice and move interventions towards models that demonstrate effectiveness.

For these two reasons, the Prevention Working Group has recommended that a priority action for the prevention infrastructure is a long-term strategy with an associated resource commitment to ensuring research/evidence to practice and ongoing monitoring and evaluation of the ACT Strategy to ensure successful implementation and intended impact.

Principles for violence prevention work with men and boys

Conceptually, there are four main ways that prevention and response to sexual violence engages with men and boys in our community. These are:

- a Men as allies and active participants in the prevention of violence against women, children, and other men
- b Men and boys as audiences and participants in primary prevention initiatives
- c Men and boys as victims/survivors of sexual violence
- d Men and boys who use sexual violence.

The first two represent the ways primary prevention strategies engage men and boys in building social consensus that addresses the drivers of sexual violence.

We can usefully consider the role that boys and men play:

- 1 As bystanders to inappropriate, harmful and abusive behaviour by peers with the potential to either re-direct or reinforce perceived social support or tolerance of sexual violence
- 2 In their personal and positional capacities as allies and advocates for the prevention of violence against women, children and other men
- 3 As key members of the workforces for reinvigorating prevention and response to sexual violence initiatives that the project is considering, and where the quality of their understanding and degree of commitment to modelling and supporting the social changes required to address underlying drivers of sexual violence can be 'make or break' for the success of these initiatives.

Male survivors of child sexual abuse and other sexual violence will be participants in primary prevention efforts, and these must be tailored to meaningfully reflect this experience.

The last reflects that secondary and tertiary prevention strategies must effectively engage and address those who are already sexually abusive, harassing and violent.

As stated by Michael Flood, Stephen Burrell (2021)¹², there are four dimensions of effective practice for violence prevention. Efforts should be:

- 1 Informed
- 2 Comprehensive
- 3 Engaging
- 4 Relevant

First, violence prevention interventions must be based on a sound understanding of both the problem — the workings and causes of violence — and how it can be changed, showing both an appropriate theoretical framework and a theory of change. Second, interventions should be comprehensive, using multiple strategies, in multiple settings, and at multiple levels (Casey and Lindhorst, 2009; Nation et al., 2003). Third, interventions should involve effective forms of delivery which engage participants, in terms of their content, implementation, and practitioners. Fourth, effective programs are relevant to the communities and contexts in which they are delivered. They are informed by knowledge of and collaboration with their target group or population and their local contexts (Nation et al., 2003).

Efforts to engage men and boys in particular should seek to live up to these criteria, but they must also be guided by further principles. There are various articulations of the principles that should guide violence prevention work with men and boys (Flood, 2019; Wells, Flood, Boutilier, Goulet, and Dozois, 2020), complemented by guides to engaging men and boys in general (American Psychological Association, 2018; Flood, Peacock, Stern, Barker and Greig, 2010; Greig and Flood, 2020; ICRW, 2018; Institute of Development Studies (IDS), Promundo-US, & Sonke Gender Justice, 2015; VicHealth, 2019). Although there is diversity here, most accounts share three emphases: a concern with sexism and gender inequalities, a concern with men's and boys' own wellbeing, and attention to differences and inequalities among men and boys themselves.

We can think of these therefore in terms of three principles:

- 1 Feminist: intended to transform gender inequalities.
- 2 Committed to enhancing boys' and men's lives.
- 3 Intersectional: addressing diversities and inequalities.

Primary prevention approaches that are informed by gender just principles, positive about the possibility of gender equity and mutuality as key characteristics of respectful relationship and sexual wellbeing, that are affirming of diversity in sexuality, gender and sex, and actively accommodate the

distinct needs of people with disability, First Nations people, and culturally diverse people in our community, offer the promise of a community free of sexual violence for all people.

That is why the Prevention Working Group recommends a comprehensive prevention strategy for the ACT that is underpinned by these principles, that gives priority to a set of activities that enable co-design with people, families and communities affected by sexual violence, and is based on a clear understanding of the prevention/intervention continuum in addressing behaviour change for people who use sexual violence against others.

WHAT IS DIFFERENT OR UNIQUE IN THE ACT CONTEXT?

Canberra is the seat of the federal government. As a jurisdiction it is both the national capital and territory of the Commonwealth, home to a regional community of 435,000 residents and another half-million in the Capital Region of NSW. The government of the Australian Capital Territory is unified at the state/territory and local government levels. The ACT inherited its social services, criminal justice and health services policy, infrastructure and legislation from the Commonwealth on the establishment of self-government in the late 1980s.

The response support system for sexual violence in the ACT, unlike other larger population jurisdictions, has been heavily driven by community sector (NGO) organisations and individual health services. A minimum service commitment and resourcing of specialised sexual assault services through State-wide health and policing/criminal justice systems, as found in NSW, Victoria and Queensland, has not existed in ACT public policy.

As a small population in a geographically concentrated area, the ACT enjoys both specific opportunities and challenges are different in other states/territories. For example:

- The ACT (like Tasmania and Northern Territory) must provide a comprehensive suite of services to its population with a relatively small population and taxation base, but unlike these others is not as geographically dispersed. Tasmania and NT do not typically serve an immediate neighbouring region of equivalent population size.
- This geographical concentration and close relationships between civil society organisations, government and business can be an enabler of innovation and collaborative approaches to health, education and social needs.

The ACT is one of three Australian state/territory jurisdictions with a Human Rights Act. The prevention and response to sexual violence in the ACT necessarily draws on and responds to a rights-based framework for promoting sexual wellbeing, sexual health, and sexual rights.

¹² <https://xyonline.net/content/three-principles-violence-prevention-work-men-and-boys>

The ACT is also one of the first Australian states or territories to adopt a Wellbeing Framework. The concept of 'wellbeing' is also found across the child and vulnerable adult safeguarding literature and public policy approaches. The Prevention Working Group has sought to reflect and integrate a broad concept of wellbeing by its links with child protection and safeguarding principles, and by specifically invoking the concept of freedom from sexual violence and a right to sexual wellbeing.

The ACT has a reputation as a socially progressive jurisdiction, with a willingness to lead on public policy nationally. The ACT also keeps an eye to consistency with the legislative and regulatory environment that surrounds it. In Australia, we enjoy the benefit of observing and learning from the experience of other jurisdictions, and the ACT has a track record of providing a benchmark for law reform nationally in many key areas in the advancement of social inclusion and human rights. Several Australian jurisdictions have already established public policy initiatives on sexual violence in recent years, and those from Victoria, NSW and Queensland have been reviewed and considered by the Prevention Working Group.

The ACT has the opportunity to again lead nationally in demonstrating what a truly comprehensive commitment to preventing and responding to sexual violence can do to effect change: in the prevalence, survivor experience, perpetrator accountability and community narrative about sexual violence.

KEY PRINCIPLES INFORMING AN ACT PREVENTION APPROACH

It is the consensus of the Prevention Working Group that the following principles should inform the development, implementation and evaluation of a long-term sexual violence prevention strategy in the ACT:

- 1 Sexual wellbeing is a right which must be supported and protected from early childhood.
- 2 Access to information, services and justice is necessary for that right to be realised. That access must be ensured, integrated, trauma-informed and culturally responsive.
- 3 Sexual violence is a violation of human rights and will not be tolerated.
- 4 Preventing and responding to sexual violence is everybody's responsibility.
- 5 Perpetrators of sexual violence must be held to account.
- 6 The autonomy and dignity of survivors of sexual violence are central to prevention of and response to sexual violence.
- 7 Prevention focuses not just on those who experience sexual violence, but everybody in the ACT community — including those who perpetrate/are likely to perpetrate sexual violence.

- 8 Sexual violence is overwhelmingly perpetrated by men — this means engaging boys and men to prevent sexual violence is critical.
- 9 Prevention activities and responses should be a product of co-design and participation: that is, they must be informed by the diversity and lived experiences of all people in the Australian Capital Territory. Such activities and responses should be delivered by and in collaboration with community groups and organisations that have established connections and trust with the communities and cohorts they serve, and an understanding of their needs.
- 10 Interventions and responses must be informed by evidence, data, ongoing evaluation and supported by resources.
- 11 The prevention of sexual violence begins with addressing the cultural norms, structures and practices that condone and enable violence to occur.
- 12 Sexual violence is gendered, and so addressing gender inequality is core tenet of this strategy.

To inform the prevention strategy the Prevention Working Group has developed a vision of a safe Canberra community (and Australia) free from sexual violence where:

- Sexual health and wellbeing, gender equality, and social participation and inclusion for all people are goals of public policy.
- Women are respected, valued and treated as equals in private and public life.
- Children and young people are informed about their rights, participate in decisions affecting them and are taken seriously.
- Equity across the diversity of people and their needs is upheld and respected in policy and practice.
- Sexual and reproductive rights are upheld and respected.

This vision drives the principles, priorities, strategies, outcomes and ultimately the fundamental recommendations made to the Steering Committee.

A RIGHTS-BASED AND WELLBEING APPROACH

Sexual health, sexual rights, and sexual wellbeing

This section will set out some of the key concepts that underpin the work of sexual violence prevention, including sexual health, sexual rights, and sexual wellbeing. The ACT is one of three Australian state/territory jurisdictions with a Human Rights Act.

The right to freedom from all forms of violence must include freedom from sexual violence, and there is an argument that preventative action must be taken, to support the Australian

Government's 'steadfast and ongoing commitment to be at the forefront of efforts to promote gender equality and the empowerment of women and girls'¹³ and to 'advancing human rights globally'.¹⁴ Relevantly, there have been growing recommendations for preventative education by the Human Rights Commission, state Law Reform Commissions, Royal Commissions and legislature inquiries.¹⁵

The prevention of sexual violence cannot be realised without recognition that all people have a fundamental right to sexual health and wellbeing, which is greater than the mere absence of harm or violence. Harm prevention must not be the sole or primary purpose of efforts to safeguard sexual wellbeing: not only will prevention efforts be less effective with such a narrow focus, but justification for this approach can also be found in contemporary rights discourse and core human rights documents.

The World Health Organization (WHO) has a working definition of sexual rights, listing the human rights 'critical to the realisation of sexual rights', and claiming 'the application of existing human rights to sexuality and sexual health constitutes sexual rights'¹⁶. The World Association for Sexual Health (WAS) also claims that sexual rights are grounded in already-recognised universal human rights.

These claims find support in fundamental human rights documents. For example, Article 8 of the Universal Declaration of Human Rights, the right to respect for private and family life, covers the 'physical and moral integrity of a person, including his or her sexual life' (*X and Y v the Netherlands* ECHR 26 March 1985). Plainly there are other rights which would also capture aspects of sexual wellbeing, including the right to live free from violence and coercion and the right to equality and non-discrimination.

The 2014 WAS Declaration of Sexual Rights recognises that 'sexual rights are essential for the achievement of the highest attainable sexual health,' and articulates how sexual rights relate to existing human rights. For example, the Declaration

13 See Australian Government, Department of Prime Minister and Cabinet, Office for Women, Accessed 26 July 2020: <https://pmc.gov.au/office-women>; DFAT, "Australia's assistance for gender equality," accessed 26 July 2020, <<https://dfat.gov.au/>>.

14 See DFAT, Human Rights, accessed July 2020, <<https://dfat.gov.au/>>.

15 See AHRC 2020, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*; NSWLRC, Consent in relation to sexual offences: draft proposals, October 2019; Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report, 2019; Royal Commission into Family Violence, 2016; ACT Standing Committee on Justice and Community Safety, Report on Inquiry into Crimes (Consent) Amendment 2018, 2018; Parliament of Australia, The House Standing Committee on Social Policy and Legal Affairs: Inquiry into family, domestic and sexual violence, 2020.

16 WHO, Sexual and Reproductive Health and Research, 'Sexual Health', <www.who.int/teams/sexual-and-reproductive-health-and-research/key-areas-of-work/sexual-health/defining-sexual-health>, accessed 23 May 2021.

asserts that with respect the right to autonomy and bodily integrity: 'Everyone has the right to control and decide freely on matters related to their sexuality and their body. This includes the choice of sexual behaviours, practices, partners and relationships with due regard to the rights of others.'

Alongside civil society organisations' calls for respect for sexual rights, 'UN agencies and other international bodies are taking cautious steps to assert some pressure on member states to recognise, respect and fulfil the human rights related to sexuality and sexual health of all individuals... However, an international consensus on the term "sexual rights" is yet to be realised'.¹⁷ (Heidari 2015).

Put simply, the alternative to sexual violence is not its absence, but a positive and fulfilling state of sexual health and wellbeing. The prevention of sexual violence can only be achieved through the pursuit of this alternative.

One reason for this is the argument that sexual activity exists on 'a continuum moving from choice to pressure to coercion to force'.¹⁸ Accordingly, even where sexual violence is broadly defined, negative sexual experiences which are not so readily defined as violence, but are nonetheless harmful, may not be captured by a strategy which only focuses on the prevention of violence without looking to an alternative of fulfillment and wellbeing.

KEY INTERSECTIONAL CONSIDERATIONS

The ACT Sexual Violence Prevention Strategy must account for the diversity of who experiences and seek to understand and address the social drivers of sexual violence, and effectively target secondary/tertiary prevention, criminal justice and other interventions with those who perpetrate sexual violence against others.

Intersectionality

'Intersectionality' is a term coined by American academic Kimberlé Crenshaw in 1989 to describe how race, class, gender, and other individual characteristics "intersect" with one another and overlap. Crenshaw describes intersectionality as:

a lens through which you can see where power comes and collides, where it interlocks and intersects. It's not simply that there's a race problem here, a gender problem here, and a class or LBGTQ problem there.

17 Heidari S 2015, 'Sexual rights and bodily integrity as human rights', *Reproductive Health Matters* 23 (46).

18 Kelly L 1987, 'The Continuum of Sexual Violence' in Jalna Hanmer and Mary Maynard (eds), *Women, Violence and Social Control*, 46, 54.

Many times that framework erases what happens to people who are subject to all of these things.

The concept has become a critical tool for understanding how different individuals can be differentially affected by similar experiences, of how social and economic power is differentially experienced in the context of other aspects of individual identity and community life, such as race/ethnicity, culture, language, religion, ability, sexuality, gender identity and expression, and age (amongst many others).

The concept of ‘vulnerability’

While sexual violence may be directed against people of all ages, genders and backgrounds, there are some discernible patterns both in terms of who is more likely to experience sexual violence, and who is more likely to commit it. The Prevention Working Group has considered the limitations of framing the experience of people subjected to sexual violence through the language of ‘vulnerability’, noting that it maintains a focus on characteristics of victims/survivors rather than the decisions and behaviours of perpetrators. ‘Vulnerability’ is situational, rather than an inherent or unchanging characteristic of a person. Attributing victimisation obliquely to ‘vulnerability’ of victims does not accurately reflect the diversity or complexity of sexual violence experiences, nor the ways that vulnerability is actively shaped by many offenders through grooming. References to ‘vulnerability’ in this document are used with caution given these considerations, or may reflect the language used in underlying source material when referenced directly.

Please note: the following sections aim to summarise key information about sexual violence and is not an exhaustive review of all relevant considerations, or the diversity of our Canberra community. The gaps in our knowledge and understanding may reflect a paucity of available data, and the representation here is summary rather than comprehensive.

Age

Children and young people represent a significant proportion of those who are subjected to sexual violence and harassment. Prior sexual victimisation is itself a recognised risk factor for subsequent and/or continuing violence and abuse, and for some forms of sexual offending against others. Children are always impacted by the decisions and behaviour of adults whose care, support and assistance they rely on to survive and thrive. At the other end of the life course as we age, and for people who require assistance to meet their needs, wants and desires throughout life, the role and behaviour of others who act as carers and alternative decision makers has a major impact on either vulnerability to or protection from violence, abuse and harm.

The Prevention Working Group has sought explicitly to link conceptually and practically a range of fields of research and

practice that are necessary to understand and intervene in the experience of sexual violence, abuse, and exploitation. These fields do not always necessarily see themselves as engaged in a common effort, and each tends to be dominated by particular academic disciplines and professions. They include:

- Child protection and abuse prevention
- Therapeutic interventions to address harmful sexual behaviour (differentiated for children and adults)
- Sexual health, sexuality and relationships education
- Human rights advocacy and protection, anti-discrimination

The ACT Sexual Violence Prevention and Response Strategy has the opportunity to explicitly link these parallel and mutually reinforcing areas of work.

Gender

Sexual violence is highly gendered in its nature. By targeting and exploiting sex and sexuality as tools or weapons in the exercise of power and control over others, people who use sexual violence are invoking the complex interpersonal and intrapersonal experiences of gender, identity, expression, in a social context that has powerful (if culturally diverse and even contested) notions about gender expression, gender roles, sexuality, sexual expression, and power in relationships.

An intersectional perspective tells us that gender, gender identity and gender expression, are not the only important parts of the experience and identity of people affected by sexual violence.

Almost all Australian sociological and crime reporting data on sexual violence is presented in a binary sex/gender model, which tends to exclude (intentionally or otherwise) the visibility and experience of transgender, gender diverse, and non-binary people. The information summarised below in this assumed binary sex/gender model is represented this way because of the sources it draws on. The Prevention Working Group is mindful that a more nuanced, intersectional approach to individual and community needs is required for effective prevention efforts.

Throughout this document, the use of the terms ‘men and boys’ and ‘women and girls’ is not intended to exclude transgender, gender diverse and non-binary folks and others who affirm a gender identity and express their gender outside cisgendered or other traditional social assumptions about sex and gender. But it does reflect the understanding that:

- the majority of sexual violence in our community is committed by heterosexual, cisgender men
- those impacted and affected by sexual violence includes all people in our diverse community
- a significant burden of this impact is experienced by cisgender girls and women.

Further, the common de-gendered referencing of ‘children’ in the literature regarding both victims of violence and witnesses to violence between others in families, has some generally unintended consequences. In particular, it can disguise that this group represents the full spectrum of cisgender, transgender and gender diverse/non-binary young people in critical developmental stages of life who are already exposed to and engaging with complex personal and social experiences of gender – inclusive of gender identity, expression, and socio-cultural norms about gender roles. And it can fail to account in both prevention and response for the conceptual transition of male children in their childhood years as part of the groups characterised as vulnerable to victimisation, to male adults as part of the group associated with perpetrating sexual violence against others.

Sexual violence against women and girls

Sexual violence is one form of violence on a broader spectrum of violence against women. Sexual violence, rarely occurs in isolation and most commonly co-occurs alongside other forms of violence against women, including physical, emotional and other forms of violence.

Violence against women, is defined under the National Plan to Reduce Violence against Women and their Children 2010–2022 and the United Nations Declaration on the Elimination of Violence against Women as: any act of gender-based violence that causes or could cause physical, sexual or psychological harm or suffering to women, including threats of harm or coercion, in public or in private life.

All forms of violence against women, including sexual violence have a profound impact on women’s physical and mental health and social wellbeing, across the course of their lives.¹⁹ Women are three times more likely to have experienced partner violence than men.

Women were eight times more likely to experience sexual violence by a partner than men.²⁰

The majority of women who experienced sexual assault by a male were sexually assaulted by a known person. Just under nine out of ten (87%) women who experienced sexual assault by a male, were assaulted by someone they knew. The most common known perpetrator was most likely to be a former partner.²¹

Sexual violence against men and boys

Sexual violence is perpetrated on men and boys. Sexual violence has distinct characteristics and dynamics, which can position men and boys differently in our prevention and response approach compared to other forms of violence in our community.

Prevalence data cited above point to the fact that most sexual violence is perpetrated by men against young people and children (all genders), adult women and other men (in that order). They also demonstrate that — as a proportion of the ACT population — male survivors represent approximately:

- thirty-nine per cent of victims of child sexual abuse before the age of 15 years
- twenty per cent of victims of sexual assault age 15 years and over
- one-third of victims of sexual harassment age 15 years and over.

These are not numbers that are marginal to either the secondary prevention or the response agenda. And they do not reflect a gender cohort that it is immune from the impacts and effects of sexual violence, or the gendered drivers of that violence.

The Australian Institute of Family Studies states:

Sexual violence against men and boys, like all acts of violence, is a violation of personal integrity. The experience of victimisation can also conflict with certain dominant notions of masculinity in patriarchal societies, characterised by sexism and homophobia, contribute to fear of disclosure for male victim/survivors of sexual assault. Like all underreporting, this results in inadequate data to enhance our understanding of the crime. Inadequate legal definitions of the crime and a scarcity of support services further mask the real extent and impact of male sexual assault.

Like female survivors of sexual assault, males struggle with traumatic symptoms and disrupted lives. Some of these symptoms may be in relation to their sexuality and the masculine role, requiring specialist support and creative options for treatment to assist their recovery. An adequate range of services and agency responses is only part of the vision required to understand and respond effectively to male sexual assault.²²

Other priority populations and groups

Although limited national data are available, research reviewed by AIHW²³ suggests that certain populations are more likely to experience sexual assault, including people who:

- are Indigenous
- have disability

¹⁹ UN Declaration on the Elimination of Violence 1993.

²⁰ UN Declaration on the Elimination of Violence 1993.

²¹ UN Declaration on the Elimination of Violence 1993.

²² AIFS 2006, ‘Male survivors of sexual assault and rape’, ACCSSA Wrap.

²³ AIHW 2020, *Sexual assault in Australia*.

- are lesbian, gay, bisexual, trans and gender diverse, or have intersex variations
- have previously been victims of sexual assault at any point throughout life

Aboriginal and Torres Strait Islander people and communities

Key resource: Queensland Centre for Domestic and Family Violence Research (February 2017) *Prevention, early intervention and support for Aboriginal and Torres Strait Islander people who have experienced sexual violence* reports.

Aboriginal and Torres Strait Islander women experience higher rates of serious violent victimisation, including sexual violence, than non-Aboriginal and Torres Strait Islander women (Mouzos and Makkai, 2004; Urbis Keys Young, 2004; Wundersitz, 2010). It is difficult to estimate the number of Aboriginal and Torres Strait Islander people who are sexually assaulted due to unreliable recording, under reporting, and non-disclosure by many victims. However, rates of sexual assault are thought to be two to five times higher for Aboriginal and Torres Strait Islander people, than for non-Aboriginal and Torres Strait Islander people (Bryant and Willis, 2008; Mullighan, 2008; Wundersitz, 2010). Recent figures show Aboriginal and Torres Strait Islander people are around three and a half times more likely to have been the victim of sexual assault compared to non-Aboriginal and Torres Strait Islander people (ABS, 2017a; AIHW, 2018).

The document goes on to identify factors influencing non-disclosure for Aboriginal and Torres Strait Islander victims of sexual assault, and reviews culturally-informed best practice prevention, early intervention and support for victims of sexual violence.

More broadly, 'family violence' has been the preferred term for violence within Aboriginal and Torres Strait Islander communities to describe domestic violence, as it covers the extended family and kinship relationships in which violence can occur. It remains a critical social policy issue, placing a huge burden on communities, especially on women and children (Closing the Gap Clearinghouse 2016). Removal from country, and other cultural dispossession over the past 230 years, have resulted in social, economic, physical, psychological and emotional problems for Indigenous Australians. Family violence against Indigenous Australians must be understood as both a cause and effect of social disadvantage and intergenerational trauma (Closing the Gap Clearinghouse 2016). In 2019 AIHW reported that Indigenous Australians experienced family violence at higher rates than the general population. Between 2010 and 2017, the sexual assault victimisation rate for Indigenous Australians rose in New South Wales and Northern Territory and fell in

Queensland and South Australia. Victims were predominantly female in all states and territories.²⁴

The Aboriginal and Torres Strait Islander Consultative Committee calls for the centrality of community-controlled, and culturally-safe and culturally-competent approaches across all areas of consideration in shaping of the ACT Strategy. The importance of cultural safety and cross-cultural competence is also highlighted in resources from other Australian jurisdictions that may usefully inform the co-design and implementation of prevention and response initiatives for First Nations people and communities.

People with disability

Source: AIHW (2020) *People with disability in Australia*

Adults with disability, especially those with severe or profound disability, are more likely than adults without disability to experience all types of violence. Drawing on ABS data, the AIHW reports that 16 per cent (935,000) of adults with disability have experienced sexual violence after the age of 15.

Table 1: Prevalence of violence after age 15^a for adults,^b by disability status^c and type of violence, 2016 (%)

Type of violence	Type of disability			
	Severe or profound	Other	All	Without
Sexual ^d	24.0	15.2	16.3	9.6
Physical ^e	43.9	43.0	43.1	32.1
Intimate partner ^f	28.5	19.7	20.8	13.2
Total	48.8	46.7	47.0	35.9

Source: ABS 2017b; see also Table VIOL3.

- Experience of violence after age 15 years (in last year or previously). Includes sexual violence and physical violence.
- People aged 18 and over living in households.
- Disability status is determined at the time of the survey. It does not indicate whether a person had disability at the time of an incident of violence.
- Includes sexual assault and sexual threat.
- Includes physical assault and physical threat.
- Includes sexual and/or physical violence perpetrated by a current partner (living with), previous partner (has lived with), boyfriend/girlfriend/date and ex-boyfriend/ex-girlfriend (never lived with).

Note: Components may not add to total as people may experience multiple types of violence. A person who experienced sexual and physical violence is counted separately for each type of violence they experienced but only once in the aggregated total.

Women with disability also report higher rates of sexual violence and intimate partner violence than their male counterparts. Men with disability report higher rates of

²⁴ AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*, vii.

physical violence. This is also the case for adults without disability, although the rates are generally higher for men and women with disability than without:

- one in four (25% or 748,000) women with disability have experienced sexual violence after the age of 15, compared with 15 per cent (or 978,000) without disability
- one in 14 (6.6% or 187,000) men with disability have experienced sexual violence after the age of 15, compared with 3.9 per cent (or 241,000) without disability
- two in five (40% or 1.2 million) women with disability have experienced physical violence after the age of 15, compared with 26 per cent (or 1.7 million) without disability
- almost one in two (47% or 1.3 million) men with disability have experienced physical violence after the age of 15, compared with 38 per cent (or 2.4 million) without disability.

People from culturally and linguistically diverse backgrounds

According to AIHW, “there is no substantive Australian research on family, domestic and sexual violence among people from culturally and linguistically diverse backgrounds. However, there are pockets of research on specific types of violence in certain cultural groups.”²⁵

However, there are some published practice guidance and small research projects that have been conducted with certain cultural groups have considered specific types of violence and responses to them. Distinct needs and issues faced by people from culturally and linguistically diverse backgrounds may also arise from prejudice and discrimination on the basis of language, ethnicity, culture, migration/refugee experience and migration status in Australia (e.g. vulnerable visa status, exclusion from certain public services and supports, the need for culturally-competent workforce, access to safe interpreters), and cultural dislocation (and different intergenerational experiences of this) between Australian social norms and those in country of origin, including the impact of Australia laws that may prohibit cultural practices (such as forced marriage or genital mutilation/cutting).

Sexual violence prevention approaches must be designed collaboratively with diverse cultural communities in order to effectively engage with specific needs and impacts, and to ensure that culturally-safe and culturally-relevant approaches are used.

Socio-economic status

Women living in the lowest socioeconomic areas were more likely to have experienced sexual violence from any perpetrator (both family and domestic violence-related and non-family and domestic violence-related) since the age of 15, compared with women living in the highest socioeconomic areas. For those living in the lowest socioeconomic areas, about 21 per cent (343,000) women had experienced sexual violence, compared with 17 per cent (350,000) women living in the highest socioeconomic areas. For men, the rates in different socioeconomic areas ranged from 4.0 per cent (lowest socioeconomic areas) to 6.0 per cent (highest socioeconomic areas) (ABS 2017c).²⁶

Diversity in sexuality, gender and sex

One of the hallmarks of human sexuality, gender and sex is its diversity. Sexual violence is one form of violence that can be connected with a continuum of stigma, prejudice and discrimination towards individuals, families and communities that do not conform to cisgendered and heteronormative social ideas about these aspects of human experience. This violence may include specific homophobic and transphobic harassment, violence and abuse directed towards people who are LGBTIQ+ or perceived/assumed to be. Prejudice and discrimination also create additional impacts and barriers to assistance experienced by LGBTIQ+ people who experience intimate partner violence and sexual violence. The *Private Lives* ³²⁷ research report has highlighted that:

- 21.8 per cent of surveyed LGBTIQ+ respondents reported having experienced sexual assault in their intimate relationships;
- 9.7 per cent experienced sexual assault as part of family violence inflicted by family members
- Sexual violence was experienced most frequently by pansexual (36.6%, n=171), queer (33.4%, n=255), bisexual (28.7%, n=359) and asexual (23.9%, n=47) identifying participants, compared to 16.9% (n=213) of lesbian identifying and 11.1% (n=189) of gay identifying participants.

25 AIHW 2019, ‘Family, domestic and sexual violence in Australia: continuing the national story’, p. vii.

26 AIHW 2019, p. vii.

27 Hill et al 2020, *Private Lives 3: The health and wellbeing of LGBTIQ people in Australia*. ARCSHS Monograph Series N0. 122. La Trobe University.

APPENDIX

Key concepts and definitions

Sexual violence is defined as:

Any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work.²⁸

In the Australian Capital Territory, sexual offences are set out in Part 3 of the *Crimes Act 1900* (ACT). As a federation, Australia has nine major legal jurisdictions. Laws regarding sexual offences may differ between these jurisdictions in use of language and definitions for offences.

Regardless of their specific legal framing, acts of sexual violence include:

- all sexual interactions that are imposed by coercion and threat
- rape and attempted rape (sexual intercourse without consent, called 'sexual assault' in ACT laws)
- non-consensual sexual interactions within marriage or dating relationships
- sexual abuse of children and young people under the age of consent
- rape as a weapon of war
- sexual violence as a form of punishment for transgressing social or moral codes
- sexual violence driven by homophobia, biphobia or transphobia
- gang (multiple assailant) rape
- sexual assault involving a sexual organ or object, including coerced contact between the mouth, penis, vulva or anus, or digital insertion
- unwanted sexual advances
- sexual harassment (common defined in civil rather than criminal laws)
- sexual interactions by a person in a position of authority, trust or caring responsibility towards someone in their care, including sexual abuse of people with a disability or abuse of older people by a carer
- technology-facilitated sexual violence

- reproductive coercion, including denial of the right to use contraception or other measures to protect against sexually transmitted diseases, or the removal of these measures without consent (stealthing)
- female genital mutilation/cutting
- forced prostitution and trafficking of people for the purpose of sexual exploitation.²⁹

The ABS *Personal Safety Survey* defines sexual assault as: an act of a sexual nature carried out against a person's will through the use of physical force, intimidation or coercion, including any attempts to do this. This includes rape, attempted rape, aggravated sexual assault (assault with a weapon), indecent assault, penetration by objects, forced sexual activity that did not end in penetration and attempts to force a person into sexual activity. Sexual threat is defined as: the threat of acts of a sexual nature that were made face-to-face where the person believed it was able to and likely to be carried out.³⁰

Sexual wellbeing is defined as more than the mere absence of harm or violence. It is a state of physical, emotional, mental and social wellbeing in relation to sexuality. It includes sexual pleasure, eroticism and intimacy, as well as the absence of sexual feelings or activity. Sexual wellbeing depends on freedom of choice, and it requires a positive and respectful approach to sexuality and relationships, as well as access to information.

The inclusion of the concept of sexual wellbeing in this proposed Framework and Strategy is therefore central to understanding the need to both prevent violence and recognise what is protected and valued.

This definition aligns with the World Health Organization definition of **sexual health**:

...a state of physical, emotional, mental and social wellbeing in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For sexual health to be attained and maintained, the sexual rights of all persons must be respected, protected and fulfilled.³¹

28 WHO 2020, *World Report on Violence and Health*.

29 WHO 2020, *World Report on Violence and Health*.

30 ABS 2016, *Personal Safety Survey, Australia*.

31 WHO, 2006a (updated 2010)

When viewed holistically and positively, sexual health:

- is about wellbeing, not merely the absence of disease
- involves respect, safety and freedom from discrimination and violence
- depends on the fulfilment of certain human rights
- is relevant throughout the individual's lifespan, not only to those in the reproductive years, but also to both the young and the elderly
- is expressed through diverse sexualities and forms of sexual expression
- is critically influenced by gender norms, roles, expectations and power dynamics
- needs to be understood within specific social, economic and political contexts.

There is a growing consensus that sexual health cannot be achieved and maintained without respect for, and protection of, certain human rights. The working definition of sexual rights given below is a contribution to the continuing dialogue on human rights related to sexual health. The application of existing human rights to the areas of sexuality and sexual health constitutes sexual rights. Sexual rights protect all people's rights to fulfil and express their sexuality and enjoy sexual health, with due regard for the rights of others and within a framework of protection against discrimination.

The WHO approach **sexual rights** posits:

The fulfilment of sexual health is tied to the extent to which human rights are respected, protected and fulfilled. Sexual rights embrace certain human rights that are already recognised in international and regional human rights documents and other consensus documents and in national laws.

Rights critical to the realization of sexual health include:

- the rights to equality and non-discrimination
- the right to be free from torture or to cruel, inhumane or degrading treatment or punishment
- the right to privacy
- the rights to the highest attainable standard of health (including sexual health) and social security
- the right to marry and to found a family and enter into marriage with the free and full consent of the intending spouses, and to equality in and at the dissolution of marriage
- the right to decide the number and spacing of one's children
- the rights to information, as well as education

- the rights to freedom of opinion and expression
- the right to an effective remedy for violations of fundamental rights.

The responsible exercise of human rights requires that all persons respect the rights of others. Sexual rights have also been affirmed in other conventions, including UN Convention of the Rights of Persons with Disabilities (UNCRPD).

Gender equity/gender equality/gender transformative approaches

Gender equality/equity means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections. Gender inequality — including the social and cultural ideas that women and men should not have these same rights, resources, opportunities and protections, and laws and social practices that allow discrimination and adverse, unequal treatment on the basis of gender — is a key driver of violence against women, including sexual violence.

Gender equality and gender equity strategies are not new in the Australia or international context. Campaigns for voting rights extend back more than a century, and schools and education institutions have implemented initiatives that reduce gender-based assumptions and restrictions on learning/subject participation, career preparation, and leadership over decades.

Different communities will have different cultural understandings and interpretations of some of the key concepts important in prevention work such as gender, gender relations, and men's and women's roles and identities. Prevention strategies need to engage carefully with these varying social and cultural norms. However, there are several broad areas to address in these conversations.

Gender transformative thinking and actions is crucial to this work. It is referred to as 'gender transformative' as it aims to transform society - its norms, practices and structures - with a focus on gender equality. **The concept of gender transformative action is essential for understanding, implementing and evaluating how we do prevention work as a community.**

THE ACT FRAMEWORK TO PREVENT SEXUAL VIOLENCE

Our vision: A community free from sexual violence

We have the right to live free from sexual violence, while maintaining the right to sexual wellbeing.

This framework is informed by the voice of First Nations people.

What do we mean by 'we'?	What do we mean by 'sexual violence'?	What do we mean by 'sexual wellbeing'?	Who is impacted by sexual violence?
We mean all people, regardless of their gender, sexuality, race, colour, sex, language, religion, political or other opinion, national or social origin, property, age, or other status.	<p>Sexual violence is a broad term describing all unwanted sexual activity, and is fundamentally driven by abuse of power.</p> <p>It can happen to anyone in our community, in the physical or virtual world and includes unwanted sexual activity against people of all ages. There is a continuum of sexual violence ranging from sexual harassment, sexual acts, sexual touching, sexual assault, aggravated sexual assault, image-based abuse, technology-facilitated sexual violence and the production of sexual abuse and exploitation material. Sexual violence does not have to be a single act of aggression but should be considered as part of a continuum of attitudes and actions, driven by power imbalances.</p> <p>Sexual violence is a violation of human rights and will not be tolerated. Sexual violence is gendered, and so addressing gender inequality is core tenet of this strategy.</p>	<p>Sexual wellbeing is more than the mere absence of harm or violence. It is a state of physical, emotional, mental and social wellbeing in relation to sexuality. It is related to individual values, sexual health, sexual pleasure, and sexual justice, and bodily autonomy. It includes the absence of sexual feelings or activity.</p> <p>Sexual wellbeing is individually experienced but socially and structurally influenced: it depends on freedom of choice and personal values, and it requires a positive and respectful approach to sexuality and relationships, as well as access to information.</p> <p>Sexual health is fundamental to the overall health and wellbeing of individuals, couples and families, and to the social and economic development of communities and countries. Sexual health, when viewed affirmatively, requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination, and violence.ⁱⁱ</p>	<ul style="list-style-type: none"> Aboriginal and Torres Strait Islander people Children and young people Women Men People with disability People who experience mental ill health People from culturally diverse backgrounds LGBTIQ+ people Older people Sex workers People in the custodial system

Our principlesⁱⁱⁱ

Proactive	Proportionate	Participation	Partnerships	Precise	Population-based
Preventing and responding to sexual violence is accepting shared (whole-of-community) responsibility. The strongest focus is on proactive universal measures that mitigate risk factors and enhance sexual wellbeing by promoting protective factors.	Incorporating an intersectional lens, non-stigmatising support is provided at the right time, in the right measure, and to the right people who are impacted by and use sexual violence.	Facilitating the full involvement throughout the framework lifecycle, including those with lived experience to share their knowledge and ensuring trauma-informed and intersectional approaches to reduce all risk of retraumatisation.	Guaranteeing co-design with a range of stakeholders is used throughout the framework lifecycle. Utilising the broad multidisciplinary expertise of the sector to ensure that social, environmental, political and legislative responses align.	Ensuring shared accountability for framework goals across the whole-of-government through evaluation and research and strong data linkage across all government and non-government agencies.	Promoting social change by addressing the cultural norms, power structures and gender transformative practices that condone and enable violence to occur and mobilising community participation and shared support for framework goals.

Our priorities for future action

Priority 1	Priority 2	Priority 3	Priority 4	Priority 5
Implementing a long-term strategy for primary, secondary and tertiary prevention of sexual violence, informed by a rigorous evidence base, ongoing evaluation and accountability.	Providing lifelong comprehensive relationship and sexuality education (RSE).	Enhancing and resourcing institutional and system processes to better protect against and respond to sexual violence.	Identifying and supporting community-driven initiatives and activities focused on sexual violence prevention.	Adopting a comprehensive sexual violence prevention communications and media strategy and media interlinked with Priority 2.

Our objectives – the ACT Government will:

<ul style="list-style-type: none"> ● Develop a ten-year strategy for preventing sexual violence through primary, secondary and tertiary measures. The strategy must be a broad Strategy for Addressing Sexual Violence, covering the areas of Prevention, Response, Workplace and Law Reform. ● The strategy must be underpinned by a rigorous evidence base informed by experts, lived experience, and ongoing evaluation. ● Establish and maintain a community sector and research leaders' body that is responsible for oversight and implementation of the strategy, to ensure accountability. ● Reduce the drivers of sexual violence through significant cultural change 	<ul style="list-style-type: none"> ● Ensure access to and delivery of comprehensive relationships and sexuality education, across multiple education, workplace and community settings over the course of the lifespan. ● Evaluate the implementation and delivery of RSE to maximise its capacity to protect and inform all people; including students, employees and other members of the community. 	<ul style="list-style-type: none"> ● Measure progress against established gender equality targets through a gendered lens being applied to all legislation, policies, and Budget measures. ● Streamline and review compliance and regulatory obligations of employers and community organisations ● Resource the delivery of the ACT's protective frameworks and meet its own obligations. ● Embed protective strategies and undertakings in ACT Government contracting and reporting obligations. ● Triage community organisations in receipt of government funding to receive evidence-based training and resources relevant their service profile. 	<ul style="list-style-type: none"> ● Support and fund grassroots, organic and informal public education initiatives and community-driven activities to foster cultural change to create a community that does not tolerate sexual violence and values the importance of sexual wellbeing. ● Resource the invaluable contribution of relevant community-driven initiatives and activities in preventing sexual violence. ● Value the community's role in co-designing actions that are meaningful within the ACT context. ● Create informal avenues for continuing the ongoing conversation around relationships and sexuality, power, gender, stereotypes and respect for people of all ages. ● Support priority populations identified through this strategy including, when appropriate, those with lived experience. ● Utilise the power of peer-learning and peer-teaching and safe story telling change methodologies. 	<ul style="list-style-type: none"> ● Coordinate a community-wide communications and media strategy supported by sustained investment and strong local partnerships that prevent and respond to sexual violence. ● Promote continuum of targeted and effective messaging about preventing sexual violence that impacts not only the receivers of the message but those that create and transmit it. ● Promote education and cultural/practice change in the media. ● Develop an integrated communications strategy and media campaign that reinforces the key messages to prevent and respond to sexual violence that draws strongly on the key messaging in the education and training packages provided in schools, workplaces and community sectors ● Provide messaging to support survivors, protect priority populations, empower allies, confront perpetrators and challenge permissive or dismissive discourses about sexual violence.
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Outcomes

<ul style="list-style-type: none"> ● Strategy drafted in collaboration with relevant experts and community sectors. ● Strategy adopted by ACT Government with tri-partisan support. ● Regular reviews/ evaluation to ensure effective strategy implementation. Sexual violence is recognised, understood, prevented, responded to and not tolerated. ● Services and systems are strengthened to prevent sexual violence and respond to the needs of people who have experienced sexual violence. 	<ul style="list-style-type: none"> ● Comprehensive RSE is prioritised across multiple sectors and within the community. ● Access to comprehensive RSE is ensured across multiple sites of intervention and over the courses of the lifespan. ● RSE implementation and delivery is evaluated. ● Sustained RSE implementation at scale contributes significantly to cultural change and mitigates the impact of drivers of sexual violence. ● RSE implementation improves sexual wellbeing of all people. 	<ul style="list-style-type: none"> ● Protective mechanisms are efficient, resourced and work in the interests of those they are intended to protect. ● ACT Government is a national leader in system-level protective reforms. 	<ul style="list-style-type: none"> ● Increased collaboration across government and community organisations to increase understanding of, and commitment to, sexual violence prevention and respectful relationships including sexual wellbeing. ● Peers are influencing each other in promoting and demonstrating respectful relationships. ● Government makes connections for outcomes to be created, designed and implemented in collaboration with relevant stakeholders and community groups, including victim-survivors. ● All Canberrans are educated about the systemic issues that bring about sexual violence and challenge this narrative to achieve cultural change. 	<ul style="list-style-type: none"> ● Strong recognition and buy-in for community wide campaign that shows its impact. ● The campaign, no matter the media channel, contains strong recall with the target audiences consuming advertisements for the full duration experiencing maximum impact of the execution and message. ● Reduced tolerance in the public narrative for all forms of sexual violence. ● Change in how sexual violence is reported (e.g. through Our Watch media training or similar).
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APPENDIX 8 FRAMING OUR WORK WITH MEN AND BOYS, PREVENTION WORKING GROUP SAPRP 2021

INTRODUCTION

This document's purpose is to more clearly set out the conceptual framing of what engaging with men and boys means in the context of the current ACT Sexual Violence Prevention and Reform Strategy Project (the project). The project is considering a wide range of issues, needs and strategies for invigorating the ACT's approaches to prevention of sexual violence, the way our systems respond to and support victims/survivors of sexual violence, and how effectively our criminal justice system addresses sexual offences.

Sexual violence has distinct characteristics and dynamics, which can position men and boys differently in our prevention and response approach compared to other forms of violence in our community. The first part of this document frames what 'work with men and boys' means for the purpose of conceptual clarity, and to explore some of the complexities that attend the intersection of sexual violence with male/masculine gender. The second part explores what core principles should inform this work across all prevention priorities that have developed by the Prevention Working Group.

SECTION 1: FRAMING OUR WORK WITH MEN AND BOYS¹

Primary author: Tim Bavinton

Conceptually, there are four main ways that prevention and response to sexual violence engages with men and boys in our community.

- 1 Men as allies and active participants in the prevention of violence against women, children, and other men
- 2 Men and boys as audiences and participants in primary prevention initiatives
- 3 Men and boys as victims/survivors of sexual violence
- 4 Men and boys who use sexual violence

1 Throughout this document, the use of 'men and boys' and 'women and girls' is not intended exclude people who affirm a gender identity and express their gender outside endosex, cisgendered or traditional social assumptions about sex and gender (transgender, gender diverse and non-binary folks, and people who are intersex). But it does reflect the understanding that:

- the majority of sexual violence in our community is committed by heterosexual, cisgendered men
- those impacted and affected by sexual violence includes all of the diversity of our community
- a significant burden of this impact is experienced by cisgendered girls and women.

- 1 Men as allies and active participants in the prevention of violence against women, children, and other men**
- 2 Men and boys as audiences and participants in primary prevention initiatives**

The evidence from social research, crime reporting, and the conceptual framing of sexual violence prevention initiatives, identifies men as the primary perpetrators of sexual violence against women, children and other men, and the role that rigid gendered notions about social roles, power, relationships and sexuality play as key drivers of sexual violence.

These are set out very clearly in the Our Watch resource *Change the Story*. As a community, we will not make changes in these drivers or reduce sexual violence without effective engagement of men and boys.

We can usefully consider the role that boys and men play:

- 1 As bystanders to inappropriate, harmful and abusive behaviour by peers with the potential to either re-direct or reinforce perceived social support or tolerance of sexual violence.
- 2 In their personal and positional capacities as allies and advocates for the prevention of violence against women, children and other men.
- 3 As key members of the workforces for reinvigorating prevention and response to sexual violence initiatives that the project is considering, and where the quality of their understanding and degree of commitment to modelling and supporting the social changes required to address underlying drivers of sexual violence can be 'make or break' for the success of these initiatives.

Section 2 of this document sets out this engagement work in further detail. And both in Australia and globally there are a range of resources and frameworks for effectively engaging men and boys in relevant areas, for example the recently released *Engaging Men: Reducing Resistance and Building Support*² resource.

2 Flood M, O'Donnell J, Brewin B and Myors B 2021, *Engaging Men: Reducing Resistance and Building Support*, Melbourne: Eastern Health, Eastern Domestic Violence Service and Queensland University of Technology.

3 Men and boys as victims/survivors of sexual violence

The majority of sexual violence reported in our community is directed against women and girls by adolescent and adult men. Our reliance on crime report data to inform our understanding of both incidence and prevalence of sexual violence (and our awareness of its gaps compared with estimates derived from social and clinical research) is recognised to likely result in underestimates, including of men and boys as victims.

Based on current estimates, male victims/survivors experience of sexual violence is not insignificant. Across the literature cited for the project, it is estimated that:

- one in five Australian women have experienced sexual violence and more than half have experienced sexual harassment since age 15.³
- one in 20 men have experienced sexual violence and one in four have experienced sexual harassment since age 15.⁴
- one in six women and one in nine men have been physically or sexually abused before age 15.⁵
- Male perpetrators were 97 per cent of sexual assault offenders recorded by police in 2018–19.⁶

These data point to the fact that most sexual violence is perpetrated by men against young people and children (all genders), adult women and other men (in that order). They also demonstrate that — as a proportion of the ACT population — male survivors represent approximately:

- thirty-nine per cent of victims of child sexual abuse before the age of 15 years
- twenty per cent of victims of sexual assault age 15 years and over
- one-third of victims of sexual harassment age 15 years and over.

These are not numbers that are marginal to either the secondary prevention or the response agenda. And they do not reflect a gender cohort that it is immune from the impacts and effects of sexual violence, or the gendered drivers of that violence. All victims/survivors deserve to receive the support they need.

The patterns of traumatic impact for male survivors, while having some distinct characteristics that reflect gender assumptions and expectations in our society, are similar to those for women and girls, and gender diverse/non-binary people, as survivors. These impacts are mediated for all

people by factors and attributes including sexuality, ability, culture, general levels of resilience, access to timely support, and prior victimisation, amongst others. A trauma-informed approach tells us that unresolved loss, grief and trauma sit at the heart of many other health and wellbeing needs for individuals, and underpin many complex ('wicked') problems in our society as a whole, and sexual violence is an underlying issue for many health and wellbeing needs for men and boys.

The common de-gendered referencing of 'children' in the literature regarding both victims of violence and witnesses to violence between others in families, has some generally unintended consequences:

- It can disguise that this group represents the full spectrum of cisgender, transgender and gender diverse/non-binary young people in critical developmental stages of life who are already exposed to and engaging with complex personal and social experiences of gender – inclusive of gender identity, expression, and socio-cultural norms about gender roles.
- For boys, it results in leaps from being framed exclusively as 'victim' to (potential) offender status in much of the community conceptualizing of violence and violence prevention, without much consideration or explanation of how, when and why this transition occurs.

One barrier that can significantly affect male survivors' willingness to disclose and seek assistance is a poor understanding of the cycle of sexual violence. This can happen both in the helping professions and across our community broadly. Prior sexual victimisation may be a contributing factor to some offenders use of sexual violence against others, but does not mean that the majority of male survivors will offend. It is a common concern or fear that contributes to additional shame, stigma and silencing for male survivors. Logically, if this were the determining factor we would expect to see the majority of sexual violence perpetrated by women – an incorrect and simplistic analysis that lacks any sophisticated gender lens⁷. There is stronger evidence that boys experience of physical abuse and neglect, and witnessing family/domestic violence between adults at home as a child is more predictive of adult sexual offending than prior sexual victimisation.^{8,9}

3 AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*; Cox P 2015, 'Violence against women in Australia: Additional analysis of the ABS' *Personal Safety Survey, 2012*.

4 ABS, *Personal Safety Survey 2016*; AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story*.

5 AIHW 2019, *Family, domestic and sexual violence in Australia: continuing the national story* (2019), vii.

6 AIHW 2020, *Sexual assault in Australia*.

7 By analogy, we also understand that while many people who inject drugs may also have used tobacco or alcohol, that using tobacco or alcohol is not inevitably predictive of other drug use.

8 Widom CS, Massey C 2015, 'A Prospective Examination of Whether Childhood Sexual Abuse Predicts Subsequent Sexual Offending', *JAMA Pediatrics*, 169(1):e143357. doi:10.1001/jamapediatrics.2014.3357.

9 Simons D, Wurtele SK and Heil P 2002, 'Childhood victimisation and lack of empathy as predictors of sexual offending against women and children', *Journal of Interpersonal Violence*, 17(12), pp. 1291–1307. doi: 10.1177/088626002237857.

4 Men and boys who use sexual violence

Given that the majority of sexual offending is committed by men, there is a strong imperative for prevention approaches to actively engage men and boys who are likely to be or are already sexually aggressive, harassing, abusive/violent to others.

There are four primary points of engagement here:

1 Early identification and intervention to address contextually inappropriate but not persistently harmful sexual behaviours.

- These responses are a critical aspect of shaping children and young people's sexual expression and sexual ethics within socially acceptable limits, principally by parents/caregivers at home and educators in early childhood and school settings, by community leaders in cultural and religious institutions, sporting and recreational activities, and later others in their community as young people become more independent.
- This clearly sits within the primary prevention and sexual wellbeing framework of this work, and includes all children and young people. Evidence-based frameworks that help explain normal and healthy sexual development of children and young people are critical.
- Prevention approaches in this space need to address both children's and adults understanding and expectations regarding sexual behaviours in a gender-transformative, developmentally-appropriate, culturally-aware, and accessible approach.
- What should be a relatively simple task of adult communication about, monitoring and redirection of inappropriate behaviour as part of social learning, is frequently avoided or made more complex by:
 - Both explicit and implicit communication of different limits, expectations, or tolerance for behaviour based on gender.
 - personal and professional concerns about the risks or appropriateness of adults addressing children and young people regarding sexual behaviour.
 - a social context of competing and conflicting personal, cultural and religious values about bodies, relationships, sex and gender.

2 Early identification and intervention to address persistent harmful/abusive sexual behaviours by children and young people towards other children and young people.

- These may be indicators of a child's abuse/neglect or other early harmful sexualisation, presenting an opportunity to connect with victim support services, and/or with the kinds of social skills learning set out in point one above.

- Interventions here are located across the secondary or tertiary prevention continuum, with a view to disrupting and redirecting a life course that may otherwise lead to increasing or continued sexual offending over time.
- Where they reflect a potential offending trajectory, failure to intervene at this point increases risks to others. Offenders typically have multiple victims until they are detected and prevented from further offending.
- Therapeutic support or programs available for adolescent and adult offenders on a voluntary, self-referral basis are scant in Australia. Those programs that do operate usually require criminal prosecution or conviction as an eligibility criterion.

3 Accounting for offender motivation and common explanations for why sexual violence happens.

Caveat: There is no meaningful difference in the experience of victims/survivors that results from the various motivations that drive individuals' sexual offending. All are experiences of the exercise of power and lack of respect for consent, regardless of the specific sexual offences that occur, or the motivations that drive them. And it is extremely unhelpful for the people and institutions that provide response services to victims/survivors to suggest any normative hierarchy of impact based on the nature of the sexual offences themselves.

- From a prevention point of view, however, it can be important to understand that offender behaviours and motivations differ from each other and may require different kinds of interventions and approaches.
 - For example, we tend to take a primary and secondary prevention approach to developing personal skills for the establishing of consent in peer sexual relationships or to build a social consensus against the use of technology to sexually harass, but a more tertiary forensic intervention approach to persistent sexual preoccupation with pre-adolescent children.
- Typological frameworks for sexual offenders are complex, and often contested. They become specifically and professionally relevant in terms of forensic investigation and individual offender treatment approaches.
- Some of the characteristics considered include how persistent or opportunistic victim targeting is, patterns of focus of sexual attention, whether the use of sexual violence is seen as an end in itself or a means to something else.
- Regardless of individual specifics, the 'psychology of offending' is strongly informed by gendered ideas about sex, sexuality, relationships, the exercise of social power, how consent is established or whether this is even important, and beliefs about whether mutuality, consent and shared pleasure are hallmarks of healthy sexual interactions, as well as what constitute appropriate sexual limits (boundaries) between different people in our society.

- The failure to account for how men and boys themselves construct the meaning of and explanation for sexual violence impacts the effectiveness of prevention efforts.
- This is where the protective and prevention value of comprehensive sexuality and relationships education is prominent, in forming knowledge, skills and attitudes about healthy sexuality, respectful relationships, health and wellbeing, and an accurate understanding of the body and how it functions.

4 Tertiary prevention, forensic and criminal justice interventions targeting adult offenders:

- These include both punitive and rehabilitative criminal justice system actions, including mandated therapeutic/treatment programs. This level crosses the tertiary prevention, response and criminal justice considerations of the project.
- These typically require a level of proven offence through the criminal justice system, or other court/tribunal mandated authority to impose limits on an individual's movements and behaviour where a criminal conviction has not been secured.
- As a result, with referral for prosecution and conviction rates for sexual offences atrophying at some of the lowest levels, they both an resource intensive and largely inaccessible prevention approach.
- Poorly targeted counselling and community supports that do not have high levels of professional supervision and accountabilities are considered high risk for recidivism, and therefore for lower community safety outcomes.
- Punitive and community vigilante approaches, while satisfying a community sense of justice and vengeance, are also commonly associated within increased risk to community safety.
- Adolescent and adult men with cognitive disabilities are sometimes misidentified in this category where the education and other earlier interventions outlined above have not occurred in meaningful or accessible ways.

Institutional failures to comprehend and act sufficiently on information, knowledge and victim report were a significant focus of the Royal Commission into Institutional Responses to Child Sexual Abuse, and are clearly linked to further victimisation by offenders that might otherwise have been prevented. Strategies regarding safeguarding, institutional protections that are being considered by the Prevention Working Group and Workplace subcommittee of the project are critical aspects of an effective prevention approach in working with people who use sexual violence.

Recognising challenges in engaging men and boys

All sexual violence prevention and response initiatives, and the broader prevention of violence against women agenda, must be accountable to and informed by the experience of victims/survivors. Safeguarding for children and safety for people subjected to violence by others must be central priorities for all prevention and response approaches.

But it can be challenging to successfully identify, resource, implement and monitor effective sexual violence prevention efforts that focus on men and boys when:

- They are seen to detract from a focus and resourcing for victim/survivor response.
- Their approach is seen to insufficiently acknowledge or to ignore important and fundamental aspects of the victim experience.
- They are neither sufficiently evidence-based nor accountable, and either intentionally or recklessly reinforce key gendered drivers of sexual violence. Or they simplistically frame explanations for sexual violence in ways that do not assist audiences for primary and secondary prevention to make sense of and meaningfully form clear ethical boundaries and behavioural intent regarding their sexual behaviour (e.g. explanations that sexual violence is caused by uncontrollable male sex drive, or occurs because of mental illness or cognitive deficiency, or is explained by what people wear, etc)
- They are structured to rely heavily on male champions or representatives who are known, or subsequently become known, to be sexually aggressive, harassing, abusive and/or violent, and prevention approaches as a whole come to be tainted by these failures.

A simplistic framing of women/girls as victims and men/boys as perpetrators of violence, neither reflects the diversity or complexity of sexual violence experiences, nor reflects that ways that vulnerability is actively shaped by many offenders through grooming. Neither reflects or is inherent to healthy masculinity or femininity.

This framing also limits the sense of:

- Agency to victims, who cannot nor are they responsible for preventing the violence of others towards them, but can feel empowered in their recovery process to take back control and make decisions that increase their sense of safety and wellbeing (which may include actions that are intended to prevent future victimisation).
- Responsibility of people who use violence, who are frequently not even conceptually named in our framing of the issues (e.g. 'violence against women' vs 'men's use of violence'), or where sexually aggressive, violent and abusive behaviours are described as inherent to a gender.

It is an accurate reflection of sexual violence that its underlying drivers are highly gendered, that sexual violence is one way that rigid social gender norms and expectations are policed and reinforced, and in the male/masculine gender identity of the vast majority of sexual offenders.

Nonetheless it can be more difficult for victims/survivors of all genders to identify and seek assistance for themselves - and for others in the community to recognise and respond appropriately to sexual offending behaviour - when these do not fit either the common stereotypical assumptions and media representations of sexual violence, or the most common experience (even when accurately reflected).

Examples include:

- women's sexual abuse of boys, or women's sexual harassment of men and boys;
- sexual harassment and sexual violence against trans and gender diverse, non-binary and gender non-conforming people;
- sexual violence that occurs between LGBTIQ+ identifying people, or in any relationships where partners do not conform to heteronormative/cisnormative assumptions;
- abusive and harmful sexual interactions between children that are ignored, dismissed or rationalised as unimportant or inconsequential;
 - conversely, adult misunderstanding and overreaction to developmentally normal sexual behaviours between age-peers can reinforce stigma, shame and secrecy that perversely increases vulnerability
- sexually exploitative relationships that involve people with cognitive disabilities
 - conversely, denying agency, self-determination and opportunity for people with disabilities to form intimate relationships when appropriately supported, represents a breach of human rights and denial of sexual wellbeing
 - stereotypes and assumptions that result in any sexual expression or behaviours of adolescent and adult men with disability being framed as inherently risky, threatening or abusive to others.
- non-consensual sex in longstanding relationships, as one aspect of ongoing intimate partner violence or family/ domestic violence, where other forms of violence are seen as more serious or pressing safety concerns,.

SECTION 2: CORE PRINCIPLES ACROSS ALL PRIORITIES

Primary author: Sheridan Kerr

Principle 1: Working alongside men and boys

Men who conform more strongly to traditional masculine norms are more likely than other men to:

- assault and rape women
- assault other men
- take risks with sexual partners
- refrain from active fathering.
- avoid help-seeking

Change the Story outlines five areas of social change essential to prevent violence against women:

- 1 Challenge condoning of violence against women.
- 2 Promote women's independence and decision-making in public life and relationships.
- 3 Foster positive personal identities and challenge gender stereotypes and roles.
- 4 Strengthen positive, equal and respectful relations among all people.
- 5 Advocate for and normalise gender equality.

Men and boys are, of course, essential allies and partners for violence prevention in general, and sexual violence specifically, against women across our community. It is men who largely perpetuate the violence. This prevention work seeks to prevent violence before it occurs.

Significant violence prevention work involves redefining existing expressions of masculinity the results of which are outlined above. Reflective and ongoing conversations can be the catalyst for generational and cultural change in addressing the drivers of violence against women. There are many ways to engage men and boys in conversations that will support effective violence prevention.

Who should talk?

Initially, non-violent men are positive role models for others and are best placed to talk to other men and boys about male privilege and gender inequality, and to call out sexism.

When to listen?

Non-violent men can build meaningful partnerships with women and girls and connect these two groups. Men and boys can learn from listening to the experiences of women and building shared norms of community safety. Women must be included in work engaging men and boys to ensure women and girls are not further excluded or silenced.

These connections build common values and principles and mutual respect. Feminist, social justice and human rights based organisations can be approached to enhance the self-reflective practices of the men's and boys' groups.

When to talk?

Times of transition, such as throughout puberty and adolescence, relationship change or fatherhood are highly appropriate times to discuss masculine norms, to challenge rigid ideas and expectations and gender roles, and encourage men and boys to reflect on the effects of gender social norms in their own lives and on their opportunities for change.

What to talk about?

To be effective in creating social change, violence prevention discussions must be embedded in a strengths-based approach that focuses on men's and boys' capacity for positive change.

Different communities will have different cultural understandings and interpretations of some of the key concepts important in prevention work such as gender, gender relations, and men's and women's roles and identities. Prevention strategies need to engage carefully with these varying social and cultural norms. However, there are several broad areas to address in these conversations.

The key conversation topics among men and boys include:

- challenging harmful and narrow notions of masculinity
- addressing male power and privilege
- understanding diverse masculinities and how they are shaped by factors such as class, ethnicity and cultural background
- encouraging the development of broad emotional literacy including empathy and caring
- exploring gender transformative thinking and actions

This final point, of gender transformative thinking and actions is crucial to this work. It is referred to as 'gender transformative' as it aims to transform society, i.e. its norms, practices and structures, with a focus on gender. This term can be viewed as technical but the concept of gender transformative action is essential for understanding, implementing and evaluating how we do prevention work as a community.

Further in depth examples of these gender transformative conversations include:

- Challenging dominant or accepted social norms about masculinity, by using the term 'masculinities', to emphasise there are many ways to be masculine and that men and boys have many choices in how they enact their own masculinity
- Exploring their own assumptions about gender roles and stereotypes. Explore how norms and expectations related to masculinity intersect with other forms of disadvantage and inequality
- Supporting self-reflection to consider male privilege and power, through structured group reflections. For example, this can be as simple as asking whether they talked too much or 'mansplained' within a meeting.

In summary, a gender-transformative approach:

- addresses the gendered drivers of violence against women
- transforms gender roles, relations, and structures
- builds gender equality and empowers girls and women
- promotes a human rights agenda.

There is a nuanced approach to this work and this must be acknowledged. For this work to be successful, it must not only support women and girls but also men and boys. Gender transformation work does this by:

- committing to enhancing boys' and men's lives (breaking free of toxic masculinities)
- appreciating the good in what men and boys do and are (valuing what non-violent men and boys offer to respectful relationships and learning from how their relationships thrive)
- exploring the social and structural contexts which shape men's and boys' lives and relations (offering meaningful opportunities for self-reflection).

Cross Priority Principle – Gender Transformative Actions				
Priority 1 Implementing a long-term strategy for primary, secondary and tertiary prevention of sexual violence, informed by a rigorous evidence base and ongoing evaluation	Priority 2 Providing lifelong comprehensive relationship and sexuality education (RSE)	Priority 3 Enhancing and resourcing institutional and system processes to better protect against and respond to sexual violence	Priority 4 Identifying and supporting community-driven initiatives and activities that are relevant to sexual violence prevention	Priority 5 Adopting a comprehensive sexual violence prevention communications strategy and media campaign interlinked with Priority 2.
<p>The governance and accountability mechanisms of the leadership team for this strategy are gender transformative, for example:</p> <ul style="list-style-type: none"> • Expert non-violent men listen and learn from expert women to champion and lead prevention efforts. • Actions that are supported by the governance group are evidence-based, equity-oriented, culturally safe, action-oriented and trauma-informed. • New ideas for gender-transformative messages will come from multi-lateral engagement, ongoing consultation and generating evidence to feed the cycle of research, evaluation, learning and training on gender-transformative social change. 	<p>The respectful relationships and sexuality education agenda is gender transformative, for example:</p> <ul style="list-style-type: none"> • A wide range of classroom activities within the school projects funded enable students to critique gender norms. • The whole of school approach promote structures that create gender equality and includes students, families and staff. 	<p>Workplaces' HR strategies are gender transformative at a structural level, for example:</p> <ul style="list-style-type: none"> • Workplaces are supported and promoted for having • positive and gender-equitable parenting practices. 	<p>The projects that are funded under this priority are gender transformative, for example:</p> <ul style="list-style-type: none"> • Organisations model and build non-violent, healthy gender identities and peer associations and respectful and equal relationships between women and men, girls and boys. • Men's groups challenge violence-supportive attitudes and behaviours, promote gender equality, and form respectful, equal relationships. • Various leadership opportunities are provided for immigrant women through mentoring programs that focus on supporting them in addressing the issues they face in their communities. 	<p>The media and campaign focuses on key elements that are gender transformative, for example:</p> <ul style="list-style-type: none"> • Media coverage around about examples of gender equality, is positive and plentiful. • Media does not relate, perpetuate, or celebrate stereotyped gender, or violence condoning norms. • Advertising is creative when create gender-transformative copy, and are not allowed to resort to exploiting or merely accommodating existing gender inequities in creating campaigns.

Key references

Australian Women's Health Network 2014, *Doing Better Gender-Transformative Public Health Messages*, www.awhn.org.au.

Change the Story, www.ourwatch.org.au/resource/putting-the-prevention-of-violence-against-women-into-practice-how-to-change-the-story.

Dr Michael Flood, <https://xyonline.net/category/authors/michael-flood>.

APPENDIX 9 WOMEN'S HEALTH MATTERS



Findings from the survey by Women's Health Matters of ACT women's experiences of seeking help following a sexual assault

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Executive Summary

Women's Health Matters (WHM) undertook a survey about the help seeking experiences of ACT women following a sexual assault to complement our 2016 research on women's experiences of seeking help for domestic violence, and to inform the ACT Government's Sexual Assault Prevention and Response program.

The aim of this work was to understand the needs of ACT women who have been sexually assaulted and the way they seek help, and to seek their views on how the response system could be improved.

218 participants were surveyed between 26 March 2021 and 7 May 2021. A wide diversity of women responded, consistent with our understanding that this is an issue that impacts women from many different backgrounds and across all age groups.

Key findings

- **85%** of participants reported that the perpetrator was known to them. Around **8%** of these women specified that they have been sexually assaulted by multiple perpetrators.
- **57%** of participants indicated that they had sought help in the past five years, with the remaining 43% stating that they had not sought help in this time period, with many of these women stating their assault happened historically between 5 and 30+ years ago.
- **74%** of the women stated concerns about their mental health as the main reason that women reached out for help following a sexual assault.
- The most common supports accessed were counselling services (65%), support of family and/or friends (63%) and help from general practitioners or other doctors (45%).
- For those who sought help, nearly **60%** said they were not able to find the help and supports they needed.
- Approximately **45%** of participants reported negative experiences with the help they received from support services, predominantly regarding poor and insensitive handling from the police and legal system that discouraged women from seeking further action and feeling not believed.
- Whereas, about **55%** of participants reported positive experiences in relation to the help they received. Some responses attributed this to respect and validation received from counselling/psychology services, however at the cost of long wait times and limited sessions or financial expense.
- There were many comments about services being inadequately prepared to deal with disclosure of sexual assault and that service providers, education institutions and workplaces lacked training in dealing with such situations. Women told us that they were often made to feel interrogated rather than supported, and felt blamed rather than being believed when speaking with police and some service providers. Having to navigate different services and health professionals to find someone with the capacity to provide appropriate support was also a recurring ordeal from many women's experiences.

Constraints and enablers to women feeling supported were reported to include:

- Respectful care
- Being believed and validated to take matters seriously and provide appropriate care and options;
- Professionalism and expertise in sexual assault support and pathways from police, justice and health services;
- Quality of therapy and/or counselling that is more available and accessible; and
- Consistency and continuity of care, and timeframes of care
- Information to support women find services and make decisions

System responses identified by participants **that do not work well** include:

- Lack of action, follow up or progress
- Complex systems and services
- Rights to justice while trying to minimise having to retell and be retraumatised at each counselling session or report

Identified opportunities and suggestions to enhance supports for women included:

- Improved information about services available and scope of support they offer
- Streamlined services
- Trauma- informed practices
- Widespread education and consent and sexual assault

Our suggestions

WHM considers the following opportunities exist to improve supports for ACT women based on our findings:

1. Improve supports for women who choose to use the justice system.
2. Consider new avenues rather than just police for reporting. E.g. informal online reporting.
3. Consider measures to attract more psychological professionals to work in Canberra.
4. Build a strong network for people who have experienced sexual assault to access a range of appropriate services.
5. Train general police to respond sensitively.
6. Quick access to counselling from time of first contact.
7. Increase funding for CRCC to meet demand.
8. Promote and improve information about the scope of services available for ACT women to report or seek support following a sexual assault.
9. Educate young people about sex and consent earlier and in more detail.
10. More information about consent in the wider community.
11. Train hospital staff who might deal with SA victims to respond sensitively.

Background

Sexual assault is a longstanding serious issue in our community with alarming national statistics, with the vast majority of victims being women.

On 29 March 2021 the ACT Government announced the establishment of a Sexual Assault Prevention and Response program to co-ordinate the community, the service sector, unions and relevant stakeholders on responses to sexual assault in the ACT. The work of Women's Health Matters (WHM) was instrumental in helping to inform the establishment of the program based on the knowledge and evidence for sexual assault we held at the time.

WHM committed to conduct a survey about the help seeking experiences of ACT women following a sexual assault to inform the government's Sexual Assault Prevention and Response program and to complement the work the organisation had published in 2016 *Hear Me Out. Women's experiences of seeking help for domestic violence in the ACT: A qualitative research report*. We understood from previous work with Canberra Rape Crisis Centre that women seeking help following a sexual assault have diverse circumstances and needs, and that there is no single best response that will be suitable for all women. Rather, there needs to be a range of responses available.

The aim of WHM's social research was to understand the needs of ACT women who have been sexually assaulted and the way they approach seeking help and support in the ACT – and an important part of our research was to also gain an understanding of women's views on what worked and what didn't, and their suggestions for how the response system could be improved.

The Survey

WHM's consultation survey opened on 26th March 2021 and consisted of 20 questions.

Apart from the first 3 questions which gathered the demographics of the respondents, all the remaining questions included the capture of both quantitative and qualitative responses, which has allowed WHM to explore the common themes within the comments from the women.

The survey was closed on 7th of May 2021 and after filter of eligible and complete responses there was a total of 218 respondents.

Participants were informed prior to completing the survey that findings may be published or otherwise made available and that WHM is committed to ensuring that personal information is handled in line with WHM privacy policy. Participants were also informed that participation in the survey is voluntary and that they may withdraw participation at any time during the survey.

About the women who have responded

There was a **wide diversity of women** who responded, showing that this is an issue that impacts women from many different backgrounds and across all age groups.

Of the 218 women:

- 30.73% of the women identified as LGBTQI+ (n=67),
- 16.06% are living with a disability (n=35),
- 4.59% are from a multicultural background (n=10); and
- 2.29% identified as Aboriginal and/or Torres Strait Islander (n=5).

In relation to the **current age of the respondents**:

- 35.57% were 25-34 years (n=71),
- 25.23% were 16-24 years (n=55),
- 19.27% were 35-44 years (n=42),
- 16.51% were 45-54 years (n=36),
- 5.50% were 55-64 years (n=12),
- 0.92% were 65+ years (n=2).

When asked **about the person who sexually assaulted them:**

- 26.15% said that the person was known to them but was not their partner or ex-partner (n=57),
- 25.23% were assaulted by a partner or ex-partner (n=55),
- 15.60% said it was a person not known to them (n=34); and
- 15.60% said the person was an acquaintance (n=34).
- 18.35% (n=40) said that someone else was responsible for the assault. Women told us this this included family members, step-parents or parent figures; someone from their workplace such as their employer, colleague or client; as well as other school students and people in position of authority e.g. instructor, police and doctor. 18 (8.26%) of the women who indicated someone else, specified that they have been sexually assaulted by multiple perpetrators.

Women's help seeking

Women were asked **whether they had sought help in the past 5 years for a sexual assault**, a total of 215 women responded of which:

- 57.210% (n=123) advised that they had sought help in the past 5 years; and
- 42.79% (n=92) said that they had not sought help in this time period. The comments provided by women to this question indicated that for many women their assault happened historically between 5 and 30+ years ago.

Women who commented that they did seek help in the past 5 years described accessing counselling/psychologist, the GP, CRCC, the hospital, friends or family, police and/or victim support. Some respondents further described that despite their help seeking they didn't feel supported.

Many of the women who said they had not sought help in the past 5 years told us in their comments that they had never sought help - because they felt scared about disclosing their assault, or that they had experienced stigma and victim blaming which deterred them from seeking help. A number of women also told they had experienced multiple sexual assaults in their life.

Women were asked **at what point they felt ready to reach out for support following the assault**, a total of 209 women responded of which:

- 33.01% (n=69) of the women who responded said it took them longer than 12 months,
- 14.35% (n=30) of women said they reached out within a week,
- 11.96% (n=25) of the women specified they felt ready within a month,
- 9.09% (n=19) of the women stated they sought support between 2-6 months, and

- 6.70% (n=14) of the women indicated that they felt ready to reach out for support between 6-12 months after the assault.

24.88% (n=52) of the respondents selected “other” when answering this question. The majority of the comments from these women highlighted that:

- They had never felt they ready to reach out for help (n=25),
- They did not feel ready within 12 months after the sexual assault with most (n=14) commenting that they did not seek help until 10+ years,
- Whereas 6 women commented that they tried to get help but got nowhere

Women were asked **when they did feel ready to reach out for help and support, if were they able to find the supports they needed**, a total of 202 women who responded of which:

- 40.10% (n=81) said they were able to find the supports they needed,
- 59.90% (n=121) said they were not able to find the help and supports they needed.

In their comments, many of the women highlighted:

- They were able to find services but the services were not supportive to their needs:

“I received support from the Rape Crisis Centre but only had one appointment at which it was suggested that it would cause me more harm than good to go to the police. I did call the police but talked to someone on the switchboard who seemed very unsupportive and did not help me understand the reporting avenues available. I did not end up talking to an officer and eventually sought private psychological support through a mental health plan and referral from my GP.”

“Because it’s hard to articulate what you need and the support struggles to identify it also, so they inform of your rights...but legal support is next to none, pre-court support is next to none, during court there is only volunteers supporting, the counsel is too busy on the case to be sensitive to your needs”

“I found myself stuck in an eternal loop of ‘we can’t help you but this org can’, but when i would go to said org, i would get the same answer, and told to go to another org, and so on and so forth”.

- Long wait times to access counselling services were a significant barrier to receiving the help they needed:

“I contacted the Canberra rape crisis centre 3 months after I was sexually assaulted, at the recommendation of my GP. I had the initial meet and greet/ assessment and was told there was an extensive wait list for counselling, even though I was struggling they said I was actually doing well and that unfortunately my story wasn’t unique. When covid hit the wait list blew out, so they would call every second week to check in, I told them I wasn’t doing well and felt like I really needed help. They told me if I’m feeling like that to call the help line (which they were calling me off) and talk to them... which I was already doing? Then they hung up. It’s not easy for me to ask for help, so this really set me back in my recovery.”

- Lack of empathy and understanding from health care professionals:

"My GP at the time dismissed the need for STI testing, and didn't offer any mental health support."

- Stigma, victim blaming and not being believed:

"People only reacted with anger that I didn't do something straight away so I shut again"

"Because my experience wasn't 'as bad as it could have been' many people were reluctant to take me seriously or talk to me about the mental health issues following the assault"

"I was assaulted on a night out in the city. I found the police who were patrolling the city on that night after I had reunited with my friends who had been looking for me. The police took my phone and read my messages and basically said I was flirting with this guy and am I sure I got assaulted, I made it clear that I was flirting with that guy, but that he wasn't the one who assaulted me. I didn't know who assaulted me because I passed out, and that other boy was with my friends looking for me. I got a pretty clear impression that they didn't believe me and weren't going to help, it was 4am and I was exhausted and decided to just go home and not pursue the matter further."

- Unhelpful and distressing interactions with ACT Policing that caused shame and deterred women from seeking further help:

"I would NOT go to the ACT police. Almost all my dealings with them have been negative experiences. They are a heartless and judgemental [sic] team overall, with absolutely no regard for the individual or their circumstances and have been dismissive in the past. My situation also involved some 'partying', which I was not prepared to have examined, or scrutinised."

"It's too hard to go through legal system, better to just leave and move on"

- Fear of repercussions if they were to disclose:

"I think I left it too late to talk about it but I was just so scared to seek support, I feel so gross and disgusted by myself and I even blame myself for one of the repeated incidents that occurred about 13 years ago. I was too afraid to seek support because I was also too terrified that I would be removed from the home and cause the divorce of my family, that CPS would be involved and take away my brother and me from the family and it would all be my fault, and I was scared my family was going to hate me forever and hurt me."

Women were asked **what made you [them] decide to seek help**, a total of 168 women responded of which their top reasons were:

- As a result of deteriorating mental health, with women speaking about suffering from severe anxiety and depression following their assault which had had long lasting impacts on their lives:

"I was having daily breakdowns and flashbacks, any loud noise sent me into a panic and I couldn't be around crowds of people larger than 6."

"I lived with trauma for 11 years and thought it was normal. I then realised I was living in fear. A friend once asked if I was okay and I had a mental break down. I then accessed help in order to deal with my mental health and trauma associated."

"I was having trouble living my life after the rape. It was affecting my ability to work, form relationships, see friends and feel safe. I was not making good decisions and having PTSD symptoms."

- Many women also told us that it had taken them a long time to realise that what they had experienced was from sexual assault and the trauma they were experiencing was valid and needed to be addressed:

"Once I had affirmed to myself that what had happened to me was an assault, my mental Health stated to rapidly decline. While I have struggled to ask for help in many areas of my life in the past, with the assistance of my psychologist I had been working on improving on being able to ask for assistance when I need it. As such, I felt strong enough to go get assistance from relevant healthcare providers and knew if I didn't do so, my mental health would only decline further."

"I had sought help from a GP for various things and mentioned to her the after effects of what I thought was just an unpleasant sexual encounter and she directed me to CRCC and told me I had definitely been assaulted."

"It was affecting my life in unhelpful behaviours. I beat myself up for so long.....it was "MY" fault, I got in the car. It was 1 month before my 14th Birthday. I was a virgin. I felt dirty and full of shame and guilt. My logic mind said "go get help and talk to someone who understands" my emotion mind said "you got in the car, so you deserved it, it wasn't rape because you got in the car, it was your fault". I got help when I told my emotion mind to shut up and listened to my logic mind. I came to believe that getting in a car DID NOT say....you can fuck me. But both my mind's battled for years"

- And for others it was only through the support of family and friends that they felt ready to seek help:

"Didn't want to deal with the shame alone. Support around processing what happened and shifting blame from myself to my assaulted. Gaining an external perspective was important. I wasn't taking care of myself-restrictive eating and my friends were able to help in practical ways like cooking for me and having me in their home"

Women were asked **whether they had sought help for their physical health following the assault and which services they accessed**, a total of 206 women responded of which:

- 76.30% (n=151) of the women said that they did not access health services for their physical health following their assault.
- 28.44% (n=62) accessed services for their physical health, of whom the majority sought STI testing through their GP or sexual health clinic, and the emergency contraceptive through a GP or pharmacy. With some of these women choosing delay or not to disclose that they had just experienced sexual assault.

Several women mentioned attending the hospital for treatment of physical injury as a result of the assault, however many of those women mentioned that the treatment they received from staff at the hospital was judgmental and unhelpful, which deterred them from seeking further help.

When asked **about whether they had sought help for their mental health (including counselling) following the assault and which services they accessed**, 208 women responded.

- 74.04% (n=154) of the women who responded said that they did access support for their mental health following their assault.

Of the women who specified which services they accessed, a large number of them said they had accessed the Canberra Rape Crisis Centre's (CRCC) counselling service, private psychologists and counselling. Many mentioned that they had seen their GP to get access to a mental health care plan as the costs involved with paying to see a private psychologist directly was a significant barrier and that waiting times for free or publicly funded options were discouraging. A small number of women mentioned they accessed counselling support through Victims Support ACT.

There were a number of comments about the national support lines such as Lifeline and 1800 RESPECT - and that ACT women found them unhelpful as they just referred them on to other local organisations which were not able to help. There were also a number of comments about how women felt let down by the limited mental health supports available in the ACT, and as a result many women felt they had not received the mental health or trauma support they needed in a timely manner.

Specific supports and services in the ACT

We asked women **if they sought help from specific supports and services in the ACT**. (Note that they were able to choose as many as were relevant).

Most women's first choices were counselling or family and friends for support.

Services and supports in the ACT accessed by women:

- 62.24% (n=122) Counselling
- 62.57% (n=117) Family and/or friends
- 44.92% (n=84) GP/Doctor
- 39.04% (n=73) Canberra Rape Crisis Centre (CRCC)
- 30.48% (n=57) Police
- 12.83% (n=24) Victim Support ACT (at the Human Rights Commission)

- 10.70% (n=20) Hospital Emergency Department
- 10.70% (n=20) Legal services or advice
- 9.09% (n=17) Domestic Violence Crisis Service
- 8.56% (n=16) Courts
- 7.49% (n=14) FAMSAC (Forensic and Medical Sexual Assault Clinic)

Many respondents mentioned that they were not coping well following what had happened to them and that they found themselves in a desperate situation to heal and move on with their lives. As a result women told us that the top service they accessed were counselling services (including psychologists) which were often recommended through their GP or by a friend or family member. Some were already seeing a counsellor or psychologist for other reasons and already had a trusted relationship with them, so therefore felt comfortable to disclose their assault.

“I needed help to deal with what happened. I needed to talk about it. I needed to not struggle alone.”

“I was incredibly distressed, I felt incredibly threatened and unsafe in the world, and the morning after I felt completely stuck, I couldn't go to my class, couldn't think clearly, and once I got into FAMSAC, it snowballed from there. Psychiatrist/GP/Psychologist have been helping me work on the issues that have emerged afterwards in my relationship- I couldn't have sex without disassociating, I became alcohol dependent, I experience anxiety, and the incident sort of spiralled me into confronting the childhood sexual abuse, and problematic situations/relationships that I had experienced in my life to the point of the assault in 2018. Bit implody.”

“I was having trouble living my life after the rape. It was affecting my ability to work, form relationships, see friends and feel safe. I was not making good decisions and having PTSD symptoms.”

For many women, speaking to family and friends about their assault made them feel safe, believed and gave them the space to discuss their options for seeking professional help for their own health and wellbeing.

“I told my husband when I met him and one of my friends and my daughters. They helped me to realise it wasn't my fault, though sometimes I still think it was. I saw psychologists to investigate my depression/anxiety. I have had low self esteem for many years”

“Friends were my immediate support and then after a while my next point of contact was a GP at the junction clinic.”

“Tried to minimise the number of times I had to repeat the story. Disclosed only to those necessary to get me the help I needed for my main issue that was a problem at the time - which was mental health. My mother supported me to contact victims support and all psychological supports as she works in healthcare which was so helpful. I felt quite overwhelmed as to how yo get help as there are so many avenues”

For those women who accessed CRCC, some said it was immediately after the assault and for others it was some time after. Comments from the women spoke highly of the support and advice they received from CRCC being a specialist sexual assault service provider,

through counselling, and the support to attend court and report to the police. However, a key theme was the long wait times they experienced in accessing CRCC for the counselling when they really needed it, due to the high demand for this specialist service.

“Wanted a feminist perspective, was most heightened and upset outside of hours, liked that it was a rape and sexual assault specific service with a feminist orientation”

“Counselling to work through trauma and process it. CRCC supported me to refer matter to police and file a report as a means of closure”

“Needed to make sure he didn’t give me any STDs. And CRCC to discuss potential reporting but I didn’t hear from them for months”

Many women told us that they did not go to police as they were afraid of the process and of being disbelieved or blamed for what had happened to them. Others who did report to police told us that their experience was retraumatising, the process unhelpful and that they were not treated respectfully. This led a number of women not following through with their report or seeking further help. The main reasons women said they wanted to report to police were to hold the perpetrator to account in the hope of stopping the same thing happening to other women.

“I went to CRCC instead of a counsellor, GP or police because I wanted specialist support for dealing with rape. I have had negative experiences with counsellors, GPs and police in the past. Additionally, I do not feel I can tell family or friends intimate details like that I have been raped.”

“None of the others could help. ACT Police are hopeless. In future I will take retribution into my own hands rather than seek support from Police.”

“Previous experience taught me that most crisis centres/police/doctors usually treated it was my fault for being a sex worker and gave me subpar care. I knew my psychologist wasn't whorephobic so I went and saw them as I knew it'd be treated with basic respect”

Some women also commented that they did not know where to go for help and that it was not easy to find local information about their options.

When we asked women **if they felt the support they received was helpful**, 197 women responded to which:

- 34.01% (n=67) of them replied a definite “yes”,
- 10.66% (n=21) chose “no”, and
- 53.33% (n=109) selected to further describe their experience.

Of the 109 women who selected to further describe their experiences accessing various services across police, legal and mental health:

- 63.30% (n=69) of the women described negative experiences predominantly regarding poor and insensitive handling from the police and legal system that discouraged women from seeking further action and feeling not believed.
- 42.20% (n=46) of the respondents described positive experiences mainly in regard to the respect and validation they received from counselling/psychology services,

Victims of Crimes Unit and CRCC as being most helpful and supportive however, at the cost of long wait times and limited sessions or financial expense.

"I blamed myself for my assault, I felt totally ashamed and couldn't be around my friends and family. The counselling I received through crcc really helped me to see that it wasn't my fault and, helped me to normalise my feelings and took my shame away."

"It lacks. There is not enough pre legal support and after legal support. I was humiliated in court. I won't ever report sexual assault again because I was treated like a criminal."

"I felt supported by every place besides one. I went to the police because i wanted to file an information report. They failed because i had to write it in the waiting area where people where coming in an(d) out. The police officer then proceeded to say sexual assault out loud in front of other strangers. This was at the Belconnen police station which was extremely disappointing because they failed to tell me about FAMSAC which my teacher told me about after talking with her about what happened (to assist with school assignments). This was in March in 2021"

"Yes and No. The court and getting the interim DVO was the only support that helped my immediate safety. I felt when dealing with Police they did not take my matter seriously, there were Police system failures, Police re-traumatised me, Police did not respect many of my human rights. Police did not tell me about the support services available to me. There was no wrap around program made available to me. I had to seek it out. I had to tell what happened to me many times to the Police."

"The private psychologist and support from my GP was the most valuable. But my attempts to get advice about charging him were not successful at all. I felt like everyone wanted to deflect me and for me to go away."

"No, as I was refused a mental health plan due to covid and i was told to go to a counsel(l)or/psychologist by myself. That is not something financially viable for me however."

"Yes/No - counselling support was good but I did not persue[sic] a police report because I was told of the impacts it may have going through the court, if it did."

"My psychologist is fantastic, but I didn't feel like I could talk about it previously and it took a LONG time before I was ok talking about it with her. But once again a professional of this standard is over 200 dollars a hour."

There were many comments about services being inadequately prepared to deal with disclosure of sexual assault and that service providers, education institutions and workplaces lacked training in dealing with such situations.

"The emergency department and follow up health care were great, as was the crisis counselling[sic]. The police however were extremely unhelpful and I decided not to take the matter further as I had the impression they didn't want to know."

"My university where I study/do casual work and where I met the perpetrator made my situation more unsafe when I made a report. DVCS was supportive ... getting my matter from

local Police to SACAT, helping me with a home safety plan e.g. the installation of cameras. My full-time workplace was supportive and made me feel safe when I was at work."

"Police caused trauma I was grilled all sorts of irrelevant sexual questions and at the station for hours, after 2 years was informed they'd decided no to try and prosecute despite video evidence such a long process and no closure. Counselling was helpful but impacted financially. Family and friends supportive. Dvcs and rape crisis such a valuable resource even years after."

When we asked women **if they felt the services they received help from supported them in a respectful and empathetic way**, 187 women responded:

- 54.01% (n=101) of women said that they felt the services they accessed treated them with empathy and respect,
- 14.44% (n=27) said they did not feel respected or treated with empathy; and
- 31.55% (n=59) had mixed feelings about their treatment and provided further explanation.

Women told us that they were often made to feel interrogated rather than supported and blamed rather than being believed when speaking with police and some service providers, and that they had to go through a number of different services and health professionals until they found someone with the capacity to provide appropriate support and that they felt comfortable and ready to discuss their situation with.

"At the time I decided not to report my assault. They never made me feel bad about my decision or pressured me. My counsellor always spoke to me with respect and understanding"

"CRCC, FAMSAC, Psychologist yes. Police.... was just a cluster of disaster. I can't in good conscience ever recommend that people who have been assaulted report. It was worse than the assault."

"My Psychologist was respectful and caring but the Police were terrible. They didn't listen to my brother and me during repeat police interventions in the house and I feel like that's rooted in ableism and they disregarded what we had to say because we were children and furthermore, autistic children."

Themes from open-ended questions

Women were asked in the survey to provide free-text responses to a number of questions. The key themes from these responses are summarised below.

Women were asked **what worked well with the support they received** and most recurring themes from their comments were:

- **Respectful care** from all supports and services in the police, legal and health system and a strong understanding and practice of trauma-informed care for victim/survivors.

"My Phycologist was respectful and listened to my entire anxious rambling about what happened. She said I didn't have to repeat what happened again because I think she made notes on it and it's obviously triggering to talk about such traumatic events."

“Both Canberra Rape Crisis Centre and the Police were very supportive, respectful, and knowledgeable about rape and domestic violence, which helped me.”

- **Being believed and validated** to take matters seriously and provide appropriate care and options.

“Willingness to listen No judgement as I had not told anyone for some time Female providers I was able to process when I was ready and privately Strong family support”

“Validation, placing blame on person who assaulted me, giving perspective on the issue”

- **Professionalism and expertise** observed from service providers in their sexual assault support and pathways.

“The weekly sessions at CRCC were fantastic. I was able to bring my dog to sessions for support. The location was accessible for my disability. The initial counsellor was respectful, validating and empathic. I feel like the treatment I have received since she left the service has been almost neglectful. I work in this industry, and I would never allow this kind of treatment towards the people I work with.”

“People making it clear that it was not my responsibility to hold the perpetrator accountable and that getting my own mental health in order was important. The support workers were very honest about what I may go through in the future.”

- **Quality of therapy and/or counselling** that is available and accessible.

“Counselling with a psychologist that was known to me from previous hospital admissions prior to the disclosure. The fact that the sessions were free helped ease my guilt at the burden this would have had financially on my family.”

“It put the blame where it belonged., on the perpetrator. NOT me. It taught me I could say NO at any stage. It took the fear away, of any man who came near me. It made me confident when in situations to voice my demands. It taught me empathy for others”

“It is free, accessible, supportive, consistent and committed to survivors.”

- The respondents' ability to make **informed decisions** from resources that were available and accessible.

“Trauma informed counselling Having people (caseworker/social worker etc) organise and co-ordinate appointments with support organisations. If I had to seek them out myself, I wouldn't have.”

“Being heard. Actually, FAMSAC was really interesting because they wouldn't do anything without my deciding or consent, which was so hard because I was pretty substantially disassociated/depersonalised, but I think it was grounding that they wouldn't just let me let the process happen. I had to think, I had to choose. CRCC, it was nice having people who knew the system and knew the nature of things to talk to, it helped me feel less alone. VVCS/ Open Arms has meant that I haven't copped a massive bill for the therapy that I need, and I can't say how grateful I am for that.”

“CRCC was supportive and welcoming from my first phone call. Amazing support, and I had regular counselling for months. The counsellor supported me to report my assault to ACT Policing and accompanied me to meet with SACAT. The officers at SACAT were empathic and

explained everything with care and respect. They were really great and provided realistic overviews and advice throughout the process. My family and friends were also incredibly supportive and wonderful when I told them."

- Other themes of notes that were found were: **consistency and continuity of care**, to be able to **feel safe**, and the importance of **supportive family and/or friends**.

"My psychologist was very available to me. I just needed people around. I needed to be looked after and I was. I don't think anyone left me alone for two weeks afterward."

Women were asked about **what did not work well with the support they received** and the themes that emerged from their open responses were:

- **Lack of continuity of care and/or very limited timeframe of care** was found to be problematic for women aiming to prioritise their health and rights to justice while trying to minimise having to retell and be retraumatised at each counselling session or report.

"In 12 months time during the process my DPP witness assistant changed twice, my prosecutor changed twice, my VSACT case manager changed 3 times. It's very hard to create trust with someone and then things keep changing"

"I didn't feel listened to or understood. I had no opportunity to continue seeing someone who I did connect with as it was difficult to get subsequent appointments after my first appointment. I did not have any resolution in the end."

"It seemed time limited - once the 'crisis' was over it was difficult to find ongoing support"

"Consistency of counselling/staffing issues at crcc - as well, I was triaged as being relatively important for crisis counselling for a handful of reasons, but for those not in my shoes wait times are quite long particularly for accessing ongoing counselling"

"Anyone who flaked (the first two counsellors I had at crcc both left which was traumatic for me as I had to keep telling my story again) plus the police not turning up as they had been called out to another appointment but took over a month to recontact me. I also felt they had an agenda rather than genuinely caring and being sensitive to my experience."

- **Not being believed and/or victim blaming** when seeking support can have long term negative impacts of hopelessness, distrust in the system, shame and guilt, and deteriorating mental health issues.

"Victim blaming - judging my behaviour (having had 2-3 drinks, and my friend having gone home without me and without telling me), and unhelpful judgement (often inaccurate/overly conservative) about what I wore out (for reference - less revealing than most other people around me and my age)."

"some friends and family members have a "'suck it up, this is just how the world works" attitude"

"CRCC had too long of a wait list SACAT detective on my case uses language that almost comes off as victim blaming and conversations were centred around how I probably wasn't

mentally well enough to take this to court. They also said that if it went to court, it just looks like I'm an alcoholic where he is a surgeon who saves people's lives. The initial interview with police, questions were designed to make me doubt myself."

- **No action, follow-up or progress** of reported cases is frustrating to women being left in the dark of another crime left unsolved.

"The police were.. woeful. The original detectives were helpful and attentive, they took my clothes and we did a statement over 4-6 hours, and I agreed to do a pretext call, all within 48 hours of the assault. Once I left the pretext call, I didn't hear from them for a month, and I had to call up to find out what was happening, my case had been reassigned to someone else, who was clearly not familiar with the details, and indicated that she thought that there was nothing to the matter, and I asked her to look at the evidence and get back to me. Next week, she called to tell me that there was no evidence that it was a non-consensual encounter, and the matter was dropped. 6 months later, I submitted a complaint, as outlined above."

"Victim's support case workers frequently changed so no continuity of care or support. Police have taken no action in 8 months since I reported the rape"

- **Navigation of systems and services** was described to be complicated and very effortful to seek justice and accessible healthcare.

"not being believed, not receiving clear advice, not knowing where to go or who to see. i felt like it was a 'tick & flick' process for most"

"The red-tape and time-frames associated with making victim claims was onerous and off-putting. As a result, there were things I was eligible for that I didn't bother claiming due to the sheer stress and annoyance of it all. I didn't need the added "admin" on top of everything else. I understand it needs to be this way, but it was difficult to navigate, especially when you are at your height of vulnerability. Also, I had to wait a very long time to be allocated a regular counsellor through CRCC. Again, whilst I understand why this was so (and I am grateful to be accepted in the program), I would have benefited from having counsellor support through the case trial, but I had to wait my place in the queue which came some time after the sentencing (I know I had the option of calling them to get whoever was on the phones to talk to, but this is not the same as having a regular person who knows you and your situation). Also, once I got a spot with CRCC, I had 3 different counsellors. For someone that was reluctant to speak to a counsellor in the first place - this was very distressing. Counsellor rapport and confidence is everything with something so sensitive and traumatic. (and am still waiting for my sessions to resume due to covid. I am offered 30 min telephone sessions, but this is just for 'checking in' and not for actual 'counselling')."

- Women reported **still experiencing trauma** demonstrates that the support need has not been met, and not much has changed.

"It was very brief and I hadn't really worked through it. I still haven't, 20 years later."

"I did not feel safe going to the police. Because of the circumstances of the assault, I was scared to talk about it with the police as I thought they would not believe me. I still think that."

- Other themes that were explored were: **long wait lists, not being heard, not being informed about available options, and experiencing stigma and discrimination.**

"I also probably didn't access services due to them not being culturally appropriate. Medical services have overlooked me in the past as a Aboriginal woman because I have lighter skin and I don't fit the stereotype. So at first intake if a worker doesn't ask me if I'm Aboriginal/Torres Strait Islander I assume they are making a assumption and I won't get appropriate care."

"Having to wait long periods for access to therapy is really awful when you are struggling with trauma, and feeling like you may be cut off from those services because you've run out of rebates, or other people need help more, etc, made it difficult to really open up."

Women were asked about **they would change the path they took to seeking help and support** and their commentary demonstrated that they wish:

- They **accessed supports or services earlier**, particularly those who now recognise the mental health impacts on themselves and/or to prevent the perpetrator from repeating the offence to other women.

"I wish I had reported the abuse a lot earlier. I wish I could have received justice. Of course, years ago the system was different and when I did contact the police I was told they could not act until my perpetrator has actually done something in real time. I wish I had pursued charges to stop him from hurting other potential victims."

"I would have sought help immediately following the incident. It was frequently pointed out that if I had reported immediately my case would have a better outcome, not that that advice is useful retrospectively. I would have tried to access counselling sooner and gone straight to the psychologist I am seeing now instead of CRCC"

"I would look for more specific services and go to the police asap for myself not 3 years later when a colleague experienced the same thing and couldn't come forward. 12 other women eventually made claims against this man once I came forward"

- They had the **confidence to practice their rights to health and/or justice** as many women reported being fearful of consequences negatively impacting themselves if they were to disclose or report.

"Whilst my gp offered to record what had happened to me in case I wanted to take it down a legal avenue in future, I was scared that due to the complexity of the assault, and the fact that I verbally said yes even though I felt I was coerced into it with no other safe option but to comply, I was scared that therefore my assault would not be seen as one by her. That was no fault of hers as she was extremely empathetic and helpful, but due to the stigma and stereotypes of what is seen as assault, perhaps I may have recorded it if I was confident that I would be affirmed."

"I would have insisted on having photos taken of my injuries. Rape crisis did not assist me enough with this decision"

"I felt like given the way the Police have treated me to date I would not report the sexual assault to the Police. However, it is the only avenue I have to get the justice I deserve and to stand up to the perpetrator that hurt me so badly both physically and psychologically."

"I would have called and called until someone helped. I'd also try lifeline"

- They **went direct to a support or service** and bypassed another.

"I would have liked to have been linked in to support by the police before I did my statement. I would have like to have been told more about the court process given it was not my case and I was classified as a witness but did not understand if I was also allowed to press charges or not. I wouldn't have gone to the uni counsellor."

"Would see female GP and talk with friends. I would also contact the RCC. I was in shock at the time and the experience including GP has taken years to process."

"I would have reported him to the police e rather than thinking I could get past it and things would be ok."

- They were **better informed about navigating the system**.

"The police also served me the documents to attend court at my parents house so they found out because of the police and not on my terms. I was also blamed by my parents and this did a huge amount of damage with that relationship. I also think having a pamphlet or something to explain the options, not just of supports but also about reporting and pressing charges etc or even disclosing to a friend or something readily available and easy to understand."

"Education of what is sexual assault, and what are the signs, and learn when you should seek help. I was also a minor when my assault took place, and tried at the time to seek mental health help for other reasons, but withdrew from that because I couldn't access help without my parents being informed. I was also in a small town, and people talk a lot in small towns. Kids help line back in the day helped, but it wasn't free to call from a mobile."

- Whereas some women reinforced that **there's no point of seeking help** and expressed they were not hopeful about the current system in providing appropriate help as they perceived pursuing help caused pain more help with recovery after sexual assault.

"Tough one! While I would have liked the person who assaulted me to face consequences, I don't know how I would have gone about that. I would have liked to have the knowledge and power to recognise and name what happened and take action, but I'm not sure I would have. I'm still not sure I would take action having seen what women who do go through."

"I never sought the police, or took the perpetrator to court. I am not sure I ever will because I fear the process."

“May have sought help from police if the reputation of the judicial system was not to victim blame”

“I would not have reported to police. I have been sexually assaulted since this first incident and have decided not to report. It is so painful to go through the process knowing it is unlikely any charges can be made.”

“I wouldn't waste my time with the police or with the Canberra rape crisis centre. Frankly the process of going through both of those avenues were more traumatic than the actual assault.”

- Other themes explored were of **supports or services to be avoided, having early awareness of what is sexual assault, to not disclose to certain people and to record evidence on one's accord.**

“I don't know if I could have changed anything because of how afraid I was. My abusers had me convinced that if I told anyone I would get in trouble too. But if otherwise, I would definitely have tried to tell someone else immediately after the situation occurred, and I wish I had known what rape was at an earlier age so I had known what happened wasn't okay and that it wasn't my fault and that I didn't deserve or encourage it. If I was brave enough I would have contacted CPS, I would have told other adults in my life that I wasn't related to if I knew any trusted adults. I would have tried to tell a teacher on school grounds about another incident if I understood what had happened”

The respondents were also invited to provide **suggestions of ways supports and services could be improved to help other ACT women in their situation** and most common themes revealed were:

- **Expectations of and information about options in the justice, police and health systems.**

“Simplify it! Reassure women of the pathway they will travel on and the way their case/ story will be managed when they access a service. The service should include not only counselling but access to psychiatrists too. A one stop shop for all aspects of health that this impacts on as well as branches to victim support. If rape crisis centre does this as dreary it is poorly communicated to the young people affected. A 'crisis centre' also sounds huge and bad - I feel like my information would be shared around a lot within that.”

“More education of what to do if this happens to you. In schools we are taught how to protect ourselves, but not services we can access when it happens, given there is a 97% chance that it will. Better access to help when reaching out. For survivors like me, saying that we need help isn't easy, so anyone who declines to give us help can be really detrimental. Better education to officers within the SACAT team, of more empathetic language to use and communication techniques to those who have gone through sexual assault. 2 security checkpoints within the court house so that I don't have to see my attacker when attending. 2 separate PPO waiting rooms are available but still had to see him at security. Mediators at PPO hearings need to be trained appropriately so that they are actually impartial and don't perpetuate rape culture.”

- **Wide-spread education about consent and sexual assault across all ages, sexualities and cultures, and how to appropriately respond.**

“Help for women getting out of living situations that are abusive. Living under the same roof but separated doesn’t work. Access to public housing. Educate everyone. Just because you are in a relationship with someone doesn’t mean it can’t be rape.”

“Understanding of sexual assault and/or coercion in LGBTIQ relationships. Standing up to family courts on all kinds of family violence issues. Clear legislation and community education around non fatal strangulation, and consent. Something similar to the NSW SARO, but much easier to fill out. Smoother processes with the surrounding NSW region, to improve access to services and remove gaps. Criminalising coercive control. Removing barriers to leaving abuse when there are children involved- including legal systems manipulation, misidentification of victims, weaponising illness and disability, including allowing services to pass the responsibility on to family law.”

“Universities must be more aware of the frequency with which sexual assault still occurs on campus. They must provide better and more easily accessible mental health services on campuses. The ACT must also begin stronger campaigns to show women where they can access the help required”

- **Streamline process to accessing appropriate services and supports.**

“It’s very clunky. Information about what to do if you experience rape might be helpful and what to expect. Police need to handle sexual assault reporting a lot better. It is currently unacceptable and very disempowering. I could understand why women would either not bother, withdraw their report, or have severe re- traumatising and mental health issues as a result”

“Don’t let women do it alone. Have someone support them and advocate for them through the entire process, all the way to the end.”

- **Trauma-informed practice** of do-no-harm where the care must include active listening, believing and continuity of care.

“I think it would be best if all support services were female-led and directed, and that the people you actually report it to are female because it makes it much easier to talk to someone about when they might have had a similar experience or understand your perspective. I think the police should take sensitivity training and be better familiarised with intellectually impaired people. Also, treat children with greater respect when reporting incidents. Maybe in schools children should be better educated about what rape and sexual assault are and the many forms it comes in so they can be better aware of it in case they are/have been assaulted and are unaware.”

“Do not allow victims of violence to come into contact with their abusers at court. Stop the loopholes where he can get to her or her to him.”

- **Being supported and protected to safely seek further action** if that is the chosen option by the victim/survivor.

“Remove the stigma and judgement. Not make the process so traumatic. That is what scared me the most when I sought help. I felt it was the situation was my fault when it wasn’t. I was scared of the judgement and criticism or people saying it was my fault or not believe my story. They is why I did not report it. The system needs to be more friendly to victims so they feel safe and protected when they come forward.”

- Other themes that were explored and of note were: **increasing funding to specialist sexual assault services** with the aim of reducing wait times, increasing appointment availabilities and outreach services, ongoing support to avoid having to discharge clients too early and ensuring safety and wellbeing of staff.

“More funding to CRCC. I cannot rate the service highly enough, and it deserves enough funding to attract and retain staff and put on more staff to support Canberrans.”

“More funding to enable more availability, more time, not being exited from the service so quickly, no waiting lists!”

An open discussion for respondents to **share more about their experiences of seeking help and support in the ACT following a sexual assault** exhibited:

- The overwhelming themes of stressing the importance of **the police and justice system to take victims/survivors more seriously** and **the urgency for increased appropriate services available to meet the needs of victims/survivors in a timely manner.**

“Even my friend, who is a lawyer who deals with DV and child protection, would not seek out ‘support’ in Canberra. It is a) too small...everyone knows each other’s business; b) the supports are wildly inadequate and C) the victim for want of a better word, gets dragged through a horrendous process of reliving their assault over and over. I had to live next to my attacker for three years before he moved out (I own, he rented). I just couldn’t have faced that daily, if I was trying to process my situation. I am a single mum...time poor and financially was doing it tougher than many. I just needed to get on with life. The attack has left me very distrustful. I have shed 95% of my friends, I see barely anyone and I am trying to deal with the effects of Oreo-menopause too. I am a shell...a ghost of my former self. I feel bereft and angry all of the time. I need help.”

“It is woefully inadequate at the current state. When you believe even the police won’t help you where do you go? I wasn’t raped/penetrated but my body was still violated and I had trouble thinking that anyone would help or believe me after the way the situations were dealt with repeatedly. There is a void for where easily accessible help and support should be especially within the city centre and high risk venues.”

“People react and deal with experiences differently and while I didn’t feel like I needed ‘support’, I would have liked an avenue for reporting the behaviour that didn’t mean I was dragged through the mud.”

“It was shit, and there was zero support, or knowledge[sic] about what to do next after the assault[sic]. I was just told to go the police, that was it... and that was really uncomfortable as the police don’t even persecute the assault[sic] crimes 80% of cases”

“The system is rigged against victims of sexual assault. Instead of support it feels more like hoops to jump through. A survival of the fittest, of if we can convince people that our case deserves to be heard... that we deserve justice. That if we want to protect other women from the men who assaulted us we have to put ourselves on the line.”

- Another theme of mention was the **need to upgrade the standard for those working with sexual assault victims/survivors to understand the realities of sexual assault, the long-term impacts and ways to do no further harm (trauma-informed practice)**.

“I think the culture and societal views are a major barrier to women feeling they can access help. Also poor training in this area for psychologists is a problem when women do disclose. Lastly inadequately funded services mean the waiting list for appropriately trained counsellors[sic] is appallingly long.”

- **Gratitude to ACT local specialist sexual assault services** was also a theme that respondents expressed about feeling safe when being supported by compassionate and patient experts.

“I cannot speak highly enough of Chrystina Stanford at Rape Crisis Centre and the whole organisation. I have felt supported and safe during a range of engagements with them over the past 15 years.”

Commentary throughout the survey demonstrated various interactions and communications involving **key stakeholders in women’s experiences with seeking help and support following sexual assault** and they were:

- **The Police**

“When you believe even the police won't help you where do you go?”

“The police were... woeful.”

“When reporting to the police I felt I was being interrogated rather than a victim of a crime.”

“The initial police reaction was horrendous and gave me no confidence that there was any point in pursuing the issue further.”

“The initial interview with police, questions were designed to make me doubt myself.”

“The police process is extremely confronting”

“I did not feel safe going to the police. Because of the circumstances of the assault, I was scared to talk about it with the police as I thought they would not believe me. I still think that. Police was just a cluster of disaster. I can't in good conscience ever recommend that people who have been assaulted report. It was worse than the assault.”

“Police didn't want to hear it. They victim blamed and also questioned why I came in a couple of months afterwards. They didn't follow up after the statement I gave. I could talk for hours on the things they did/said that were disrespectful and not helpful.”

"Victim blaming - judging my behaviour .. and unhelpful judgement (often inaccurate/overly conservative) about what I wore out."

- **The justice system**

"Police were not respectful, courts were not respectful, lawyers were not respectful."

"The courts/DPP don't understand really the impacts of some of the process on your mental and emotional wellbeing - you never fully get prepared for what you're going to experience."

"I find the court system very harrowing and frightful."

"Better access to help when reaching out. For survivors like me, saying that we need help isn't easy, so anyone who declines to give us help can be really detrimental. Better education to officers within the SACAT team, of more empathetic language to use and communication techniques to those who have gone through sexual assault. 2 security checkpoints within the court house so that I don't have to see my attacker when attending. 2 separate[sic] PPO waiting rooms are available but still had to see him at security. Mediators at PPO hearings need to be trained appropriately so that they are actually impartial and don't perpetuate rape culture."

"Courts, lawyers and police, to be trained more impactfully in DV, sit in a support group of individuals who have been managing this behind closed doors, for a while and hear their stories, and hear how it impacted them, and their children"

"Set me back financially and wellbeing was grossly impacted"

- **Hospital Emergency Department**

"Pushing me to do certain treatment or rushing me to do things I'm not ready to"

"I have made a complaint about the Dr on that day. Nothing has happened to this Dr. even though there was a witness. It was all my fault, I deserved what happened."

"the hospital mishandled my case. I wasn't talked to by a doctor or health professional. I was placed in a private room and ignored for 3+ hours, while people were aware of my trauma and were staring at me, and whispering (the doctors and professional staff at the hospital)"

- **GP/Doctor**

"Because ultimately a GP hasn't got the right information, the time, or the training to support someone who declares that they have been sexually assaulted."

"A doctor I saw told me that I may be experiencing another mental health issue, or that I had been over-dramatising the situation."

"No because when speaking to the doctor I was very rushed, didn't explain all of the reasons I felt I needed a mental health plan"

"GP tried to find a relevant referral in ACT and unable to find someone to take me on."

- **Domestic Violence Crisis Centre**

“Lack of continuity of support people”

“There was one occasion I accessed DVCS and sought a caseworker to accompany me to court, however this caseworker did not show up for whatever reason. I had no other support person at the time.”

- **Canberra Rape Crisis Centre**

“I was surprised with how quickly CRCC initially saw me, but have been severely disappointed with how long it took to find a replacement counsellor.”

“CRCC needs more funding to meet demand and reduce wait times. Appropriately trained responders in all schools and health services.”

“I wanted to go to the rape crisis centre but was told it would be months and months before getting support so I never bothered. Now, I've been triggered so much by recent events but know that there just isn't availability in the services so I don't bother seeking support.”

“The weekly sessions were disrupted every month due to a rotating roster requiring the counsellors to work nightshifts. Understandable, but also inconvenient.”

“I always had the sense that the service was flooded with people needing help. I did occasionally feel guilty that I was taking up someone else's spot who was more in need”

“The Rape Crisis Centre Must Change Its Name. It is so very exclusionary and triggering.”

WHM comment and suggestions

The findings presented in this report reveal stories of diverse women with many experiences of seeking help and support in the ACT following a sexual assault. It is important to hear directly from ACT women regarding their experiences of services so that responses can be designed to meet their needs and improve women's ongoing safety.

The findings highlight a range of strengths and weaknesses in the ACT system for supporting women who experience a sexual assault. Women's Health Matters considers the following opportunities exist for improvement based on our findings:

1. Improve supports for women who choose to use the justice system.
“The whole system needs reforming. The way 'victims' are treated needs to be completely changed. The follow through and unmet time frames makes a stressful and traumatic time more stressful”
2. Consider new avenues rather than just police for reporting. E.g. informal online reporting.
“I think that potentially the recent NSW police initiative to record your assault online without having to pursue the matter formally would be extremely helpful.”
3. Consider measures to attract more psychological professionals to work in Canberra.

"More funding to CRCC. I cannot rate the service highly enough, and it deserves enough funding to attract and retain staff and put on more staff to support Canberrans."

4. Build a strong network for people who have experienced sexual assault to access a range of appropriate services.
"Have peer workers, not just DVCS in courts, utilise therapy dogs, and video, look at the laws, there is so much that could be facilitated."
5. Train general police to respond sensitively.
"General police officer at Belconnen station when I first made a report was not great - tried to get me to describe the assault in the waiting room"
6. Quick access to counselling from time of first contact.
"I was asked to wait four months, that is way too long when you've finally been able to seek support."
7. Increase funding for CRCC to meet demand.
*"More funding for Canberra Rape Crisis Centre. As a nurse I refer women there and the waiting list for counselling is 3-4 months which is completely unacceptable."
"Rape crisis centre should get funding for more counsellors and community outreach activities."*
8. Promote and improve information about the scope of services available for ACT women to report or seek support following a sexual assault.
"More education of what to do if this happens to you. In schools we are taught how to protect ourselves, but not services we can access when it happens"
9. Educate young people about sex and consent earlier and in more detail.
"Maybe in schools children should be better educated about what rape and sexual assault are and the many forms it comes in so they can be better aware of it in case they are/have been assaulted and are unaware."
10. More information about consent in the wider community.
"Clearer information on consent that had been withdrawn during intercourse. I.e. Consenting to sex, but then feeling uncomfortable and wanting him to stop."
11. Train hospital staff who might deal with SA victims to respond sensitively.
"It is not the job of an ER nurse to determine whether an allegation is false or a patient is "just being dramatic"

A final word from the respondents

"Please support women more. I just told you my story which was hard. But I honestly don't think anything will change. I'm sad and I continue to push through because I have absolutely no other option."

APPENDIX 10 SEXUAL ASSAULT REFORM IN AUSTRALIA AND THE ACT

IN AUSTRALIA

The issue of sexual violence has attracted increasing interest and support from policy makers at the national and state and territory level in recent decades. This coincides with an improved understanding of domestic, family and sexual violence, and gender-based violence as a whole.

Australia has had a role in international work against sexual violence and harassment since the 1970s. This work includes the 1993 United National Declaration on the Elimination of Violence that defined violence against women as including sexual violence.

At a national policy level, the *National Plan to Reduce Violence against Women and their Children — 2010–2022* supports women and their children to live free from violence in safe communities and focuses on the experience of family/ domestic violence and sexual assault by women.

In 2015, Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and VicHealth released *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* which acknowledges the broad relevance of prevention and cultural change in relation to both family violence and sexual violence.

This was followed by a national, independent survey of university students to gain greater insight into the nature, prevalence and reporting of sexual assault and sexual harassment at Australian universities, by the Human Rights Commission. Its 2017 *National Report on Sexual Assault and Sexual Harassment at Australian Universities* identified that sexual assault and sexual harassment were too prevalent in university settings as in the broader community; significant under reporting to the university; and universities need to do more to prevent such abuse from occurring in the first place, to build a culture of respect and to respond appropriately by supporting victims of abuse and sanctioning perpetrators.¹

Later in 2017, the Royal Commission into Institutional Responses to Child Sexual Abuse handed down the findings from its five-year inquiry. This report is particularly important for contextualising the unique needs of children and young people as they relate to sexual assault.

The focus of the Australian Institute of Health and Welfare's (AIHW) inaugural *Family, domestic and sexual violence in Australia 2018* report specifically included sexual violence, acknowledging the nexus between family violence and sexual violence in terms of the incidence and the culture change needed to respond. The 2019, follow-up report *Family, domestic and sexual violence in Australia: continuing the national story* presented new information on groups such as children and older people, and new data.

2020 saw the release of a number of pieces of work relating to sexual assault and violence more broadly. The AHRC *Respect@Work: Sexual Harassment National Inquiry Report* recommended a new model to improve the coordination, consistency and clarity between the anti-discrimination, employment and work health and safety legislative schemes.²

The AIHW subsequently published *Sexual assault in Australia*, which summarises relevant national data.³ Towards the end of 2020, the NSW Law Reform Commission Report Consent in relation to sexual offences recommended how to simplify and modernise the structure and language of consent law under the *Crimes Act 1900* (NSW), update relevant definitions, improve justice system education and improve procedural arrangements for sexual offences.

The 2021 National Summit on Women's Safety explicitly focused on domestic, family and sexual violence, and delegates identified priorities for the next National Plan that are consistent with the principles and recommendations developed by the Steering Committee and its supporting Working Groups. This includes:⁴

- the need to continue building a strong base in primary prevention to stop violence before it starts;
- recognising that Aboriginal and Torres Strait Islander people must lead community responses;
- that future work involve listening to, engaging with and being informed by diverse lived experiences;
- addressing the complex intersection of gender inequality with other inequalities and disadvantages;
- improving the justice system to ensure people impacted by sexual, domestic and family violence;

1 AHRCc 2017, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, p.1

2 AHRCa 2020, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces*.

3 AIHWa 2020, *Sexual assault in Australia*.

4 Statement from Delegates — 2021 National Summit on Women's Safety, p.4.

- acknowledging children and young people as victims and survivors of violence in their own right; and
- noting that everybody has a leadership role to play to end violence against women.

The ABS conducts a regular Personal Safety Survey that feeds into analysis of data on both the victims and perpetrators of violence across Australia. The last time the Personal Safety Survey was undertaken was 2016. The next Personal Safety Survey will be released in late 2021 or 2022.

IN THE ACT

In 2002, the ACT Government funded the Sexual Assault Reform Program (SARP) within the Office of the Director of Public Prosecutions (DPP) to explore ways to improve practices and procedures relating to victims of sexual offences in the criminal justice system. The outcome of that research was the 2005 SARP Report, 'Responding to Sexual Assault: The Challenge of Change', jointly authored by the DPP and Australian Federal Police. The 2005 SARP Report proposed a number of recommendations that were largely specific to the justice system and did not take into account other modalities of support and intervention such as prevention and response.

The SARP Reference Group was established in 2007, with representatives from government and non-government agencies and chaired by the Chief Executive Officer of the Justice and Community Safety Department. Later in 2007 the ACT Government announced funding for several SARP reforms and upgrades to legal system infrastructure. The SARP reform agenda also included legislative changes that came into effect on 30 May 2009. The legislative amendments changed how evidence can be given by victims of sexual and family violence offences, children and other vulnerable witnesses.

In 2012, a preliminary evaluation of the SARP reforms sought to address whether the program progressed changes to better support victims, lower attrition rates and improve coordination and collaboration among agencies administering the SARP. The SARP evaluation noted the progress to improving the criminal justice process for victim survivors in the ACT in a number of areas, including legislative changes and better support services. The SARP evaluation also identified an improvement in the working relationship of agencies that respond to and/or provide services to victim survivors of sexual assault in the ACT, but that the governance of SARP lacks overall coordination.⁵

As the SARP reforms were designed to take time to become entrenched within the ACT's criminal justice system, some of the impacts of the reforms were not yet evident such as in relation to the attrition of sexual offence cases.

The SARP Reference Group last formally met in 2014.

Originally it advocated for the implementation of recommendations in the 2005 SARP Report, then continued to identify legislative and system reforms to support victims and hold perpetrators accountable.

In 2014, the ACT Attorney-General then requested that the Domestic Violence Prevention Council (DVPC) lead a review of deaths that occurred as a result of domestic or family violence. In April the following year, the Attorney-General convened an Extraordinary Meeting on domestic and family violence including sexual assault. In May 2015, the DVPC released a report summarising the findings and recommendations of the Review of Domestic and Family Violence Deaths in the ACT that occurred between 2000 and 2012.

In October 2016, the ACT Government appointed Jo Wood as the ACT Coordinator-General for Family Safety, to coordinate efforts across the ACT Government and the ACT community to progress the ACT Government's reform agenda for domestic and family violence.

In early 2021, a groundswell of public support for action in relation to sexual assault culminated in the March 4 Justice, which brought together an estimated 110,000 people in March 2021 to demand action to improve the support available to victims of sexual assault, including in schools and in the workplace.

The Minister for the Deputy Chief Minister, Minister for Women and Minister for the Prevention of Domestic and Family Violence, Yvette Berry MLA then met with the Victims of Crime Commissioner Heidi Yates, Associate Professor AM and Senior Specialist Sexual Health and Forensic Medicine Vanita Parekh AM, CEO of Women's Health Matters Marcia Williams, and CEO of Canberra Rape Crises Centre Chrystina Stanford to understand what needs to happen next with the Sexual Assault Reform Program. This meeting built on continued advocacy from the Victims of Crime Commissioner and other previous members of SARP for continued government efforts to drive sexual assault reform.

Informed and supported by this meeting, Minister Berry announced targeted work to coordinate efforts to develop effective, systemic, evidence-based responses to sexual assault to the ACT.

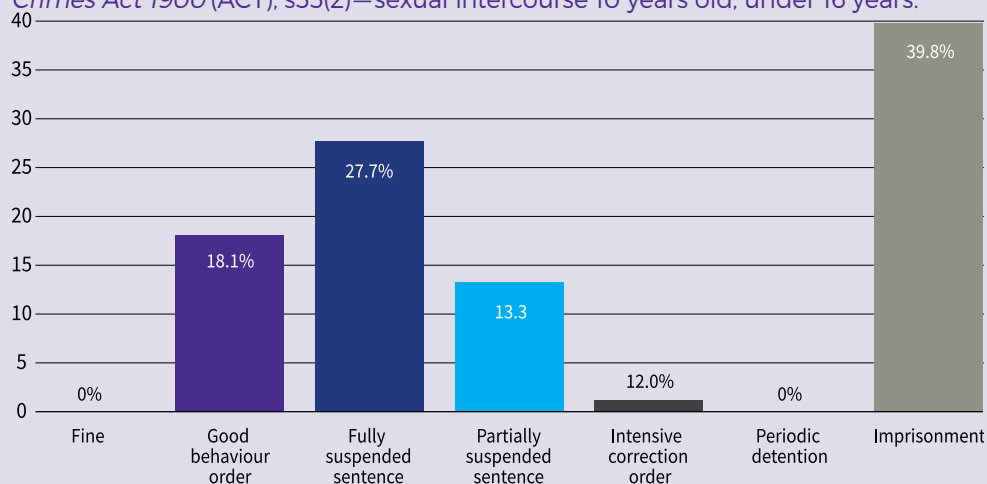
⁵ Anderson J, Richards K and Willis K 2012, *Evaluation of the ACT SARP: Final report*. AIC, <www.aic.gov.au/sites/default/files/2020-05/tbp051.pdf> p.x.

APPENDIX 11 AUSTRALIAN CAPITAL TERRITORY SENTENCING DATABASE (ACTSD) STATISTICS

ACT Supreme Court (as at February 2021)

Sentences from 1 July 2012–30 November 2020

Crimes Act 1900 (ACT), s55(2)—sexual intercourse 10 years old, under 16 years.



Penalty type	Cases	%
Fine	0	0
Good behaviour order	15	18.1
Fully suspended sentence	23	27.7
Partially suspended sentence	11	13.3
Intensive correction order	1	12
Periodic detention	0	0
Imprisonment	33	39.8
Total	83	100.0

APPENDIX 12 SEXUAL ASSAULT PREVENTION AND REFORM PROGRAM MEMBERSHIP

ABORIGINAL AND TORRES STRAIT ISLANDER CONSULTATION COMMITTEE

Position	Name	Organisation
Chair	Tanya Keed	Community member, member of the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and Director of Clybucca Dreaming Consulting
Member	Chelsea Malinas	Beryl Women's Refuge
Member	Julie Moss	Domestic Violence Crisis Service
Member	Paula McGrady	Member of the ATSIEB, ACT Government and Canberra Rape Crisis Centre (CRCC)
Secretariat	Juliette Ford and Clare Sheehan	Office of the Coordinator-General for Family Safety

PREVENTION WORKING GROUP

Position	Name	Organisation
Chair	Katrina Marson	Churchill Fellow/Rape and Sexual Assault Research and Advocacy (RASARA)
Member	Tim Bavinton	Sexual Health and Family Planning ACT
Member	Leah Dwyer	YWCA
Member	Alex Dance	Education Directorate
Member	Nova Inkpen	Justice and Community Safety Directorate (JACS)
Member	Sheridan Kerr	Sexual Health and Family Planning ACT
Member	Annie Lamont, Kim Henderson, Emma Partridge	Our Watch
Member	Bronwyn McNally	Education Directorate
Member	Alex Miller	ACT Health
Member	Lauren O'Brien	ADACAS
Member	Penny Pestano	CRCC
Member	Chrystina Stanford	CRCC
Member	Camille Schloeffel	The STOP Campaign
Member	Matilda Webb	Youth Advisory Council member
Member	Tina Dixon	Office for LGBTIQ Affairs
Secretariat	Juliette Ford and Clare Sheehan	Office of the Coordinator-General for Family Safety

RESPONSE WORKING GROUP

Position	Name	Organisation
Chair	Heidi Yates	Victim Support ACT (Human Rights Commission)
Member	Lysa Barnsley	ACT Policing—SACAT
Member	Sel Cooper	A Gender Agenda
Member	Richard Denning	Restorative Justice
Member	Lauren Dreyar	Legal Aid ACT
Member	Kat Read	Women with Disability ACT
Member	Megan Hagan	Women with Disability ACT
Member	Alistair Jones	Every Man
Member	Dianne Lucas	Independent
Member	David Momcilovic	Office for LGBTIQ Affairs
Member	Vanita Parekh	FAMSAC
Member	Penny Pestano	CRCC
Member	Elena Rosenman	Women's Legal Centre
Member	Chris Smith	ACT Policing—Family Violence Unit
Member	Chrystina Sanford	CRCC
Member	Cassandra Tinning	CARHU
Member	Kath Taplin	Victim Support ACT
Member	Sue Webeck	DVCS
Member	Mick Woodburn	ACT Policing—SACAT
Member	James Brann	ANU
Secretariat	Juliette Ford and Clare Sheehan	Office of the Coordinator-General for Family Safety

LAW REFORM WORKING GROUP

Position	Name	Organisation
Chair	Juliette Ford	Office of the Coordinator-General for Family Safety
Member	Cate Allingham	JACS
Member	Madelon Rosenberg	JACS
Member	Lorana Bartels	ANU
Member	Julie Beddoe	JACS
Member	Tina Connor	Chief Minister, Treasury and Economic Development Directorate (CMTEDD)
Member	David Fleming	ACT Policing
Member	Marcus Boorman	ACT Policing
Member	Chelsea Malinas	Beryl Women's Refuge
Member	Jacqueline Hickman	Independent researcher
Member	Skye Jerome	DPP
Member	Stephanie Johns	JACS
Member	Georgia Johnson	CMTEDD
Member	Michael Kukulies-Smith	ACT Law Society
Member	Allison Munro	Victim Support ACT
Member	Stacey Rheese	Advocacy for Inclusion
Member	Molly Saunders	Advocacy for Inclusion
Member	Philippa Spence	ACT Courts
Member	Sue Webeck	DVCS
Member	Heidi Yates	Victims of Crime Commissioner
Secretariat	Clare Sheehan and Johanna Larkin	Office of the Coordinator-General for Family Safety

WORKPLACE REFERENCE GROUP

Position	Name	Organisation
Chair	Madeline Northam	Community and Public Sector Union
Member	Jacqueline Agius	WorkSafe ACT
Member	Patrick Judge	Australian Education Union
Member	Ellen Kelly	Women's Legal Centre
Member	Elizabeth Lomas	Australian Education Union
Member	Monique Blasiak	National Tertiary Education Union
Member	Rebecca Parton	CMTEDD
Member	Rosalind Read	Construction, Forestry, Maritime, Mining and Energy Union
Member	Lyndal Ryan	United Workers Union
Member	Laura Turner	Australian Midwifery and Nursing Federation
Member	Helen Westwood	Australian Services Union
Secretariat	Juliette Ford and Clare Sheehan	Office of the Coordinator-General for Family Safety

APPENDIX 13 RESOURCE LIBRARY

A selection of resources that were identified and drawn on in the course of this work that may inform further work into sexual assault responses.

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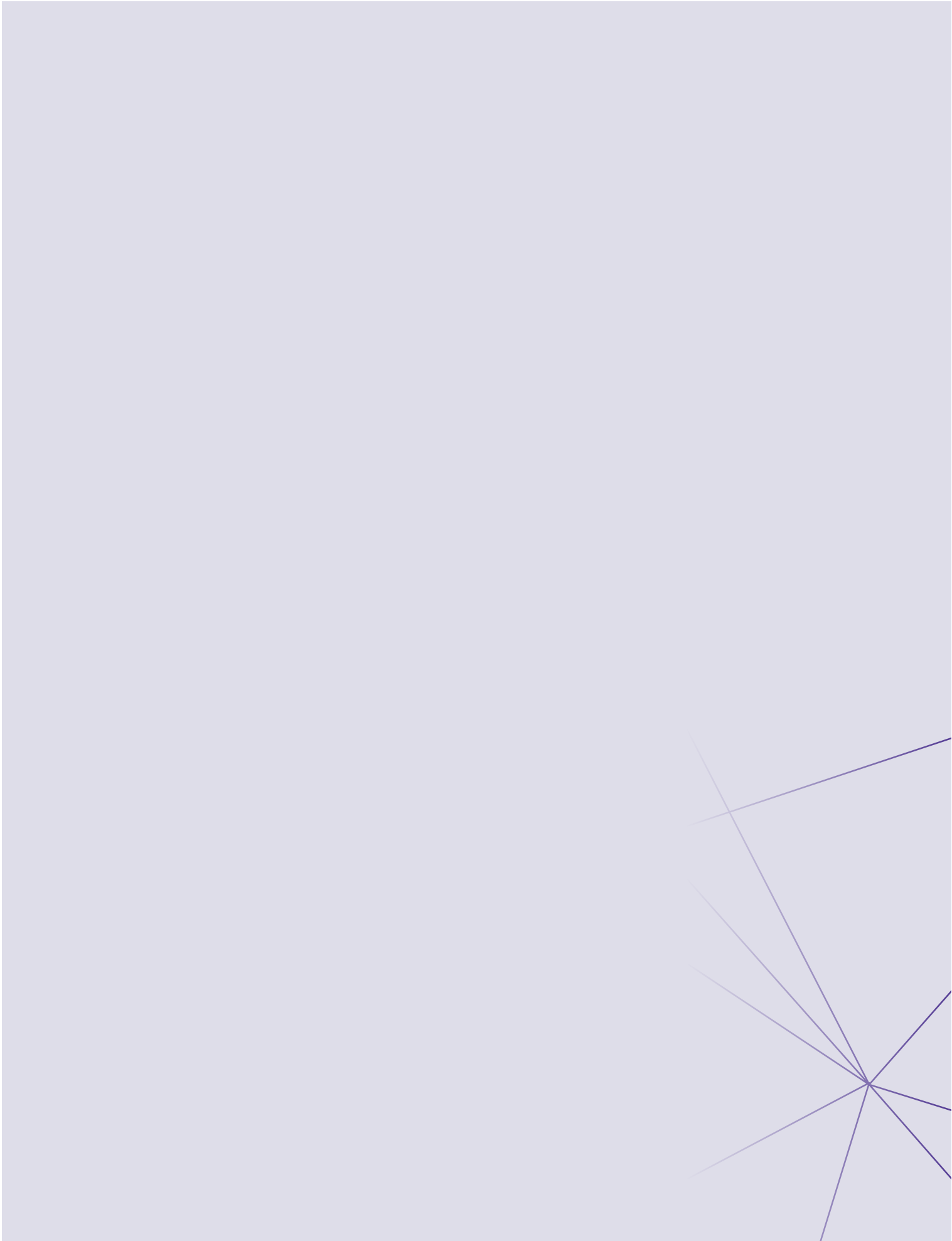
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ACT Office of the Director of Public Prosecutions

Our Reference: 200928063
Your Reference:

10 November 2021

Mr Shane Rattenbury MLA
Attorney-General for the ACT
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Via email: REDACTED@act.gov.au

Dear Attorney, *Shane*

THE POLICE TEST FOR CHARGING

I write to outline a key factor that, in my view, has contributed to the lack of charging of matters by the AFP SACAT section, specifically that they appear to erroneously apply the test of whether in their view, the matter has a reasonable prospect of conviction.

Law surrounding appropriate test

In *Latoudis v Casey* (1990) 170 CLR 534, 549 Dawson J cited (at 549) with approval the comments of Darley CJ in *Ex parte Jones* (1906) 6 SR (NSW) 313:

It is said that police should make careful inquiry into the circumstances before instituting proceedings. I think it would be dangerous to the public welfare if we laid upon the police any such duty, and held that they were bound to make inquiries before commencing prosecution. In making such inquiries they might easily be deceived. The proper course for police to pursue, is, if they see that a prima facie case exists, to bring it before the court which has jurisdiction to decide it. It is the duty of the magistrate to decide the case upon the evidence, and not the police to determine

*whether the accused is guilty or not. In some countries the police have this duty charged upon them of making inquiries, and exercising quasi-judicial functions, but that is not our system. Our system is that **if there is apparently good ground to suspect that an offence has been committed, it is the duty of the police to lay a complaint and bring the accused before a magistrate.***

This gives rise to two distinct issues:

- a) When police lay an information, and
- b) How police get the defendant before court to answer that information.

When police lay an information.

Police commence a prosecution by laying an information before the ACT Magistrates Court. The test of "good ground to suspect" finds its way into law in section 26 of the *Magistrates Court Act*, which states: *An information may be laid before a magistrate in any case where a person has committed or is suspected of having committed, in the ACT, an indictable offence or an offence that may be dealt with summarily...*

How police get the defendant before the court.

There are three options to get a defendant before the court to answer an information:

- 1) The laying of an information is accompanied by a summons for the defendant to appear. When this option is utilised police can simply rely on the defendant to appear pursuant to this summons.
- 2) Seek a warrant from the court - pursuant to section 42 of the *Magistrates Court Act*, the AFP may apply for a warrant of arrest, however pursuant to section 42(3), the Magistrate may issue a summons instead "if the magistrate considers it appropriate".
- 3) Arrest without a warrant – pursuant to section 212 of the *Crimes Act 1900*, the police may arrest a defendant without a warrant. In order to lawfully exercise this power, police are required to reasonably suspect that proceeding via summons would not achieve a purpose in subsection 212(1)(b), namely, ensuring the appearance in respect of the offence, preventing the continuation of the offence, preventing concealment or loss of evidence, preventing harassment or interference with a person who may be required to give evidence, preventing the fabrication of evidence, or preserving the safety or welfare of the person.

The test for whether the DPP continues prosecution

Once a charge is before the court, pursuant to section 6 of the *Director of Public Prosecutions Act 1990*, the DPP conduct the prosecution on behalf of the AFP and make all necessary decisions.

Pursuant to section 12 of the *Director of Public Prosecutions Act*, the Director may, in writing, give directions or furnish guidelines in relation to prosecutions or proceedings. This has resulted in various Directors publishing the Prosecution Policy of the Australian Capital Territory. The first was Director Ken Crispin QC in 1991. A revised Prosecution Policy was issued by Director Jon White SC in April 2018, with the current Prosecution Policy being revised by myself and issued on 1 April 2021.

At section 2.4 of the Prosecution Policy, I outline that the decision to prosecute (in this context meaning to continue to prosecute) is a two-staged process. First, does the evidence offer 'reasonable prospect of conviction'? If so, is there a public interest to proceed with a prosecution?

As outlined by the Australian Law Reform Commission, *Sentencing Federal Offenders*, Report No 15 (1980), the process of prosecutions at both State and Federal level is "*probably the most secretive, and poorly documented aspects of the administration of criminal justice.*" Accordingly, it is vitally important that the exercise of such discretions be both transparent and demonstrably in accordance with clear policies and guidelines. At section 2.7 of the Prosecution Policy, I have published a clear yet non-exhaustive list of rather complex considerations which guide my determination of whether or not a matter has a reasonable prospect of conviction.

The 'reasonable prospects of conviction' test is applicable to most prosecutorial authorities throughout the common law world. The test does not require a *probability* of conviction, nor does it require a conclusion that a conviction is more likely than not.^[1] It has been said that it only requires that the Crown needs sufficient evidence to believe that a conviction *could* be obtained: *Proulx v Quebec* [2001] 3 SCR 9 at [31].

The application of these tests requires great experience in the prosecution of similar matters. For example, section 2.7(e) requires consideration of potential attacks on the credibility of witnesses, which itself requires a detailed and nuanced understanding of Part 3.7 of the *Evidence Act 2011*, and how courts apply it. Further considerations such as section 2.7(i) traverse complex questions of admissibility spanning the entire *Evidence Act* and the weighty jurisprudence interpreting the various provisions. Section 2.7 (j) requires a complex

^[1] *Report of the Law Reform Commission of Canada: Controlling Criminal Prosecutions: the Attorney General and the Crown Prosecutor, Working Paper 62*, (Justice Canada, 1990), 81-82 [LRC on Prosecutions]; Martin Report, *supra* note 8 at 51, 58-59, 63; *Report of Commissioner Stephen Owen on the Discretion to Prosecute Inquiry*, 1990, at 102-104 [Owen Report]; and John L. J. Edwards, *The Attorney General, Politics and the Public Interest* (London Street & Maxwell, 1984) at 413-414.

analysis of the evidence and both the statute law and jurisprudence surrounding Part 3.4 of the *Evidence Act*. Likewise with section 2.7(k) and Part 3.9 of the *Evidence Act* and so on.

In *Miazaga v Kvello Estate* [1986] 1 SCR 802 the Canadian Supreme Court cautioned at [66] that:

... the Crown prosecutor who harbours personal doubt about the guilt of the accused cannot substitute his or her own views for those of the judge or jury in making the threshold decision to go forward with a prosecution. The Martin Report explains as follows, at pp 71-72:

Crown counsel need not and ought not to be substituting his or her own views for those of the trial judge or jury, who are the community's decision makers. It cannot be forgotten that much of the public's confidence in the administration of justice is attributable to the trial court process that ensures that justice is not only done, but is seen to be done...

For the same reasons it is critically important that the police, also, should avoid engaging in such personal assessments in the reasonable suspicion test.

It is important to emphasise that the 'reasonable suspicion' test which guides the decision of police to lay charges, and the 'reasonable prospects of conviction' test which guides DPP decision making, are separate and discrete tests, and should not be conflated.

Further, in accordance with recommendations 40-43 of the *Royal Commission into Institutional Responses to Child Sex Abuse*, it recommended that the DPP develop comprehensive written policies for such decision making, publish the policies online, and provide a right for complainants to seek written reasons in the application of the reasonable prospect of conviction test. Further, it was recommended that each Australian DPP should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits reviews of such decisions, and have an internal audit process to ensure compliance. In accordance with these recommendations, in September 2019 I launched our victim review policies, and commenced our internal auditing processes published on our web page, the results of which are published in our Annual Report.

Notwithstanding the absence of legislative support or transparent processes, and notwithstanding the complexity of the application of such tests, the test of whether or not there is a 'reasonable prospect of conviction' has not only crept into police considerations, it is now a documented test in both their mention and hearing brief adjudication sheets.

It is the misapplication, and frequent misunderstanding of these tests, that has led to the large number of complaints not resulting in charges.

The AFP / DPP Collaborative Agreement

Shortly after my appointment, I entered a new Collaborative Agreement between my Office and the AFP. Section 2.2 of the Collaborative Agreement facilitates discussion between the AFP and DPP on large complex or sensitive investigations, to assist in answering these questions, and it appears this has not been availed of for any of the matters that did not result in charges.

I am available to discuss this matter further, should you have any questions.

Yours faithfully,



Shane Drumgold SC
Director - ACT Director of Public Prosecutions

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Hearing Brief Adjudication Sheet

PART A: TO BE COMPLETED BY THE INFORMANT – ALL QUESTIONS TO BE ANSWERED			
Full name	REDACTED	Charge number/s	CC2021/5913, 5914, 5915 & 5916.
Date of CMH	16 July 2021	Date of hearing	
Is this a Family violence matter?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Who will be responsible for completing and submitting the Brief of Evidence?			<input checked="" type="checkbox"/> Informant <input type="checkbox"/> Corroborator
Has each document been imported into PROMIS & a document created in the incident log, including the Brief of Evidence documents (Brief of Evidence documents and Police Statements only to be imported after approval of Adjudication & Practices (A&P))?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Brief Head is attached, complete and includes: a. Defendant's full name, address and DOB b. Correct offences and charge numbers c. Case Officer's name, rank, station, contact numbers and e-mail address			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Table of contents is attached?			<input checked="" type="checkbox"/> Yes
Witness list (A) is attached - showing in respect of EACH witness a. Their name (if AFP member – rank and service number) b. Address (if AFP member – station) c. Contact telephone number(s) (if any) d. Evidence (one or two word descriptor) e. DOB (Only applies to the following witnesses – Young person/child or person suffering an intellectual impairment) f. Unavailable dates			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Witness list (B) is attached – as in (A) above but WITHOUT addresses and contact telephone numbers of any victim or civilian witness or police officer			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Exhibit list is attached			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Disclosure Certificate is attached, does not contain details of protected material not contained in the brief, and is signed			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Statement of Facts is attached			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
AFP Member(s) statement attached (signed)			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Notebook/Diary entry photocopy is attached			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Primary complainant or witness statement is attached			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Witness statement(s) is attached with addresses removed unless relevant to offence/s			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Transcript of Record of Interview is attached If no, why?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
Photographic, discs and documentary exhibit(s) are attached			<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Compensation has been addressed, schedule and supporting documents attached			<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Is an Interpreter required (to be arranged by Informant)			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
All civilian witnesses and police witnesses have been contacted and unavailability dates have been obtained			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Report

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Victim has been informed about VIS (VIS not to be completed until matter is proved)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Private information not relevant to offence/s is redacted	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A
The case is fully disclosed within this brief If no see Disclosure Certificate	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Informant/Corroborator's endorsement	
Name: Aaron REDA	Rank/Badge number: Senior Constable 21338
Location: ACT - CI - DOCT	Date: 13/07/2021
Signature: [REDACTED]	
Team Leader's endorsement	
Name: David Fleming	Rank/Badge number: Detective Sergeant 16065
Location: ACT - CI - DOCT	Date: 13/07/2021
Signature: [REDACTED]	

PART B: TO BE COMPLETED BY THE ADJUDICATING MEMBER - ALL QUESTIONS TO BE ANSWERED	
The Informant has correctly completed Part A?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The Brief of Evidence has been compiled in correct order?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The correct charges have been laid?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The following evidence is present:	
a. The proofs or elements of the offence are covered	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
b. Common proofs are covered	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
c. Obvious or statutory defences have been negated	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
d. Have rules of evidence been followed (e.g. relevant hearsay, correct questioning, caution etc.) – if not please address on back of this sheet for Judicial Operations	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
e. Rules relating to disclosure have been followed, Disclosure Certificate has been completed for the DPP only and signed	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
The number of witness statements attached (AFP and civilian) matches the number of witnesses?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Private information not relevant to offence/s is redacted	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Compensation has been addressed, schedule and supporting documents attached	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Procedure has been followed relating to Victim Impact Statements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
There is a reasonable prospect of a successful conviction based on the evidence presented?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Further investigation/action is needed: (If Yes see Brief Adjudication Feedback Sheet)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Adjudicating Member endorsement	
Name: David Fleming	Rank/Badge number: 91595 [REDACTED]
Location: ACT CI	Date: 13/7/21
Signature: [REDACTED]	

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AFP
AUSTRALIAN FEDERAL POLICE



Collaborative Agreement

between

Australian Federal Police (ACT Policing)

and

ACT Director of Public Prosecutions

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PARTIES: AUSTRALIAN FEDERAL POLICE (AFP) - ACT POLICING

AND: ACT DIRECTOR OF PUBLIC PROSECUTIONS (DPP)

BACKGROUND

A. The Australian Federal Police (AFP) and the Office of the Director of Public Prosecutions (DPP) each play a key role in supporting criminal justice in the Australian Capital Territory, and each is committed to ensuring that there is effective investigation and prosecution process, including prosecution and victim support process.

B. This Collaborative Agreement (CA) sets out the guidance, direction and understanding between the parties for their relationship.

IT IS AGREED by the parties as follows.

1. The Relationship

1.1 Relationship

The parties agree that this arrangement will be undertaken in the spirit of goodwill and in a manner that:

- promotes a mutually professional relationship;
- encourages regular discussions and communication;
- seeks to resolve issues in a timely fashion and at the lowest level;
- promotes the administration of justice; and
- enables them to further fulfil their obligations at law under this CA.

1.2 CA does not create legal obligations

This CA does not create legal obligations between the parties or derogate from the statutory powers or duties of the parties.

1.3 Variation and Review

This CA may be varied at any time by agreement in writing and signed by persons holding the offices of the original signatories. The parties will review this CA regularly.

The parties also agree that supporting protocols may also be established, by agreement in writing, to address specific issues.

1.4 Relationship management

The primary point of contact for the AFP will be the Superintendent, Judicial Operations.

The primary point of contact for the DPP will be the Assistant Director Legal Practice.

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However, the parties agree that the CPO, DCPO and the Director, Deputy Director and Assistant Director will each be responsible for relationship management.

1.5 DPP Liaison Officer

The AFP agrees to maintain a DPP Liaison Officer position to work closely between DPP and AFP to help resolve matters at the lowest level and to foster timely communication between case officers and DPP staff. The DPP Liaison Officer reports to JFVO.

The AFP agrees to ensure that the DPP Liaison Officer is filled by an experienced and appropriately qualified police officer.

The DPP agrees to provide suitable accommodation within its office to facilitate close liaison between the DPP Liaison Officer and DPP staff, and to incorporate the DPP Liaison Officer into office meetings as appropriate subject to DPP operational requirements.

2. The investigation phase

2.1 AFP and DPP roles

Subject to the functions and powers of the DPP under the Director of Public Prosecutions Act 1990, the decision to investigate a matter rests with the AFP. Any referral from the DPP to the AFP to investigate a matter should include the reasons for the referral.

The decision to prosecute rests with the DPP. The DPP will, where practicable, take into account any views expressed by the AFP before determining whether a prosecution should be instituted, continued or discontinued.

2.2 AFP and DPP Consultation

The AFP may seek DPP advice at an investigative stage, particularly in large, complex or sensitive investigations. Advice in these circumstances are limited to:

- The admissibility of evidence that has already been obtained or likely to be obtained by police; and
- The legal implications of alternative or proposed police actions.

The DPP will not direct police as to which choice should be made, rather provide advice as to the legal limitations or consequences of a particular choice.

In addition, the AFP may seek DPP advice about general matters of law, evidence and procedure. Advice will be provided only on receipt of sufficient material in admissible form.

Following consultation, the decision of the charges to proceed with, the required witnesses and the evidence to support those charges, will ultimately rest with the Office of the Director of Public Prosecutions.

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2.3 Indemnities (Undertakings)

Where the AFP is of the view that the circumstances of a case warrant the DPP's considering granting an undertaking pursuant to section 9 of the Director of Public Prosecutions Act 1990, the AFP will request in writing that the DPP consider the matter.

The request will be accompanied by a copy of a statement obtained from the person in respect of whom the undertaking is sought, stating the relevant evidence that the person can give, if such a statement is available. Where possible the request will also include:

- a synopsis of the facts of the case;
- a summary of the witness's role in the case;
- a summary of the evidence that the witness can give;
- an assessment of the extent of the criminal involvement of the witness in the enterprise regarding which charges have been laid;
- an assessment of the character, credibility and previous criminal history of the witness;
- a note about whether there is any possibility of obtaining evidence from another source which might cover the same matters; and
- a note indicating whether any inducement has been offered to the person to give the evidence (noting that this is a relevant matter to be taken into account by DPP under the Prosecution Policy).

3. Court Process

3.1 Police Bail

Police bail (and any issues arising out of police bail) is a matter for the AFP.

3.2 Court Bail

It is a matter for the DPP to determine the position to be taken on the question of bail. This includes whether to oppose bail and what conditions (if any) may be sought by the DPP.

Where possible, the DPP will consult with the AFP before determining a position on bail, especially where police bail was opposed.

The AFP will provide the DPP with sufficient material for the DPP to make its determination, including objection to bail documentation where relevant. The AFP agrees to make available informants or other appropriate case officers of bail refusal applications when requested by the DPP.

3.3 The Provision of Briefs of Evidence

The AFP will provide briefs of evidence to the DPP within six weeks from a plea of not guilty being entered.

The parties will agree from time to time the makeup and content of both mention briefs and hearing briefs and may develop agreed protocols for this purpose.

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3.4 Format of a Brief

Best practice is the provision of briefs of evidence in electronic format, in a way that can be most easily incorporated into CASES. The parties agree to use their best endeavours to achieve best practice and to work together on developing improved arrangements into the future.

3.5 Continuity of staff

The AFP will retain the same informant(s) on a case from its beginning to its completion where possible. If there is a change of informant(s), the AFP will notify the DPP.

Once a matter is set for hearing or trial the DPP will retain the same prosecutor on the case from its beginning to its completion where possible. If there is a change in the prosecutor, the DPP will notify the AFP at the earliest practical opportunity.

3.6 Police Witnesses

The AFP will make appropriate arrangements to ensure that the informant and other relevant Police will attend hearings, and trials and/or forensic procedure hearings to provide support to the DPP and witnesses when required.

To assist Police in finalising Court attendance arrangements and operational rosters for Police witnesses, the DPP will, when possible, notify Police of finalised witness lists prior to a hearing or trial date.

3.7 Witness Attendance

Subject to clause 3.6, the responsibility for arranging the attendance of witnesses, including arranging witness costs and expenses, lies with the AFP in the Magistrates' Court and the DPP in superior courts.

The responsibility for arranging the attendance of witnesses includes the responsibilities of ensuring that the witnesses attend case conferences or other DPP proofing meetings, as required.

Where the DPP is arranging witnesses for attendances in superior courts, the AFP will provide assistance in serving summonses and subpoenas for witnesses.

3.8 Exhibits

Best practice is for the DPP to store exhibits and other material provided by the AFP in accordance with relevant evidentiary and court standards. The parties agree to use their best endeavours to achieve best practice and may develop agreed protocols for this purpose.

The DPP will return exhibits to the AFP as soon as practicable once the item is no longer required for court purposes.

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3.9 Appeals

The DPP will inform the AFP of any appeal instituted or responded to by DPP. The DPP will keep the AFP informed about the progress of such appeal processes, including the outcome of the appeal.

If the AFP is of the view that a prosecution appeal should be considered, it will notify the DPP with reasons. The DPP will advise the AFP of its decision.

4. Considering Whether to Discontinue a Matter

4.1 Representations from a Defendant

When the DPP receives representations from a defendant asking the DPP to:

- discontinue a prosecution;
- change the charge(s); or
- accept a guilty plea to a lesser or alternative charge(s),

the DPP will, if practicable, provide a copy of those representations to the AFP and seek the AFP's comments.

4.2 Consideration by the DPP

Where the DPP is considering discontinuing a prosecution it will, if practicable, contact the informant to seek the informant's views.

If the DPP decides to discontinue a matter it will advise JFVO.

4.3 Consideration by the AFP

If the AFP is of the view that a matter should be discontinued, a report is to be sent to the DPP through JFVO including reasons. If a brief has not already been provided to the DPP in the matter, the report should be accompanied by sufficient material to enable the DPP to decide the issue.

5. Communications

5.1 Communications between the AFP and the DPP

Communications between the AFP and the DPP are to be conducted where possible through AFP's JFVO. Emails between the DPP and the informant will be copied to JFVO to ensure all matters are dealt with appropriately.

5.2 Provision of Material to the DPP

All briefs of evidence and supplementary material shall be delivered by JFVO to the DPP unless exceptional circumstances apply. Where possible this material is to be hand delivered and signed by the DPP when received, or delivered by an auditable online portal.

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5.3 Communication and Notification in Prosecution Matters

The DPP will keep the AFP informed, in a timely manner, of the progress of all matters through the Court process including all relevant information about the matter such as the next Court date, the purpose of the Court listing and any action required. For Supreme Court matters, the DPP will provide a Failed/Withdrawn Prosecution Report to the AFP in a timely manner.

5.4 Subpoenas

If the AFP is served with a subpoena seeking documents relating to a pending prosecution the AFP is responsible for dealing with the subpoena.

The AFP will advise the DPP of the existence of the subpoena as soon as possible and keep the DPP informed of the progress of the matter, including what material is provided to the defence and whether any additional evidence has come to light because of the searches carried out as a result of the subpoena.

5.5 Dispute settlement arrangements

The parties agree to resolve any disagreements or disputes at the lowest possible level. If the DPP consider a matter requires management level intervention or oversight, the DPP will notify the OIC or the Superintendent of JFVO for resolution.

If the AFP considers a matter requires management level intervention or oversight, the AFP will notify the Assistant Director in charge of the Criminal Practice for resolution.

Where a matter cannot be resolved at Superintendent JFVO level, the Assistant Director DPP will contact the Deputy Chief Police Officer or Director to jointly settle the matter.

6. CASES

6.1 CASES Data Exchange

CASES (Criminal Advocacy Support and Enquiry System) is the DPP's Case Management System.

The AFP will provide an electronic data feed from the AFP Case Management System which contains a number of data fields to the DPP for population of the CASES system.

The list of agreed data fields to be provided by the AFP may be varied from time to time with the agreement of both parties.

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DPP may provide JO with limited access to CASES to support that agreement. The set-up costs, the cost of any equipment and ongoing access associated with AFP access to CASES will be borne by the AFP.

7. Costs

7.1 Meaning of costs

Costs are the costs of prosecuting a matter, including the costs of issuing subpoenas to witnesses, the costs of travel, accommodation and loss of income for witnesses, costs of briefing counsel and any costs awarded against the prosecution by a court. Costs do not include internal administrative costs of either the AFP or the DPP, nor costs incurred by the AFP in extradition proceedings.

7.2 Responsibility for costs

The AFP will bear the costs of prosecuting policing matters in the Magistrates Court; and any costs associated with coronial hearings; and any costs associated with applications made by police officers in the Magistrates Court, such as applications under the *Crimes (Forensic Procedures) Act 2000*, or the *Crimes (Child Sex Offenders) Act 2005*.

The DPP will bear the costs of prosecuting matters in superior courts, with the exception that costs associated with the attendance at court of police witnesses and other AFP employees will be met by the AFP.

The AFP has the responsibility for the negotiation of costs in Magistrates Court matters. The DPP agrees to notify the AFP as soon as possible of a matter where costs have been awarded, and to assist the AFP in considering any claims made.

Where it is appropriate for the prosecution to claim costs in the Magistrates Court (for example where police witnesses have been required by defence to attend court but have then not been called to give evidence) the DPP will make an application for costs to be awarded in favour of the AFP.

The DPP agrees to consider the impact of any prosecution decisions that are likely to result in costs to the AFP and to consider the views of the AFP.

In cases that may involve significant cost implications, the DPP agrees to consult with the Superintendent JFVO at the earliest opportunity.

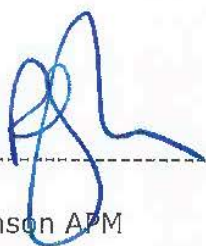
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7.3 Criminal justice visas

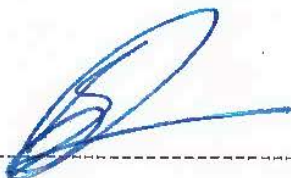
The AFP will be responsible for any costs associated with an undertaking given in conjunction with the grant of a criminal justice visa up to such time as the matter is committed for trial. After that time the DPP will be responsible for such costs.

Signed by the parties on 26 September 2019



Ray Johnson APM

Chief Police Officer for the ACT



Shane Drumgold

Director - ACT Director of Public Prosecutions

In the presence of

KEISSY BARRETT

(Print Name)

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THE PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY



ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS

FOREWORD

The Prosecution Policy of the Australian Capital Territory was published in December 1991 by the first Director, Ken Crispin QC. The policy followed the establishment of the Territory's own independent Office of Public Prosecutions under the *Director of Public Prosecutions Act 1990*. Until now the policy has remained unchanged despite important changes to Territory law. Therefore it is timely that the current Director Jon White SC should revise the policy.

The update to the policy acknowledges and encompasses the *Human Rights Act 2004* and the *Victims of Crime Act 1994* which were enacted after the original policy was published. Notably it acknowledges a prosecutor's role to act in accordance with human rights as a public authority under the Act.

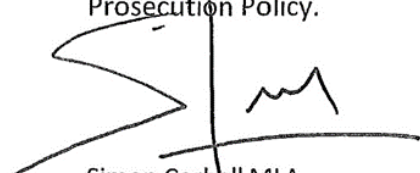
Over the last twenty years the common law has also changed. Notable changes, now incorporated into the policy, include prosecutors' duties to disclose, and the role of the prosecutor in the sentencing process.

Although the revised policy incorporates the various developments of the law, the test in relation to the decision to prosecute remains the same. Indeed the same test is contained in the prosecution policies of all Australian States and Territories and the Commonwealth.

As my predecessor, then Attorney-General, Mr Terry Connolly said in the foreword of the original policy, the published policy:

"ensures the consistency of decisions made in similar circumstances and, by the same token, assists officers in reaching a sound decision on the basis of an informed exercise of their judgement. The public availability of the document serves the dual purpose of making the decision-making process open and accountable, as well as ensuring that the public is informed of the principles which guide the Director of Public Prosecutions and his Office in the performance of their function."

The twin principles of consistency and transparency continue to be served by the revised Prosecution Policy.



Simon Corbell MLA
Attorney-General

13.4.15

PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

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PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

1. INTRODUCTION

- 1.1 On 1 July 1991 the *Director of Public Prosecutions Act 1990* (the Act) came into effect. It established an Office of the Director of Public Prosecutions (DPP) controlled by the Director of Public Prosecutions (the Director) for the Australian Capital Territory.
- 1.2 The Act ensures the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. While under section 20 of the Act the Attorney-General may give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of his or her functions or powers, such a direction or guideline must be of a general nature and must not refer to a particular case. Further, the Attorney-General must not give a direction or furnish a guideline unless he or she has consulted with the Director. Any such direction or guideline is a notifiable instrument and must be presented to the Legislative Assembly.
- 1.3 The Act also ensures that the prosecutor's role will be independent of police and other investigative agencies. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once an investigation has culminated in a prosecution, any decision as to whether or not it should proceed will be made independently by the DPP. In the ACT that independence extends to summary prosecutions as well.
- 1.4 The Director's functions are also carried out independently of the courts: as the High Court has said, *"our courts do not purport to exercise control over the institution or continuation of criminal proceedings, save where it is necessary to do so to prevent an abuse of process or to ensure a fair trial"*.
- 1.5 The purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime. Accordingly, prosecutors have strikingly been called "ministers of justice". A prosecutor represents the community: as Deane J has observed, he or she must *"act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one"*.
- 1.6 Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution's case firmly, fearlessly and vigorously, with, it has been said *"an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings"*.
- 1.7 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the Australian Capital Territory, the *Human Rights Act 2004*, provides that everyone - the accused, members of the community and victims of crime - has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

- 1.8 The ACT is a human rights compliant jurisdiction, and all staff of the DPP must be mindful of the principles underlying the *Human Rights Act* and its purpose, as they conduct the business of the DPP. In particular they are responsible for respecting, protecting and promoting the human rights that are set out in that Act.
- 1.9 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Prosecutors must seek to resolve a wide range of issues with judgment, sensitivity and commonsense. It is neither practicable nor desirable too closely to fetter the prosecutor's discretion as to the manner in which the dictates of justice and fairness may best be served in every case.
- 1.10 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the Act. This policy supersedes the previous policy and guidelines and directions.

2. THE DECISION TO PROSECUTE

General criteria

- 2.1 It is not the case that every allegation of criminal conduct must culminate in a prosecution. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, he or she has merely committed an inadvertent or minor breach of the law. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.
- 2.2 Further, the resources available for prosecution are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue, with appropriate vigour, those cases worthy of prosecution.
- 2.3 Whilst a number of general principles may be articulated, it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations, but the interests of the victim, the accused and the general public must all be taken into account. (In this context the term "the accused" includes an alleged offender, a defendant and an accused.)
- 2.4 The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?
- 2.5 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.6 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.
- 2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:
- (a) Are the witnesses available and competent to give evidence?
 - (b) Do they appear to be honest and reliable?
 - (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?

- (d) Do any have a motive for being less than candid?
- (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
- (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?
- (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?
- (i) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- (j) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?
- (k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
- (l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

2.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, he or she must then consider whether it is in the interest of the public that the prosecution should proceed. In many cases the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will usually be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.

2.9 Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. Many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include the following:

- (a) the seriousness or, conversely, the triviality of the alleged offence;
- (b) whether it is of a "technical" nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
- (e) the antecedents and background of the accused;
- (f) the staleness of the alleged offence;
- (g) the degree of culpability of the accused in relation to the offence;
- (h) the effect on public order and morale;
- (i) the obsolescence or obscurity of the law;
- (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- (k) the availability and efficacy of any alternatives to prosecution;
- (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
- (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (n) whether the alleged offence is of considerable public concern;

- (o) any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (p) the actual or potential harm occasioned to any person as a result of the alleged offence,
- (q) the attitude of the victim of the alleged offence to a prosecution;
- (r) the need to give effect to regulatory priorities;
- (s) the likely length and expense of a trial;
- (t) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;
- (u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (v) whether the alleged offence is triable only on indictment; and
- (w) the need to maintain public confidence in such basic institutions as parliament and the courts.

2.10 Plainly the decision to prosecute must **not** be influenced by:

- (a) the race, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the accused or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused);
- (b) any personal feelings concerning the alleged offender or victim;
- (c) any political advantage, disadvantage or embarrassment to the government or any political group or association; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

Prosecution of juveniles

2.11 Special considerations apply to the prosecution of juveniles. In this context a juvenile is a child (a person who is under 12 years old) or a young person (a person who is 12 years old or older, but not yet an adult). The best interests of the juvenile must always be considered. Juveniles should be encouraged to accept responsibility for their behaviour, and should be dealt with so as to provide them with the opportunity to develop in socially responsible ways. Prosecution of a juvenile must always be regarded as a severe step. Generally, a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

2.12 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.

2.13 In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 2.9 as appear to be relevant and to the following matters:

- (a) the seriousness of the alleged offence;
- (b) the age, apparent maturity and mental capacity of the juvenile;
- (c) the available alternatives to prosecution and their likely efficacy;
- (d) the sentencing options available to the court if the matter were to be prosecuted;

- (e) the family circumstances of the juvenile particularly whether those with parental responsibility appear willing and able to exercise effective discipline and control over the juvenile;
 - (f) the juvenile's antecedents including the circumstances of any previous cautions that he or she may have been given; and
 - (g) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or otherwise be inappropriate, having regard to such matters as the vulnerability of the juvenile and his or her family circumstances.
- 2.14 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

Prosecution of Corporations

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.
- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.
- 2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.
- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.
- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at paragraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;

- (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
- (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
- (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
- (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
- (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
- (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;
- (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
- (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
- (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
- (l) whether the corporation is in administration, liquidation or receivership.

Discontinuing a prosecution

2.21 Generally the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the Director. However, wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision. Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution. It will be for the Director to decide on the sufficiency of evidence. On the other hand, if discontinuance on public interest grounds is contemplated, the views of the police or other referring agency, and the views of the victim will have greater relevance.

3. OTHER DECISIONS IN THE PROSECUTION PROCESS

Choice of Charges

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.
- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the *Crimes Act* or *Criminal Code* unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

Mode of trial

- 3.6 Summary disposition usually provides the speediest and most efficient disposition of justice. In relation to some indictable offences, the prosecution has the power to elect whether those matters are dealt with summarily. In other cases the consent of the prosecution may be required before an indictable matter can be dealt with summarily.
- 3.7 In making the election or giving or withholding consent for summary disposal, each case is to be considered on its merits. The over-riding consideration is to achieve justice. The principal matter to be considered will be whether in the circumstances the Magistrates Court can adequately deal with the matter should it proceed to sentence. In turn, that will depend on:
- the nature and circumstances of the alleged offending;
 - any other matters that a court would have to consider in sentencing the alleged offender, were the offence to be proved; and
 - the criminal history if any of the alleged offender.

3.8 Other factors to be considered are:

- whether the alleged offence is part of a series of related alleged offences, and if so whether it is appropriate to deal with those alleged offences summarily;
- whether there are any co-offenders of the alleged offender, and if so whether it is appropriate for the alleged offender to be dealt with together with the co-offenders; and
- any delay, increased costs or adverse effects upon witnesses likely to be occasioned by proceeding on indictment.

3.9 Under no circumstances will the election be made, or consent given or withheld, for tactical reasons.

Consent to prosecution

3.10 The Director has been authorised to give consent to the prosecution of a number of offences. This is to ensure that prosecutions are not brought in inappropriate circumstances. The reason for the requirement for consent is a factor which should be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account, or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. Other cases may involve a use of the criminal law in sensitive or controversial areas, such as conspiracy, or may involve important considerations of public policy, such as administration of justice offences.

Charge negotiation

3.11 Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to a fewer number of charges, or to a less serious charge or charges, with the remaining charges either being not being proceeded with or being taken into account on a schedule. It may also result in agreement for matters to be dealt with summarily. In some cases it may involve agreement about the content of the statement of facts to be put before the court.

3.12 There are obvious benefits to the criminal justice system from a plea of guilty. The earlier it is achieved, the greater will be the benefits accruing to the accused, the victim, witnesses and the community. Accordingly, negotiations between the defence and the prosecution are to be encouraged. They may occur at any stage and may be initiated by the prosecution or the defence. Charge negotiations must be based on principle and reason, and not on expediency. A clear record of the negotiations must be kept in the interests of transparency and probity.

3.13 A plea of guilty may be accepted following appropriately authorised plea negotiations if the public interest is satisfied on consideration of the following matters:

- (a) whether the plea reasonably reflects the essential criminality of the conduct and provides an adequate basis for sentencing;
- (b) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
- (c) the desirability of prompt and certain dispatch of the case;
- (d) the need to avoid delay in the dispatch of other pending cases;
- (e) the time and expense involved in a trial and any appeal proceedings;

- (f) any deficiencies in the available evidence;
 - (g) in cases where there has been a financial loss to any person, whether the defendant has made restitution or arrangements for restitution;
 - (h) the views of the police or other referring agency; and
 - (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.
- 3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that he or she is not guilty of an offence to which he or she is offering to plead guilty.
- 3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

Jury selection

- 3.16 In exercising the right to challenge or stand aside prospective jurors the prosecution must not attempt to select a jury which is not representative of the community including as to age, sex, ethnic origin, marital status or economic or social background.

Retrials

- 3.17 Where a trial has ended without a verdict, prompt consideration should be given to whether or not a retrial is required. Factors to be considered include:
- (a) the reason the trial ended, that is, whether the jury was unable to agree or other reason;
 - (b) whether or not another jury would be in any better or worse position to reach a verdict;
 - (c) the seriousness of the alleged offence;
 - (d) the cost to the community;
 - (e) the cost to the accused;
 - (f) whether the accused has spent time in custody;
 - (g) the views of the victim.
- 3.18 Where two juries have been unable to agree upon a verdict, a third or additional trial will be directed only in exceptional circumstances.

Sentence

- 3.19 The prosecution has an active role to play in the sentencing process.
- 3.20 As the High Court has said, a prosecutor should draw to the attention of the court what are submitted to be the facts that should be found, the relevant principles that should be applied and what has been done in other (more or less) comparable cases. It is not the role of the prosecutor to proffer some statement of the specific result he or she considers should be reached, or a statement of the bounds within which that result should fall.

- 3.21 If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, the prosecutor may make submissions on that issue. This will be particularly so if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty, or where a conviction is appropriate, the court is contemplating a non-conviction order.
- 3.22 Where facts are asserted on behalf of an accused which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues, if the resolution of such disputed facts is in the interests of justice or is material to sentence.
- 3.23 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. On no occasion will it be appropriate for material such as police testimony as to an accused's assistance to authorities, to be handed directly to the court. Such material should be given to the prosecutor and tendered to the court by the prosecutor at the prosecutor's discretion.
- 3.24 Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
- 3.25 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate).

4. DISCLOSURE

- 4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:
- to be relevant or possibly relevant to an issue in the case;
 - to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
 - to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.
- 4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:
- a relevant previous conviction or finding of guilt;
 - a statement made by a witness which is inconsistent with any prior statement of the witness;
 - a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
 - evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;
 - any physical or mental condition which may affect reliability;
 - any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.
- 4.3 The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.
- 4.4 In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.
- 4.5 The prosecution duty of disclosure does not extend to disclosing material:
- relevant only to the credibility of defence (as distinct from prosecution) witnesses;
 - relevant only to the credibility of the accused;
 - relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
 - for the purpose of preventing an accused from creating a forensic disadvantage for himself or herself, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.
- 4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.

- 4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.
- 4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.
- 4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.

5. THE UNREPRESENTED ACCUSED

- 5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.
- 5.2 So far as practicable, oral communications with an unrepresented accused should be witnessed. Communications should be promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused. Prosecutors may also, where appropriate, communicate with the accused through the court.
- 5.3 A prosecutor has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused.
- 5.4 While a prosecutor has a duty of fairness to an accused, it is not a prosecutor's function to advise an accused about legal issues, evidence, inquiries and investigations that might be made, possible defences, or the conduct of the defence.

6. PRIVATE PROSECUTIONS

- 6.1 Not all prosecutions are initiated by police officers or other officials acting in the course of their public duty. The right of a private individual to institute a prosecution has been described as "*a valuable constitutional safeguard against inertia or partiality on the part of authority*". Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a private prosecution, although instituted in good faith, should not proceed, or at least should not be allowed to remain in private hands. Consequently, section 8 of the Act enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.
- 6.2 Section 13 of the Act provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide to the Director a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence, and furnish any further information the Director requires. In addition, section 14 enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.
- 6.3 Given the large range of circumstances which may give rise to a private prosecution it is impracticable to lay down inflexible rules as to the manner in which the discretion will be exercised. In general, however, a private prosecutor will be permitted to retain the conduct of the proceedings unless:
- (a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;
 - (b) the prosecution is not in the public interest;
 - (c) there are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or
 - (d) it would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.
- 6.4 Where a private prosecution is instituted to circumvent an earlier decision of the Director not to proceed with a prosecution for the same offence, it will usually be appropriate to take over the prosecution with a view to bringing it to an end.

7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED

- 7.1 The Director has a power under the Act to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given, no proceedings may subsequently be instituted in respect of the offence or conduct so specified. The undertaking may be given subject to such conditions (if any) as the Director considers appropriate.
- 7.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who have participated in the commission of offences or who have guilty knowledge of their commission. It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued.
- 7.3 As a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. If tried and convicted or acquitted with respect to the offences in issue, the person will then be a compellable witness for the prosecution, without the need for the issuing of an undertaking. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate.
- 7.4 The central issue in deciding whether to give an accomplice an undertaking under the Act is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of his or her own involvement in the crime in question should be foregone in order to secure that person's testimony in the prosecution of another. The factors to be considered include:
- (a) the importance of the evidence which may be obtained as a result of the undertaking;
 - (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;
 - (c) whether the person seeking the undertaking has given a full and frank statement of his or her prospective evidence, including an acknowledgement of his or her own role in the offences in issue;
 - (d) the character, credibility and previous criminal record of the person concerned;
 - (e) whether any inducement has been offered to the person to give the evidence sought; and
 - (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under section 9(1) or section 9(4) of the Act.
- 7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.
- 7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or

other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.

- 7.7 Where an accomplice receives any concession from the Director in order to secure his or her evidence, for example, whether as to choice of charge, or the grant of an undertaking under the Act, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

8. VICTIMS OF CRIME

- 8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994*.
- 8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses, and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.
- 8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.
- 8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.
- 8.5 Consideration must be given in the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of the service and where necessary referred to it.
- 8.6 Victims may make victim impact statements pursuant to Part 4.3 of the *Crimes (Sentencing) Act 2005*. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or a statement given orally in court.

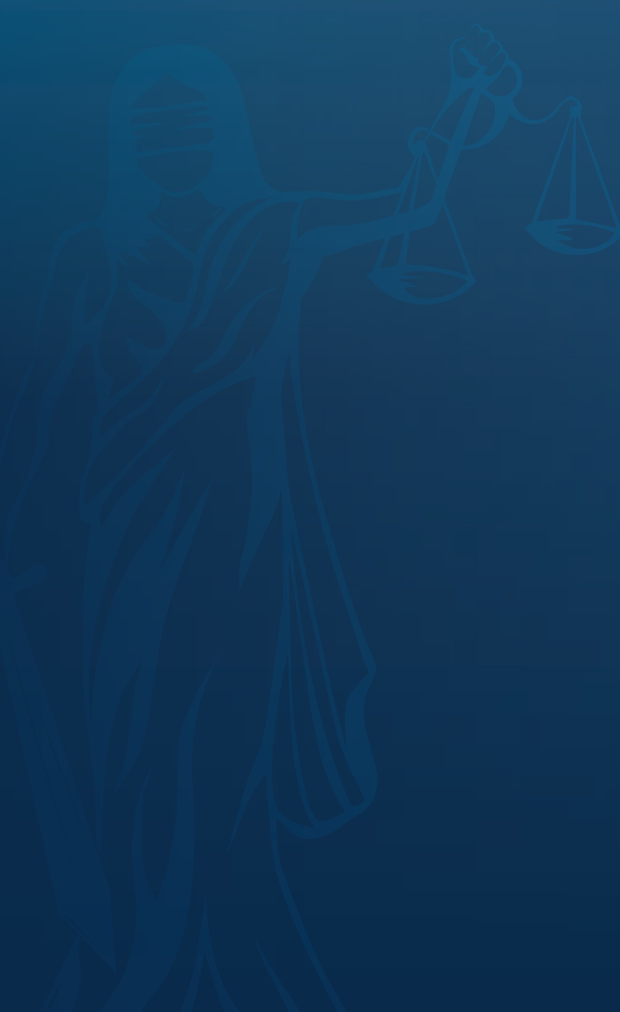
9. PUBLICATION OF REASONS

- 9.1 Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution, reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the community through the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public.
- 9.2 However reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.
- 9.3 Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing, because to do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified.



ACT DPP
DIRECTOR OF PUBLIC
PROSECUTIONS

**THE PROSECUTION
POLICY OF THE
AUSTRALIAN
CAPITAL
TERRITORY**





Director's Foreword

The Prosecution Policy of the Australian Capital Territory was first published by the first Director of Public Prosecutions, Ken Crispin QC, in December 1991. In the foreword to this first issue of the Prosecution Policy, the then Attorney-General, Mr Terry Connolly wrote that the published policy:

“ensures that consistency of decisions made in similar circumstances, and by the same token, assists officers in reaching a sound decision on the basis of any informed exercise in judgment. The public availability of the document serves the dual purpose of making the decision-making process open and accountable, as well as ensuring that the public is informed of the principles which guide the Director of Public Prosecutions in his Office in the performance of their function”

It is important that the Prosecution Policy remains a living document, evolving and adapting to the everchanging demands of the jurisdiction. Thus, a revised version of the Prosecution Policy was published in April 2015. The changes noted in the foreword to the 2015 issue included the introduction of the *Human Rights Act 2004* and the *Victims of Crime Act 1994*.

In this April 2021 issue of the Prosecution Policy, the updates incorporated in the 2015 issue have been maintained. However, there have been a number of further developments to our legal environment since 2015. Thus, the additional revisions made in this issue of the Prosecution Policy include the following:

- Changes to the *Victims of Crime Act 1994 (ACT)* (coming into effect in 2021), and a raft of new victim's rights policies issued by this office in September 2019 to comply with recommendations 40-43 (Criminal Justice Report, Parts III to VI, 2017) of the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

- A formal recognition of the overrepresentation of indigenous offenders in custody and the evolving sentencing jurisprudence in cases such as *R v Fernando* (1992) 76 A Crim R 58, *The Queen v Fuller-Cust* [2002] VSCA 168, *Bugmy v The Queen* (2013) 249 CLR 571, and *Kentwell v R (No 2)* [2015] NSWCCA 96.
- The unification of the profession through both prosecutors' engagement in the Bar Association, and the issue of practising certificates to prosecutors, supporting the incorporation of the relevant ACT Bar Rules into our prosecution policy.
- Recommendation 63 in Volume IV of the Victorian *Royal Commission into the Management of Police Informants*, recommending that police certify disclosure of all relevant material.

We have also taken the opportunity to use gender neutral language through the Prosecution Policy. The two-fold principles of consistency and transparency continue to echo in this April 2021 issue of the Prosecution Policy.



Shane Drumgold SC
Director of Public Prosecutions
1 April 2021

PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

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PROSECUTION POLICY OF THE AUSTRALIAN CAPITAL TERRITORY

1. INTRODUCTION

1. On 1 July 1991 the *Director of Public Prosecutions Act 1990* ('the *DPP Act*') came into effect. It established an Office of the Director of Public Prosecutions ('DPP') controlled by the Director of Public Prosecutions ('the Director') for the Australian Capital Territory ('the ACT').
 - 1.1 The *DPP Act* ensures the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. While under section 20 of the *DPP Act* the Attorney-General may give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of their functions or powers, such a direction or guideline must be of a general nature and must not refer to a particular case. Further, the Attorney-General must not give a direction or furnish a guideline unless they have consulted with the Director. Any such direction or guideline is a notifiable instrument and must be presented to the Legislative Assembly.
 - 1.2 The *DPP Act* also ensures that the prosecutor's role will be independent of police and other investigative agencies. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once an investigation has culminated in a prosecution, any decision as to whether or not it should proceed will be made independently by the DPP. In the ACT that independence extends to summary prosecutions as well.
 - 1.3 The Director's functions are also carried out independently of the courts: as the High Court has said, "*our courts do not purport to exercise control over the institution or continuation of criminal proceedings, save where it is necessary to do so to prevent an abuse of process or to ensure a fair trial*".

- 1.4 The purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime. Accordingly, prosecutors have strikingly been called “ministers of justice”. A prosecutor represents the community: as Deane J has observed, they must “*act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one*”.
- 1.5 Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution’s case firmly, fearlessly and vigorously, with, it has been said “*an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings*”.
- 1.6 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the ACT, the *Human Rights Act 2004*, provides that everyone - the accused, members of the community and victims of crime - has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- 1.7 The ACT is a human rights compliant jurisdiction, and all staff of the DPP must be mindful of the principles underlying the *Human Rights Act* and its purpose, as they conduct the business of the DPP. In particular, they are responsible for respecting, protecting and promoting the human rights that are set out in that Act.
- 1.8 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Where law or policy ends, discretion begins. Prosecutors must seek to resolve a wide range of issues with judgement, sensitivity and common sense. It is neither practicable nor desirable to fetter the prosecutor’s discretion too much because the demands of justice and fairness will vary from case to case.
- 1.9 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the *DPP Act*. This policy supersedes the previous policy and guidelines and directions, save for the Director’s disclosure guideline which came into effect on 3 August 2020 and remains in effect.

2. THE DECISION TO PROSECUTE

General criteria

- 2.1 It is not the case that every allegation of criminal conduct must culminate in a prosecution. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, they have merely committed an inadvertent or minor breach of the law. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.
- 2.2 Further, the resources available for prosecution are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue, with appropriate vigour, those cases worthy of prosecution.
- 2.3 Whilst a number of general principles may be articulated, it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations, but the interests of the victim, the accused and the general public must all be taken into account. (In this context the term "the accused" includes an alleged offender, a defendant and an accused.)
- 2.4 The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?

- 2.5 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.6 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.
- 2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:
- (a) Are the witnesses available and competent to give evidence?
 - (b) Do they appear to be honest and reliable?
 - (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?
 - (d) Do any have a motive for being less than candid?
 - (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
 - (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?

- (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?
- (i) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- (j) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?
- (k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
- (l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

2.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, they must then consider whether it is in the interest of the public that the prosecution should proceed. In many cases the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will usually be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.

2.9 Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. Many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include the following:

- (a) the seriousness or, conversely, the triviality of the alleged offence;

- (b) whether it is of a "technical" nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
- (e) the antecedents and background of the accused;
- (f) the staleness of the alleged offence;
- (g) the degree of culpability of the accused in relation to the offence;
- (h) the effect on public order and morale;
- (i) the obsolescence or obscurity of the law;
- (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- (k) the availability and efficacy of any alternatives to prosecution;
- (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
- (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (n) whether the alleged offence is of considerable public concern;
- (o) any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (p) the actual or potential harm occasioned to any person as a result of the alleged offence,
- (q) the attitude of the victim of the alleged offence to a prosecution;
- (r) the need to give effect to regulatory priorities;

- (s) the likely length and expense of a trial;
- (t) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which they have already done so;
- (u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (v) whether the alleged offence is triable only on indictment; and
- (w) the need to maintain public confidence in such basic institutions as parliament and the courts.

2.10 Plainly the decision to prosecute must **not** be influenced by:

- (a) the race, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the accused or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused – see for example subparagraphs 3.26-3.27);
- (b) any personal feelings concerning the alleged offender or victim;
- (c) any political advantage, disadvantage or embarrassment to the government or any political group or association; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

Prosecution of juveniles

- 2.11 Special considerations apply to the prosecution of juveniles. In this context a juvenile is a child (a person who is under 12 years old) or a young person (a person who is 12 years old or older, but not yet an adult). The best interests of the juvenile must always be considered. Juveniles should be encouraged to accept responsibility for their behaviour and should be dealt with so as to provide them with the opportunity to develop in socially responsible ways. Prosecution of a juvenile must always be regarded as a severe step. Generally, a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.
- 2.12 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.
- 2.13 In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in subparagraph 2.9 as appear to be relevant and to the following matters:
- (a) the seriousness of the alleged offence;
 - (b) the age, apparent maturity and mental capacity of the juvenile;
 - (c) the available alternatives to prosecution and their likely efficacy;
 - (d) the sentencing options available to the court if the matter were to be prosecuted; the family circumstances of the juvenile particularly whether those with parental responsibility appear willing and able to exercise effective discipline and control over the juvenile;
 - (e) the juvenile's antecedents including the circumstances of any previous cautions that they may have been given; and

- (f) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or otherwise be inappropriate, having regard to such matters as the vulnerability of the juvenile and their family circumstances.

2.14 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

Prosecution of Corporations

2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.

2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.

2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.

2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.

- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at subparagraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
 - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
 - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
 - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
 - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
 - (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
 - (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;

- (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
- (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
- (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
- (l) whether the corporation is in administration, liquidation or receivership.

Discontinuing a prosecution

2.21 Generally, the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the Director. However, wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision. Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution. It will be for the Director to decide on the sufficiency of evidence. On the other hand, if discontinuance on public interest grounds is contemplated, the views of the police or other referring agency, and the views of the victim will have greater relevance.

3. OTHER DECISIONS IN THE PROSECUTION PROCESS

Choice of Charges

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.
- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the *Crimes Act 1900* or *Criminal Code 2002* unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent chargenegotiation.

Mode of trial

- 3.6 Summary disposition usually provides the speediest and most efficient disposition of justice. In relation to some indictable offences, the prosecution has the power to elect whether those matters are dealt with summarily. In other cases, the consent of the prosecution may be required before an indictable matter can be dealt with summarily.
- 3.7 In making the election or giving or withholding consent for summary disposal, each case is to be considered on its merits. The over-riding consideration is to achieve justice. The principal matter to be considered will be whether in the circumstances the Magistrates Court can adequately deal with the matter should it proceed to sentence. In turn, that will depend on:
- the nature and circumstances of the alleged offending;
 - any other matters that a court would have to consider in sentencing the alleged offender, were the offence to be proved; and
 - the criminal history if any of the alleged offender.
- 3.8 Other factors to be considered are:
- whether the alleged offence is part of a series of related alleged offences, and if so whether it is appropriate to deal with those alleged offences summarily;
 - whether there are any co-offenders of the alleged offender, and if so whether it is appropriate for the alleged offender to be dealt with together with the co-offenders; and
 - any delay, increased costs or adverse effects upon witnesses likely to be occasioned by proceeding on indictment.
- 3.9 Under no circumstances will the election be made, or consent given or withheld, for tactical reasons.

Consent to prosecution

- 3.10 The Director has been authorised to give consent to the prosecution of a number of offences. This is to ensure that prosecutions are not brought in inappropriate circumstances. The reason for the requirement for consent is a factor which should be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account, or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. Other cases may involve a use of the criminal law in sensitive or controversial areas, such as conspiracy, or may involve important considerations of public policy, such as administration of justice offences.

Charge negotiation

- 3.11 Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to a fewer number of charges, or to a less serious charge or charges, with the remaining charges either being not being proceeded with or being taken into account on a schedule. It may also result in agreement for matters to be dealt with summarily. In some cases it may involve agreement about the content of the statement of facts to be put before the court.
- 3.12 There are obvious benefits to the criminal justice system from a plea of guilty. The earlier it is achieved, the greater will be the benefits accruing to the accused, the victim, witnesses and the community. Accordingly, negotiations between the defence and the prosecution are to be encouraged. They may occur at any stage and may be initiated by the prosecution or the defence. Charge negotiations must be based on principle and reason, and not on expediency. A clear record of the negotiations must be kept in the interests of transparency and probity.
- 3.13 A plea of guilty may be accepted following appropriately authorised plea negotiations if the public interest is satisfied on consideration of the following matters:
- (a) whether the plea reasonably reflects the essential criminality of the conduct and provides an adequate basis for sentencing;

- (b) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
- (c) the desirability of prompt and certain dispatch of the case;
- (d) the need to avoid delay in the dispatch of other pending cases;
- (e) the time and expense involved in a trial and any appeal proceedings;
- (f) any deficiencies in the available evidence;
- (g) in cases where there has been a financial loss to any person, whether the defendant has made restitution or arrangements for restitution;
- (h) the views of the police or other referring agency; and
- (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.

3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that they are not guilty of an offence to which they are offering to plead guilty.

3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

Jury selection

3.16 In exercising the right to challenge or stand aside prospective jurors the prosecution must not attempt to select a jury which is not representative of the community including as to age, sex, ethnic origin, marital status or economic or social background.

Retrials

- 3.17 Where a trial has ended without a verdict, prompt consideration should be given to whether or not a retrial is required. Factors to be considered include:
- (a) the reason the trial ended, that is, whether the jury was unable to agree or other reason;
 - (b) whether or not another jury would be in any better or worse position to reach a verdict;
 - (c) the seriousness of the alleged offence;
 - (d) the cost to the community;
 - (e) the cost to the accused;
 - (f) whether the accused has spent time in custody;
 - (g) the views of the victim.
- 3.18 Where two juries have been unable to agree upon a verdict, a third or additional trial will be directed only in exceptional circumstances.

Sentence

- 3.19 The prosecution has an active role to play in the sentencing process.
- 3.20 As the High Court has said, a prosecutor should draw to the attention of the court what are submitted to be the facts that should be found, the relevant principles that should be applied and what has been done in other (more or less) comparable cases. It is not the role of the prosecutor to proffer some statement of the specific result they consider should be reached, or a statement of the bounds within which that result should fall.

- 3.21 If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, the prosecutor may make submissions on that issue. This will be particularly so if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty, or where a conviction is appropriate, the court is contemplating a non-conviction order.
- 3.22 Where facts are asserted on behalf of an accused which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues, if the resolution of such disputed facts is in the interests of justice or is material to sentence.
- 3.23 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. On no occasion will it be appropriate for material such as police testimony as to an accused's assistance to authorities, to be handed directly to the court. Such material should be given to the prosecutor and tendered to the court by the prosecutor at the prosecutor's discretion.
- 3.24 Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
- 3.25 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate).

Sentencing indigenous offenders

- 3.26 The DPP recognises the overrepresentation of indigenous offenders in custody in Australia, including in the ACT. The High Court has said that the “*high rate of incarceration*” of indigenous offenders must not be taken into account when sentencing an indigenous offender. However, an offender’s indigenous identity may explain or throw light on the offending and the circumstances of the offender.
- 3.27 A prosecutor should, as far as practicable, draw the court’s attention to any relevant matters associated with or related to the offender’s indigenous background. Without purporting to be exhaustive, this may include the following:
- (a) the socio-economic circumstances in which the offender has been raised, including the absence of educational and employment opportunities;
 - (b) that the offender has experienced social exclusion or discrimination;
 - (c) that the offender has been raised in a community surrounded by substance abuse and/or violence;
 - (d) that the offender has been separated from their birth parents and/or community, for example by placement in foster care;
 - (e) that the offender has suffered physical, sexual or emotional abuse;
 - (f) that a lengthy term of imprisonment may weigh more heavily on the offender by reason of culture factors.

4. DISCLOSURE

4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

- to be relevant or possibly relevant to an issue in the case;
- to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
- to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.

4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

- a relevant previous conviction or finding of guilt;
- a statement made by a witness which is inconsistent with any prior statement of the witness;
- a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
- evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;
- any physical or mental condition which may affect reliability;
- any concession which has been granted to the witness in order to secure their testimony for the prosecution.

- 4.3 The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.
- 4.4 In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.
- 4.5 The prosecution's duty of disclosure does not extend to disclosing material:
- relevant only to the credibility of defence (as distinct from prosecution) witnesses;
 - relevant only to the credibility of the accused;
 - relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
 - for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.
- 4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.
- 4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.

- 4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with their previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.
- 4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.
- 4.10 Where known, in accordance with Director's disclosure guideline which has been in effect since 3 August 2020 (see Annexure 1), the prosecution is under a duty to disclose the existence of:
- (a) Relevant protected material that is subject of a claim of privilege or immunity;
 - (b) Relevant material that is subject of a statutory publication restriction;
 - (c) Relevant unprotected material that is not subject to a claim of privilege or immunity or a statutory publication restriction.

5. THE UNREPRESENTED ACCUSED

- 5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.
- 5.2 So far as practicable, oral communications with an unrepresented accused should be witnessed. Communications should be promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused. Prosecutors may also, where appropriate, communicate with the accused through the court.
- 5.3 A prosecutor has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused.
- 5.4 While a prosecutor has a duty of fairness to an accused, it is not a prosecutor's function to advise an accused about legal issues, evidence, inquiries and investigations that might be made, possible defences, or the conduct of the defence.

6. PRIVATE PROSECUTIONS

- 6.1 Not all prosecutions are initiated by police officers or other officials acting in the course of their public duty. The right of a private individual to institute a prosecution has been described as "*a valuable constitutional safeguard against inertia or partiality on the part of authority*". Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a private prosecution, although instituted in good faith, should not proceed, or at least should not be allowed to remain in private hands. Consequently, section 8 of the *DPP Act* enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.
- 6.2 Section 13 of the *DPP Act* provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide to the Director a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence, and furnish any further information the Director requires. In addition, section 14 of the *DPP Act* enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.
- 6.3 Given the large range of circumstances which may give rise to a private prosecution it is impracticable to lay down inflexible rules as to the manner in which the discretion will be exercised. In general, however, a private prosecutor will be permitted to retain the conduct of the proceedings unless:
- (a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;
 - (b) the prosecution is not in the public interest;
 - (c) there are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or

- (d) it would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.

6.4 Where a private prosecution is instituted to circumvent an earlier decision of the Director not to proceed with a prosecution for the same offence, it will usually be appropriate to take over the prosecution with a view to bringing it to an end.

7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED

- 7.1 The Director has a power under the *DPP Act* to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given, no proceedings may subsequently be instituted in respect of the offence or conduct so specified. The undertaking may be given subject to such conditions (if any) as the Director considers appropriate.
- 7.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who have participated in the commission of offences or who have guilty knowledge of their commission. It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However, it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued.
- 7.3 As a general rule an accomplice should be prosecuted irrespective of whether they are to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. If tried and convicted or acquitted with respect to the offences in issue, the person will then be a compellable witness for the prosecution, without the need for the issuing of an undertaking. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate.
- 7.4 The central issue in deciding whether to give an accomplice an undertaking under the *DPP Act* is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of their own involvement in the crime in question should be foregone in order to secure their testimony in the prosecution of another. The factors to be considered include:
- (a) the importance of the evidence which may be obtained as a result of the undertaking;

- (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;
- (c) whether the person seeking the undertaking has given a full and frank statement of their prospective evidence, including an acknowledgement of their own role in the offences in issue;
- (d) the character, credibility and previous criminal record of the person concerned;
- (e) whether any inducement has been offered to the person to give the evidence sought; and
- (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under subsection 9(1) or subsection 9(4) of the *DPP Act*.

7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.

7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.

7.7 Where an accomplice receives any concession from the Director in order to secure their evidence, for example, whether as to choice of charge, or the grant of an undertaking under the *DPP Act*, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

8. VICTIMS OF CRIME

- 8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994* as well as the Director's Instruction Nos. 1, 2, 7, 13, 14.1 and 14.2 outlining victim's rights in relation to particular prosecutorial decisions.
- 8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.
- 8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.
- 8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.
- 8.5 Consideration must be given from the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of this service and where necessary referred to it.
- 8.6 Victims may make victim impact statements pursuant to Part 4.3 of the *Crimes (Sentencing) Act 2005*. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or as a statement to be given orally in court.

9. PUBLICATION OF REASONS

- 9.1 Where the Director decides to exercise the power conferred by the *DPP Act* to decline to proceed further with a prosecution, reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the community through the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public.
- 9.2 However, reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.
- 9.3 Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing, because to do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified.

10. PROSECUTOR'S DUTIES UNDER THE ACT BAR RULES

- 10.1 Crown Prosecutors and Senior Prosecutors will hold Practising Certificates issued by the ACT Bar Association. This policy incorporates aspects of the ACT Bar rules.
- 10.2 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- 10.3 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 10.4 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 10.5 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 10.6 A prosecutor must disclose material in accordance with paragraph 4 ('Disclosure') of this policy.
- 10.7 A prosecutor who has decided not to disclose material to the opponent, as required under subparagraph 10.6 of this policy, must consider whether:
- (a) the defence of the accused could suffer by reason of such non-disclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.

10.8 A prosecutor must call as part of the prosecution's case all witnesses:

- (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
- (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
- (c) whose testimony or statements were used in the course of any committal proceedings; and
- (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case unless the opponent consents to the prosecutor not calling a particular witness;

and except where:-

- (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;
- (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
- (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused;

provided that:-

- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.

- 10.9 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- (a) inform the opponent if the prosecutor intends to use the material; and
 - (b) make available to the opponent a copy of the material if it is in documentary form.
- 10.10 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- 10.11 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 10.12 A prosecutor who has informed the court of matters within subparagraph 10.11 of this policy, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- 10.13 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
 - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
 - (c) must assist the court to avoid appealable error on the issue of sentence;
 - (d) may submit that a custodial or non-custodial sentence is appropriate; and

- (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority

10.14 A barrister who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with subparagraphs 10.2, 10.4 and 10.5 as if the body were the court referred to in this policy and any person whose conduct is in question before the body were the accused referred to in subparagraph 10.4.

Annexure 1
Guideline issued under section 12(1)(a)
Director of Public Prosecutions Act 1990 (ACT)

Matter of:

Charge No(s):

For indictable or summary offence(s) of:

Guideline

This guideline is effective 3 August 2020, issued under section 12(1)(a) of the *Director of Public Prosecutions Act 1990* and applies to all prosecutions in the Australian Capital Territory.

On 13 April 2015, pursuant to section 12(3) of the *Director of Public Prosecutions Act 1990*, the Office of the Director of Public Prosecutions ('DPP') issued 'The Prosecution Policy of the Australian Capital Territory' ('Prosecution Policy').

Paragraph 4 of the Prosecution Policy outlines the DPP disclosure policy. Paragraph 4 is provided below.

4 DISCLOSURE

4.1 *The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:*

- *to be relevant or possibly relevant to an issue in the case;*
- *to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or*
- *to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.*

4.2 *The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:*

- *a relevant previous conviction or finding of guilt;*
- *a statement made by a witness which is inconsistent with any prior statement of the witness;*

- *a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;*
 - *evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;*
 - *any physical or mental condition which may affect reliability;*
 - *any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.*
- 4.3 *The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.*
- 4.4 *In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.*
- 4.5 *The prosecution's duty of disclosure does not extend to disclosing material:*
- *relevant only to the credibility of defence (as distinct from prosecution) witnesses;*
 - *relevant only to the credibility of the accused;*
 - *relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or*
 - *for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.*
- 4.6 *The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.*
- 4.7 *Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.*

- 4.8 *Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.*
- 4.9 *The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.*

The DPP require the following acknowledgment and certification attached to the service of each brief of evidence received by the DPP.

Acknowledgment

I am aware that as a law enforcement officer investigating an alleged indictable or summary offence, I have a duty to disclose to the DPP all relevant material if the DPP is involved in the prosecution of the offence.

I understand **relevant material** to be all relevant information, documents or other evidence obtained during the investigation that falls within section 4 of the Prosecution Policy.

I am aware that my duty to disclose continues until the DPP decides that the accused person will not be prosecuted for the alleged offence(s), the accused person is found guilty or acquitted, or the prosecution is terminated.

I am aware that my duty to disclose as outlined above is subject to claims of privilege, public interest immunity or statutory immunity. I am aware that such claims are to be directed as follows:

- (a) for police officers—through the Chief Police Officer, the Deputy Chief Police Officer Response or the Deputy Chief Police Officer Capability and Community Safety.
- (b) for other law enforcement officers—through the Commissioner or an Assistant Commissioner of the agency of which I am an officer.

I am aware that the duty to disclose is also subject to any statutory publication restriction.

Certification

I certify that the information I have given in Schedules 1, 2 and 3 below is true, to the best of my knowledge and belief.

Schedule 1

Schedule 1 relates to relevant protected material, being relevant material not contained in the brief of evidence that is the subject of a claim of privilege, public interest immunity or statutory immunity. I am aware that I am required to disclose to the DPP the existence and nature of all such material. I am aware that I must retain the material for as long as my duty to disclose exists and provide the material to the DPP on request. I acknowledge that if I object to the disclosure of relevant protected material to the DPP, I can request a conference with the responsible lawyer in the DPP to discuss reasons for this.

Schedule 2

Schedule 2 relates to relevant material not contained in the brief of evidence, that is the subject of a statutory publication restriction. I am aware that I am required to disclose to the DPP the existence of any such material, and the nature of the material, however, only to the extent not prohibited by the statutory publication restriction. I am aware that I must retain the material for as long as my duty to disclose exists.

Schedule 3

Schedule 3 relates to relevant unprotected material, being relevant material not contained in the brief of evidence that is not the subject of a privilege or an immunity claim or a statutory publication restriction. Unless impracticable to do so, I have attached a copy of all such material to this certificate. If a copy of any such material has not been provided, I am aware that I must retain the material for as long as my duty to disclose exists and facilitate access to the material by the DPP.

Undertaking

I undertake to advise the DPP in writing, as soon as practicable, if I become aware of any additional information, documents or other evidence that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Signed [*officer responsible for investigation of case*]:

Date:

Name:

Rank [*if applicable*]:

Received and noted by superior officer*

Signed [*superior officer*]:

Date:

Name:

Rank [*if applicable*]:

*If the disclosing law enforcement officer is a police officer, this form must be signed by a police officer who holds a rank in the ACT Policing of Sergeant. If the disclosing law enforcement officer is an officer of another agency, this form must be signed by the Commissioner or an Assistant Commissioner of that agency.

Schedule 1: relevant protected material that is subject of claim of privilege or immunity

Certification* **Yes** **No**

There is relevant protected material, not contained in the brief of evidence, that is the subject of a claim of privilege, public interest immunity or statutory immunity. That material is described in the Schedule below.

Description of item **Privilege/immunity sought****

Schedule 2: relevant material that is subject of statutory publication restriction

Certification* **Yes** **No**

There is relevant material, not contained in the brief of evidence, that is the subject of a statutory publication restriction and the existence of which I can disclose without contravening the statutory publication restriction. That material is described in the Schedule below. *[Describe the material only to the extent not prohibited by the statutory publication restriction]*

Description of item

Schedule 3: relevant unprotected material that is not subject to claim of privilege or immunity or statutory publication restriction

Certification* **Yes** **No**

There is relevant unprotected material, not contained in the brief of evidence, that is not the subject of a claim of privilege or immunity or a statutory publication restriction. That material is described in the Schedule below.

Description of item**Copy attached?*****

**Tick either yes or no in relation to the statement*

***Describe the nature of the privilege or immunity claim in relation to each item*

****Tick either yes or no in relation to each item*

Request for meeting with DPP lawyer***Yes No**

I object to the disclosure of relevant protected material and request a conference with the responsible solicitor in the Office of the Director of Public Prosecutions.

**Tick either yes or no in relation to the statement*



From: Williamson, Anthony
Sent: Wed, 24 Feb 2021 08:55:00 +1100
To: Drumgold, Shane
Subject: Fwd: Brittany Higgins [SEC=OFFICIAL]

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From: McDevitt, Jason <[REDACTED]>
Sent: Wednesday, February 24, 2021 8:53:36 AM
To: Williamson, Anthony <[REDACTED]@act.gov.au>
Cc: Saunders, Gareth <[REDACTED]>; RED, Mark <[REDACTED]@afp.gov.au>;
 Boorman, Marcus <[REDACTED]>; Moller, Scott <[REDACTED]>
Subject: RE: Brittany Higgins [SEC=OFFICIAL]

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OFFICIAL

Good Morning Anthony,

Please see below correspondence received via AFP-DPP-LO. Are you able to advise whether the DPP or the CDPP will be referred the matter should sufficient evidence be obtained. We would like early engagement with either office as the investigation progresses.

Thanks

Jas

DETECTIVE SERGEANT JASON MCDEVITT
 CRIMINAL INVESTIGATIONS - SACAT
 ACT POLICING
 Tel: [REDACTED]
www.afp.gov.au



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 A SAFER AUSTRALIA

The Australian Federal Police acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, sea and community. We pay our respects to the people, the cultures and the elders past, present and emerging.



From: REDACTED Corey <REDACTED@afp.gov.au>
Sent: Tuesday, 23 February 2021 2:03 PM
To: ACT-SACAT-TL [REDACTED]@afp.gov.au>
Subject: Brittany Higgins [SEC=OFFICIAL]

OFFICIAL

Good afternoon

I had a meeting with CDPP this morning in which they mentioned the Brittany Higgins matter.

As the alleged offence took place at Parliament House, they expect the matter to be referred to CDPP if there is sufficient evidence. They wanted to send a friendly reminder that they are always available to offer advice on investigations before charges are laid. They would appreciate being involved earlier rather than later.

If the case officer would like to engage with CDPP, the best person to contact is Rebekah O'Meagher. Her details are below.

Cheers, Corey

Rebekah O'Meagher

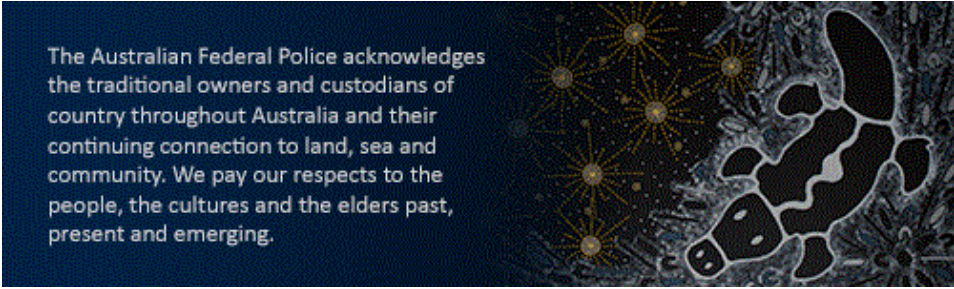
*Assistant Director
International Assistance & Specialist Agencies
Commonwealth Director of Public Prosecutions*

Direct line REDACTED
REDACTED@cdpp.gov.au
Mobile REDACTED

A/SGT COREY REDACTED
DPP LIAISON
ACT POLICING
Tel: REDACTED
www.afp.gov.au



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AFP Web site: <http://www.afp.gov.au>

From: Jerome, Skye
Sent: Thu, 25 Feb 2021 08:54:59 +1100
To: Williamson, Anthony; Drumgold, Shane; Hiscox, Joel
Subject: FW: Joint Trial Agreement [SEC=OFFICIAL]

OFFICIAL: Sensitive

Dear Shane, Anthony and Joel

Please see below.

Kind regards

Skye



Skye Jerome
 Senior Advocate
 Office of the Director of Public Prosecutions (ACT)
 GPO Box 595, Canberra ACT 2601 (DX 5725)
 T: [REDACTED] (Direct)
 T: (02) 6207 5399 (Reception)
 E: [REDACTED]@act.gov.au
 W: www.dpp.act.gov.au

For a full range of victim's rights, please go to www.dpp.act.gov.au and go to the 'Witness and Victim' link.

From: [REDACTED] Corey <[REDACTED]@afp.gov.au>
Sent: Thursday, 25 February 2021 8:53 AM
To: Hiscox, Joel <[REDACTED]@act.gov.au>; Jerome, Skye <[REDACTED]@act.gov.au>
Subject: FW: Joint Trial Agreement [SEC=OFFICIAL]

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OFFICIAL

Good morning

Please see the below advice from CDPD regarding the Brittany Higgins matter.

Kind regards,

A/SGT COREY [REDACTED]
 DPP LIAISON
 ACT POLICING
 Tel: [REDACTED]
www.afp.gov.au



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From: O'Meagher Rebekah [REDACTED]@cdpp.gov.au>
Sent: Wednesday, 24 February 2021 6:22 PM
To: [REDACTED], Corey <[REDACTED]@afp.gov.au>
Cc: Kemenes Tania [REDACTED]@cdpp.gov.au>
Subject: RE: Joint Trial Agreement [SEC=OFFICIAL]

OFFICIAL

Dear Corey

During our liaison meeting yesterday I indicated that the CDPP would have carriage of any referral in relation to the matter of Brittany Higgins.

Following our meeting yesterday we have reconsidered the CDPP's National Legal Direction on Parliamentary Issues, the Parliamentary Precincts Act 1988 and the Parliamentary Privileges Act 1987. Following this reconsideration we are now of the view that any referral in relation to this matter should be to the ACT DPP.

I apologies for any confusion caused and I am happy to discuss further if necessary.

Regards,

CDPP

Australia's Federal Prosecution Service

Rebekah O'Meagher

Assistant Director

International Assistance &

Specialist Agencies

Commonwealth Director of Public

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Classification: OFFICIAL

From: O'Meagher Rebekah
Sent: Tuesday, 23 February 2021 11:49 AM
To: REDACTED @afp.gov.au' <REDACTED @afp.gov.au>
Cc: Kemenes Tania {REDACTED @cdpp.gov.au}>
Subject: Joint Trial Agreement [SEC=OFFICIAL]

OFFICIAL

Dear Corey

Thanks for meeting with us today.

As discussed please find attached the Joint Trial Agreement between the ACT DPP and CDPP. Pursuant to para 11 of the Agreement the ACT DPP will conduct summary prosecutions and committal proceedings against the laws of the Cmth that are investigated by the AFP in the course of their community policing role in the ACT. Community Policing has been interpreted as matters dealt with by general duties policing as opposed to more serious matters investigated by any of the crime teams.

Regards,



Australia's Federal Prosecution Service

Rebekah O'Meagher
Assistant Director
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MAGISTRATES COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title: Madders v Tiffen and Tiffen (No 1)

Citation: [2021] ACTMC 4

Hearing Dates: 3,4,5,6,7 August 2020; 21 October 2020; 8,9,11,12 February 2021

Last Submissions: 26 March 2021

Decision Date: 6 April 2021

Before: Magistrate Theakston

Decision: The evidence from the Samsung mobile phone and HP laptop computer will be admitted. The evidence from the Huawei mobile phone will not be admitted.

Catchwords: **CRIMINAL LAW** – JURISDICTION, PRACTICE AND PROCEDURE - EVIDENCE – whether to exclude improperly or illegally obtained evidence – considerations under s 138 of the *Evidence Act 2011* – police powers – execution of search warrants – nature of ‘moving’ items under s 3K of the *Crimes Act 1914* – time limits of moved items under s 3K of the *Crimes Act 1914* – assigning authority to execute a search warrant – unlawful arrest – desirability of admitting evidence – public interest considerations

Legislation Cited: *Acts Interpretation Act 1901* (Cth), s 36
Anti-Money Laundering & Counter-Terrorism Financing Act 2006 (Cth), ss 41, 43, 45, 49
Bail Act 1992 (ACT), s 17
Crimes Act 1914 (Cth), ss 3C, 3E, 3F, 3K, 3K(3A), 3LA, 3P
Evidence Act 2011 (ACT), s 138
Human Rights Act 2004 (Cth), ss 12(a), 18
International Covenant on Civil and Political Rights, Art 17

Cases Cited: *Adler v Gardiner* [2002] FCA 1141; (2002) 43 ACSR 24
ASIC v Sigalla (No 2) [2010] NSWSC 792; (2010) 240 FLR 327
George v Rockett [1990] HCA 26; (1990) 170 CLR 104
Hart v Commissioner of Australian Federal Police [2002] FCAFC 392; (2002) 124 FCR 384
Puglisi & Anor v Australian Fisheries Management Authority & Ors [1997] FCA 846; (1997) 148 ALR 393
R v Alqudsi [2015] NSWSC 1615
R v Siang Pin Foo (No 2) [1998] NTSC 50

Parties: Trent Madders (Informant)

Joshua Tiffen (Defendant)

Kenan Tiffen (Defendant)

Representation:

Counsel

Skye Jerome (Informant)

Jack Pappas (Defendants)

Slade Howell (Defendants)

Solicitors

ACT Director of Public Prosecutions (Informant)

McKenna Taylor Criminal Defence Lawyers (Defendants)

File Number(s):

CAN 5321/2019

CAN 12151/2019

CAN 9132-5/2020

CAN 9137-40/2020

MAGISTRATE THEAKSTON:**Introduction**

1. During their criminal hearing, the two defendants objected to the admission of evidence obtained from two mobile phones and a laptop computer seized by police. I will admit the evidence from the Samsung mobile phone and the laptop computer but exclude the evidence from the Huawei mobile phone. These are my reasons.

Background

2. The defendants, who I will for convenience and clarity refer to as Joshua and Kenan, are identical twin brothers charged with a number of offences relating to the capturing of visual data involving an invasion of privacy and indecency. Joshua is also charged with possession of child exploitation material.
3. The prosecution case is that the brothers owned a home in Canberra and they, by agreement, fitted and used a number of hidden cameras in the bedrooms of that home. Those bedrooms were leased to young women, and the cameras were used to covertly observe and record the private activities of those women in their bedrooms. Additionally the brothers, by agreement, covertly filmed a naked female neighbour and her child through her bathroom window. Further, Joshua covertly filmed women in a public toilet. And finally, Joshua knowingly possessed child exploitation material on his laptop computer.
4. The prosecution relies upon hidden cameras found behind the front plastic covers of two television sets and behind small glass windows on timber clothes hook racks located within the bedrooms, and the associated wiring connecting those cameras to other equipment within the house. It also relies upon the images and videos found on the two mobile phones and the laptop computer, and a WhatsApp conversation located on the Samsung mobile phone, which appears to be a discussion between the defendants about existing and potential cameras and the private activities of the women observed by the defendants.
5. Additionally, in relation to Joshua the prosecution relies upon the image and video files found on his Samsung mobile phone and a micro SD card in relation to the offending involving the public toilet. Further, the prosecution seeks, for the purpose of establishing each offence against Joshua, to rely upon all of the evidence against him to establish that he had a tendency to set up electronic recording devices in locations where people would expect privacy, to possess recordings depicting females in locations where they would expect privacy and he did so with a specific interest in those recordings. The prosecution relies upon the child exploitation material found on Joshua's laptop computer for the charge involving that material.
6. The defendants object to the admission into evidence of the data located on Joshua's Samsung mobile phone on the basis that the phone was not seized at the time of the execution of the search warrant upon him, but instead transported to a different location; then formally moved under s 3K of the *Crimes Act 1914* (Cth); then later examined after the expiration of the 30 day time limit without any extension of time; and only then purportedly seized.
7. The defendants object to the admission into evidence of the data located on Kenan's Huawei phone on the basis that the phone was brought onto the premises which was

the subject of a search warrant by the police after it was removed from him at a location not at or near the premises; was moved under s 3K of the Act; later examined after the expiration of the 30 day time limit without any extension of time; and only then purportedly seized.

8. The defendants object to the admission into evidence of the data located on Joshua's HP laptop computer on the basis that during the execution of the search warrant on the premises, the laptop was moved under s 3K of the Act at the direction of someone who was not the executing officer or a constable assisting; it was examined after the expiration of the 30 day time limit without any extension, and only then purportedly seized.
9. The defendants say the above evidence was therefore illegally or improperly obtained. They also say that the application of the considerations provided by s 138(3) of the *Evidence Act 2011* (ACT) should take into account the following additional contextual circumstances:
 - (a) the informant made an unlawful demand for information to Westpac Bank, purportedly under s 49 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
 - (b) Kenan was initially detained unlawfully;
 - (c) Kenan's Huawei mobile phone was incorrectly recorded on the property seizure record as being a Samsung branded phone, seized from Joshua and seized in the evening;
 - (d) the house warrant was assigned by Detective Leading Senior Constable Madders to another police officer, other than in circumstances where he did not intend to be present at the execution of the warrant;
 - (e) the informant's statements were silent about the failure to comply with the 30 day time limit to examine the moved items, in accordance with s 3K of the *Crimes Act 1914* and the copy of his field notebook provided to the prosecution and defence had a relevant entry redacted;
 - (f) the property seizure and movement records were not completed accurately; and
 - (g) individuals attended the warrant address to assist with the execution of the warrant, who had not been expressly authorised to do so.

Circumstances

10. It is necessary to initially describe the circumstances and make findings about the execution of the search warrants.
11. Joshua was a sworn AFP officer stationed at the Majura Police Complex. Kenan was an electrician and had recently arrived from South Australia. The defendants jointly owned a house in Horneville Street Forde in the ACT. Joshua had lived in the house for some years. Kenan stayed at the house from time to time.
12. On 8 May 2019, Detective Madders sought and received three s 3E *Crimes Act 1914* search warrants for the search of Joshua's person, residence and car. Detective Madders was named as the executing officer. That same day, Detective Madders briefed several police officers and a member from the AFP's Digital Forensics Team about the

execution of those warrants planned for the following day. The Digital Forensics Team member was requested to attend the residential address and assist with the examination of electronic devices.

13. During the briefing, Detective Madders explained that he and another officer would attend the Majura Police Complex to execute the person warrant on Joshua. The others were to form up near the residence in the vicinity of Fennessy Way in Forde, be prepared to execute the warrant on the residence, but await further instructions. Detective Madders would give Joshua the option of being present during the search of his residence, and if he chose to do so, that search would commence once he arrived. Otherwise the search of the residence would commence in Detective Madders' and Joshua's absence.
14. The next morning before travelling to the Majura Police Complex, Detective Madders signed the residence warrant over to Senior Constable Kube. Senior Constable Kube and other police officers formed up on or near Fennessy Way in two police vehicles.
15. Detective Madders and Senior Constable Hardiman attended the Majura Police Complex and spoke to Joshua. Joshua was informed of the warrants, allowed to read the person warrant and cautioned. The conversation was audio recorded. His Samsung mobile phone and work bag were taken from him. Detective Madders endorsed the person search warrant as having been executed. No other paperwork was completed at that time in relation to the items taken from Joshua.
16. Joshua elected to observe the execution of the residence search warrant. He, Detective Madders, Senior Constable Hardiman and another officer travelled in the same car to the residence. His Samsung mobile phone was placed into his sports bag and placed in the police vehicle. (That bag stayed in the vehicle until later that night when Senior Constable Hardiman handed it to Senior Constable Linden).
17. At approximately 1:30 pm Detective Madders stopped briefly at the form up point, spoke to Senior Constable Kube and Senior Constable Kube signed the warrant back over to him. He, Senior Constable Hardiman, Joshua and the other police officer then drove to the residence.
18. At some time shortly thereafter, police in one of the two vehicles waiting at the form up point observed another vehicle being driven by Kenan. At that time Kenan was not a suspect in the matter and as far as the police were concerned, he was only the brother of the person of interest, Joshua. He was observed to be driving his vehicle faster than normal around a corner and towards the residence. The driver of one of the police vehicles, Senior Constable Corey, decided to follow Kenan. She lost sight of the vehicle but found it stationary on Horneville Street. It was located at approximately 70 metres from the defendants' premises. Senior Constable Corey parked the police vehicle on the other side of the road, walked to the door of Kenan's vehicle and observed him to be using his phone. She opened his door and told him to get out of the car and took his Huawei phone from his hand. She recalled that Kenan's name was contained in one of the conditions on the premises search warrant and believed she had the power to take his phone. She left Kenan in the company of other police and walked to the residence with Senior Constable Linden and spoke to Sergeant Crocker, who said 'bring him down to the warrant straightaway'. She returned, told Kenan that a search warrant was being executed at the residence and that he needed to come down to the house. She and other police walked with Kenan to the warrant premises.

19. The search warrant for the residence was executed. Senior Constable Kube arranged for a locksmith to attend for the purpose of unlocking two locked doors. Detective Madders agreed one would be needed. Detective Madders also agreed to an electrician attending to render electrical wiring from the cameras safe for members. An electrician did attend, although it is not clear who arranged that or who escorted the electrician through the residence. There is no suggestion that either the locksmith or the electrician assisted in the discovery, or the taking possession of, the disputed items.
20. Various members of the AFP's Digital Forensics Team also attended the property. Their assistance was requested by Detective Madders through their team leader, Mr Rees. That team leader determined who would attend. The number of members increased throughout the afternoon due to the scale of the job. Their role was to assist with the search by attempting to examine the contents of the electronic items. Most members of the team were not sworn AFP members. Detective Madders and Senior Constable Kube were aware of their presence and assistance at the residence.
21. Shortly after arriving at the premises, Senior Constable Corey handed Kenan's Huawei mobile phone to Senior Constable Linden. Senior Constable Linden then held the phone until the Digital Forensics Team was set up. The phone was then handed to them and later the property officer.
22. The HP laptop was located in plain sight in Joshua's bedroom by Senior Constable Corey, who told Senior Constable Kube about it. Senior Constable Kube later took it downstairs for the Digital Forensics Team to examine. She was told by them that it should be moved under s 3K of the Act. She filled out a property movement form to facilitate that process.
23. The property officer recorded the moving (under s 3K of the Act) of Kenan's Huawei mobile phone and Joshua's HP laptop computer on property movement record forms. However, the former was erroneously described as a 'Black Samsung phone' located 'on Josh Tiffen' at '1942' by 'Senior Constable Linden'.
24. Joshua was arrested at approximately 2:45 pm. He remained at the premises until approximately 8:00 pm when he was transported to the Watch House. Earlier at approximately 6:00 pm, he had requested to leave the premises.
25. Kenan remained at the residence with police until he indicated he wished to leave, at which time, approximately 2:15 pm, he was spoken to by police outside and then arrested. He then remained at the premises until approximately 5:50 pm when he was taken to the Watch House.
26. Later in the evening, Senior Constable Hardiman handed Senior Constable Linden Joshua's sports bag and requested she seize the Samsung mobile phone located within. That seizure was erroneously recorded as occurring at the residence at 2012 hours, as opposed to the Majura Police Complex earlier that day.
27. The seized and moved items were transported to and lodged with the Majura Forensic Operation Centre. On 7 June 2019, Senior Constable Smyth, of the Digital Forensics Team, commenced examining items obtained from the search. He informed his team leader, Mr Rees, that the deadline to examine the items was due to expire possibly the next day and offered to work back late to examine them before the deadline. That offer was declined. On 12 June, Senior Constable Smyth examined Kenan's moved Huawei phone. The following morning, he examined Joshua's moved laptop computer. That

afternoon Detective Madders attended the Majura Forensic Operation Centre and communicated to Senior Constable Smyth his decision that both the Huawei mobile phone and the HP laptop computer were to be formally seized.

28. On 12 June 2019, Senior Constable Smyth sent an email to Detective Madders noting that neither item had been examined and requested confirmation that an extension of time to examine the items had been sought. Later that same day and before receiving a response to his earlier email, Senior Constable Smyth sent a further email to Detective Madders indicating that the Huawei mobile phone had been preliminarily reviewed and there were photographs of interest, that he intended to review the HP laptop computer the following morning, and that he was processing the items on the assumption that an extension of time had been obtained. Detective Madders responded very late the following morning at 11:55 am indicating that no extension of time had been sought and expressing the belief that all moved items can be seized due to how the investigation had progressed. Incidentally, all moved items would have included other items of little relevance. At that stage he had not viewed any of the contents from the items. When giving evidence, Detective Madders separately claimed that he had decided to seize the Huawei mobile phone earlier on 18 May after he spoke to Kenan at the Alexander Maconochie Centre. No notes, records or actions were made or taken. In those circumstances and in light of the whole of Detective Madders' evidence, I reject that claim. I also reject that Detective Madders had any basis to form the requisite state of mind to seize the two items before he viewed their contents. I find that Detective Madders only decided to seize the Huawei mobile phone and HP laptop computer after he viewed their contents at the Majura Forensic Operations Centre on 13 June 2019.

Samsung mobile phone

29. The defendants argue that Joshua's Samsung phone was not seized from Joshua at the Majura Police Centre, but simply taken from him and moved to the warrant residence. As it was not 'found' at the warrant residence it could not then be lawfully seized or moved by police under the search warrant for that residence. In support of that argument they rely upon *Puglisi & Anor v Australian Fisheries Management Authority & Ors* [1997] FCA 846; (1997) 148 ALR 393. In that case Hill J held that as the police had acquired possession of the items under an invalid warrant, and then subsequently obtained a valid warrant for the defendant's home, they could not lawfully seize the items by transporting the items to the home and then retain the items at that home by the notional execution of the second warrant. That was because the items were not 'found' at the home as required under the Act. That case can easily be distinguished from the present circumstances. Here there was a valid warrant that legalised the seizure of the phone in the first place.
30. The term 'seize' is not defined within the *Crimes Act 1914*, but has been held by the Court in *Hart v Commissioner of Australian Federal Police* [2002] FCAFC 392; (2002) 124 FLR 384, to have the following characteristics:
- (a) it is a question of fact;
 - (b) may or may not be lawful;
 - (c) is the forcible taking of possession of things, i.e. once officers took items the seizure had occurred;

- (d) it does not occur if items are instead 'moved' under s 3K of the Act, without the executing officer having formed any belief as to their contents, and seizure in that case would not occur until after the examination and a decision by the relevant officer to affect their seizure.
31. In the present case it is clear that Detective Madders and the other police officers were executing the search warrant on Joshua at the Majura Police Complex. They demanded and took his mobile phone. They did not return that phone to him. There was no suggestion at the time or afterwards that the phone was moved under s 3K. I find, as a matter of fact that phone was seized by police at that time.
32. No issue was taken by the defendants about the validity of the warrant to search Joshua. That warrant authorised the seizure of that phone. Detective Madders gave evidence that at the time he held the requisite belief. It is true that the usual property seizure records were not completed at the time, and that a property seizure record was later completed that erroneously described where and when that phone was seized. Those two facts do not of themselves invalidate the lawfulness of the seizure. At most they muddle the evidence about what occurred and certainly do not reflect the AFP's usual practice. It could not be described as best practice.
33. I note that the above conclusion is consistent with the ruling in *R v Siang Pin Foo (No 2)* [1998] NTSC 50, where Thomas J opined:
- Police failed to comply with s 3Q of the Crimes Act which provides that police should provide a receipt for all things seized under the warrant. However, the failure to provide such receipt does not mean the evidence was illegally or improperly obtained, or that the failure will be productive of unfairness to the accused at his trial.*
34. The defendants also argue that there was impropriety about what police told Joshua during the execution of the search warrant on his person at the police complex. The submission, as I understand it, is that the police suggested that his home was about to be searched and that therefore there was a degree of urgency and they encouraged him to accompany them to the residence. It was not clear to me how this might impact upon the seizure of the mobile phone. In any event, the conversation was recorded and while the language was not always precise, the message conveyed by police to Joshua, who at the time was also a sworn police officer with knowledge and training about the process, was that he could, if he chose to do so, be present at the execution of the search warrant at his home. That conversation evidences police providing Joshua with a genuine choice to attend or not attend the residence. That offer is consistent with the right provided by s 3P of the Act for an occupant, present at the premises, to observe the execution of a search warrant on the premises. The distinction between what police said and what was planned by them is of little significance. I did not perceive anything illegal or improper about that conversation.
35. Ultimately, I am not convinced that Joshua's mobile phone was seized illegally or improperly. That objection must fail, and the data located on that phone will be admitted into evidence.

Huawei mobile phone

36. Kenan's Huawei mobile phone was taken by Senior Constable Corey, from Kenan's hand as Kenan stepped out of his car as directed by Senior Constable Corey. It is clear from the totality of the evidence that the phone was taken in circumstances where Kenan was not given the option about whether or not to hand the phone over. His car door was

opened by a police officer, the phone taken from his hand and retained by police. He was told a search warrant was about to be executed. Kenan had been using his phone while parked on the street of the residence, but at the other end of the street at a distance of approximately 70 metres. Kenan's name was included as a particular in a condition on the warrant in relation to what types of items could be seized. He himself was not the subject of a warrant. Nor was he a suspect at that time. Senior Constable Corey denied Kenan had been stopped for a traffic reason. During her evidence, she expressed the belief that she had power to take the phone under the search warrant for the residence. Kenan was subsequently escorted to the warrant premises. Again it is clear from the totality of the evidence that Kenan had no choice about being escorted by police to the warrant premises. He was effectively arrested at that time and was, at the very least, entitled to the protections of a 'protected suspect' under Part 1C of the *Crimes Act 1914*.

37. It is clear from the evidence that Kenan's Huawei mobile phone was forcibly taken from him and therefore that action amounted to seizing the item, save if the police intended to instead exercise their option to move the phone under s 3K of the Act. Section 3F(1)(f) of the Act provides:

(1) A warrant that is in force in relation to premises authorises the executing officer or a constable assisting:

...

(f) if the warrant so allows – to conduct an ordinary search or a frisk search of a person at or near the premises if the executing officer or a constable assisting suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession. (emphasis added)

38. The question therefore arises, was Kenan 'at or near the premises' when his phone was taken from him? In my view this must be a question of fact. The expression must be interpreted in the context of the power purportedly being exercised and the physical environment which was the subject of the warrant. That interpretation must also be informed by the rule of strictness. For example, in *George v Rockett* [1990] HCA 26; (1990) 170 CLR 104 at [4] and [5] the High Court observed:

4. ... A search warrant thus authorizes an invasion of premises without the consent of persons in lawful possession or occupation thereof. The validity of such a warrant is necessarily dependent upon the fulfilment of the conditions governing its issue. In prescribing conditions governing the issue of search warrants, the legislature has sought to balance the need for an effective criminal justice system against the need to protect the individual from arbitrary invasions of his privacy and property. Search warrants facilitate the gathering of evidence against, and the apprehension and conviction of, those who have broken the criminal law. In enacting s.679, the legislature has given primacy to the public interest in the effective administration of criminal justice over the private right of the individual to enjoy his privacy and property. The common law has long been jealous of the prima facie immunity from seizure of papers and possessions: ...

5. State and Commonwealth statutes have made many exceptions to the common law position, and s.679 is a far-reaching one. Nevertheless, in construing and applying such statutes, it needs to be kept in mind that they authorize the invasion of interests which the common law has always valued highly and which, through the writ of trespass, it went to great lengths to protect. Against that background, the enactment of conditions which must be fulfilled before a search warrant can be lawfully issued and executed is to be seen as a reflection of the legislature's concern to give a measure of protection to these interests. To insist on strict compliance with the statutory conditions governing the issue of search warrants is simply to give effect to the purpose of the legislation. (emphasis added)

39. The relevant power relates to conducting an ordinary or frisk search of a person. The focus of the power is still the premises, and not any individual, but allows an extension of the power beyond the premises and to a person at, or near the premises. That extension must be understood to be modest in scale. To do otherwise would be counter to the rule of strictness and potentially allow the subject premises to be merely a location from which a much broader and more intrusive power to search individuals radiates out from that location.
40. The premises in this case were residential premises in an ordinary suburb. This should be distinguished, for example, from a rural property. Here, houses were lined up in the usual way on both sides of the urban street. Numerous homes, containing various private spaces, were located proximate to the subject residence. Individuals could be expected to be moving in and out of and within those private spaces, as well as transiting along the suburban street by foot, vehicle and otherwise. In such circumstances my view is that the expression 'near the premises' would equate to a small number of metres, rather than the next order of magnitude, that is tens of metres. An alternative view would simply cast the net too wide and too far. A different scale may be appropriate in different circumstances, for example in a rural or industrial setting.
41. In the above circumstances, the premises warrant did not authorise the taking of the phone from Kenan. No other power was identified. Accordingly, I find that police unlawfully seized Kenan's Huawei mobile phone at his car.
42. Kenan's phone was later purportedly moved under s 3K of the Act. For the same reasons described below in relation to the HP laptop computer, I find that phone was intentionally retained beyond the 30 day time limit and the informant, Detective Madders, recklessly allowed it to be examined after the expiration of that time limit. Accordingly, the possession and examination of the phone after the expiration of the time limit was also unlawful.

HP laptop computer

43. The defendants argue that the decision to move Joshua's HP laptop computer, under s 3K of the Act, was unlawful, as it was possibly made by an unsworn Digital Forensics Team member. The evidence was unclear about who made the decision to exercise the power under that provision. The evidence is consistent with there being a lack of structural decision-making arrangements on the day, with some AFP officers confusing what could only ever be a recommendation by the Digital Forensics Team with a decision or a direction. In any event, Senior Constable Kube, as the executing officer, certified the property movement records for the laptop computer and effectively made or, at the very least, ratified the decision to move the item. I find the laptop computer was not moved unlawfully.
44. The subsequent retention and examination of the HP laptop computer (and the Huawei mobile phone) are of concern. Section 3K(3A) imposes a time limit for retention and any associated examination. In the case of a computer or data storage device it is 'for no longer than' 30 days. (Evidence was heard from Senior Constable Smyth that a smart phone is a computer because it has data storage, a processor and is able to connect to the internet. I have no doubt that a modern smart phone is both a data storage device and a computer).
45. The items were taken on 9 May 2019 and no extension of time was sought or granted. Applying s 36(1) of the *Acts Interpretation Act 1901*, the period 'for no longer than' 30

days would end on Saturday 8 June 2019. In 2019, Monday 10 June was the Queen's Birthday public holiday. Applying s 36(2) of the Acts Interpretation Act, the period would therefore end on Tuesday 11 June 2019.

46. As described above, the HP laptop computer (and Huawei mobile phone) were not examined before 12 June. On that day the mobile phone was examined, and images of interest located. The laptop computer was examined the following day, 13 June, and again content of interest was located. Detective Madders attended the Digital Forensic workplace, viewed the content of interest and decided to seize both items on 13 June. Accordingly, the two items were unlawfully retained and examined contrary to the time limitation imposed by s 3K(3A).

Other incidental issues

47. The defendants argue that there are a number of other features of the investigation that should inform the s 138 balancing exercise. They are addressed here.

Request for information under the Anti-Money Laundering Counter-Terrorism Financing Act 2006

48. Reporting entities routinely provide information to AUSTRAC about international financial transactions. Detective Madders was authorised to receive and use that information for the purpose of his AFP functions. In this case he accessed information from AUSTRAC, provided by PayPal Australia Ltd about Joshua's overseas purchase of miniature cameras. As part of his investigation, he then needed to know whether Kenan was in Canberra at a particular time. For that reason, he subsequently sent a demand to Westpac Bank, under s 49 of the *Anti-Money Laundering Counter-Terrorism Financing Act 2006*, hoping to discover domestic transactions by Kenan, which would indicate Kenan's location at certain times.
49. The defendants argued that Detective Madders' demand of Westpac Bank was a misuse of that provision. They say when making the request, Detective Madders needed to be investigating an offence falling within ss 41, 43 or 45 of that Act. No authority about that point was brought to my attention.
50. Those three sections describe three separate circumstances when reporting entities must provide information to AUSTRAC. They do not, of themselves, create or describe offences. Relevant for our purposes, is s 45 that relates to international funds transfer instructions. It would have been that provision that triggered PayPal's report to AUSTRAC of Joshua's overseas purchases of miniature cameras. Section 49 then provides a facility for Detective Madders to demand from the same reporting entity or another person such further information as specifies in a notice, if he is carrying out an investigation arising from, or relating to the matters mentioned in the information provided by the reporting entity. Section 49 does not expressly limit the ambit of the further information sought, although a reading of the entire provision would suggest the further information may need to be relevant to the same investigation.
51. In this case there is no suggestion that the request extended beyond the same investigation, notwithstanding the information sought related to a different person, that is Kenan as opposed to Joshua. In those circumstances and on the evidence before me, I am not persuaded that Detective Madders' demand of Westpac Bank was unlawful or improper.

Assignments of the premises search warrant

52. The defendants argue that the initial assignment of the premises search warrant by Detective Madders to Senior Constable Kube, was not valid because Detective Madders could not be said to not intend to be present at the execution of the warrant, as required by s 3C of the *Crimes Act 1914*. The defendants contend that Detective Madders always intended to be present at the execution of the premises warrant and that a strict and literal interpretation should be applied to the provision.
53. As described above, Detective Madders was uncertain about whether or not he would be present to execute the warrant as he would be initially executing a person warrant on Joshua at the Majura Police Complex, and would only attend the residence if Joshua elected to be present for the execution of the warrant on the residence. I do not find that Detective Madders always intended to be present. At best, any intention he had to do so was contingent upon an election by Joshua to attend the residence.
54. When the definition of 'executing officer' at s 3C is read as a whole, it is clear that the role of executing officer could be transferred from one constable to another when the former does not intend to be present at the execution of the warrant. The provision provides for there to be more than one transfer, and that is consistent with the legislator anticipating that circumstances may change more than once, including officers may need to come and go from the premises. I am satisfied that when Detective Madders wrote Senior Constable Kube's name on the warrant the first time, he could not be said to intend to be at the warrant premises at the commencement of the execution of the premises warrant. This is because he simply did not know at that time whether he would be still executing the search warrant on Joshua, transporting Joshua to the regional Watch House or available to attend the residence with Joshua. Accordingly, I find that at that time, he did not intend to be present at the execution of the warrant, and that the assignment of the warrant to Senior Constable Kube was lawful.
55. The argument that subsequent assignments were consequently invalid therefore falls away.
56. If I am wrong about the initial assignment then, as that assignment was invalid, Detective Madders may have remained the executing officer and could have therefore lawfully executed the warrant on the premises when he arrived at the premises. He could also later assign the warrant to Senior Constable Kube when he was leaving the premises. However, I note *R v Alqudsi* [2015] NSWSC 1615 where Adamson J at [57] to [60] appears to have decided that the unlawful marking of the warrant invalidated the warrant. In that case the marking was made by someone other than the executing officer, and that decision may be distinguished from this case on that basis. Ultimately in the circumstances of this case, the validity of the initial assignment may make no difference to the lawfulness of Detective Madders initially acting as the executing officer for the premises search warrant or his subsequent assignment of the warrant to Senior Constable Kube.

Attendance of locksmith, electrician and Digital Forensics Team members at the warrant premises

57. The defendants argued that Detective Madders did not expressly authorised the locksmith, electrician or Digital Forensics Team members who attended the premises. It is true that there was no documentation evidencing any such authorisation and the name

of the locksmith is now not known to attending police, and it was unclear who escorted the electrician within the premises.

58. Considering the invasive nature of premises search warrants and the need for accountability, it would be best for all persons attending the premises for the purpose of assisting with a search to be formally recorded as doing so, including the nature of their authorised assistance. However, while s 3C requires a person who is not a constable to be authorised by the executing officer to assist in executing the warrant, it does not require that authorisation to be done expressly, for example in writing or by any particular form of words. In *Adler v Gardiner* [2002] FCA 1141; (2002) 43 ACSR 24 at [18], Hely J found that the executing officer's knowledge and assent of the person rendering assistance was sufficient to establish the requisite authority.
59. In the instant case, Detective Madders was informed about the need for a locksmith and electrician and agreed to their attendance.
60. In relation to the Digital Forensics Team members, Detective Madders initially requested the team leader provide team members for the search, a team member attended the brief the day before the execution of the warrant and was requested by him to attend and assist, and Detective Madders and Senior Constable Kube were at the premises with those members during the execution of the warrant. In those circumstances I am satisfied that each of those persons assisting the executing officer, who were not a constable, were authorised by the relevant executing officer to assist.

Section 3LA order

61. The defendants argued that Joshua's Samsung mobile phone and Kenan's Huawei mobile phone were not a data storage device and therefore the s 3LA *Crimes Act 1914* orders were improperly obtained. This argument is made without any reference to the material put before the magistrates who issued the two s 3LA orders. In the absence of that evidence, I am not able to draw any conclusion about whether or not the orders were issued improperly.
62. The defendants further argue that such orders only apply to items moved under s 3K or seized under Division 2 of the Act. They go on to suggest neither item was properly moved or seized. I have already ruled that the Samsung mobile phone was lawfully and properly seized. In relation to the Huawei mobile phone, I have found it was unlawfully seized and agree that in such circumstances the use of the information acquired by the s 3LA order would have been improper at the time it was examined.

Delay in putting the defendants before a court

63. Following their arrests, after indicating that they no longer wished to remain at the premises, and as described above at [24] and [25], Joshua and Kenan remained at the premises for approximately 2:00 and 2:30 hours respectively. That delay was not explained.
64. Section 18 of the *Human Rights Act 2004* requires anyone who is arrested or detained on a criminal charge must be promptly brought before a judge or a magistrate. Section 17 of the *Bail Act 1992* requires anyone taken into custody, charged and refused bail at the Watch House to be brought before a court as soon as practicable. In this case Joshua and Kenan indicated that they wished to leave the premises at approximately 8:00 pm and 2:15 pm respectively. In the former case it would have been too late to put

Joshua before a magistrate that day. The court file records his appearance before a magistrate the following day. In the latter case, there may have been time to put Kenan before a magistrate that same day. The delay prevented that occurring. However, it wasn't clear from the evidence or the court file if Kenan appeared before a magistrate the following day or if he was released earlier.

The section 138 balancing exercise

65. As Kenan's Huawei mobile phone was unlawfully seized and Joshua's HP laptop computer was unlawfully retained and examined, s 138 of the *Evidence Act 2011* (ACT) requires those items, and any evidence obtained as a consequence of examining those items, to not be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way which the evidence was obtained. The onus is on the prosecution. That provision also provides a list of considerations for the purpose of the balancing exercise. I will address those considerations sequentially.

The probative value of the evidence

66. It is conceded by the defendants that the evidence on Kenan's Huawei mobile phone and Joshua's HP laptop are of high probative value. To be precise the following files were located on the mobile phone:
- (a) 46 video files depicting the bedroom used by the first complainant, including images of the complainant moving about the room, getting dressed and being naked;
 - (b) 95 video files depicting the bedroom used by the second complainant, including images of that complainant moving about the room, getting dressed and being naked; and
 - (c) 41 video files depicting the bedroom used by the third complainant, including images of that complainant moving about the room, getting dressed, lying on the bed with a male and being naked.
67. The following files were located on the laptop computer:
- (a) 13 video files depicting the bedroom used by the first complainant, including images of that complainant moving about the room, getting dressed, being naked and using a tampon.
 - (b) 27 video files depicting the bedroom used by the second complainant, including images of that complainant moving about the room, getting dressed and being naked, (15 of those files are the same as on the Huawei mobile phone); and
 - (c) 6 video files depicting the bathroom of the defendants' neighbours' house, through the partially open bathroom window, including depicting the fourth complainant and her young child naked as they were drying themselves.
68. The above evidence is clearly relevant and compelling in relation to each of the charges against each defendant involving the capturing of visual data involving the invasion of privacy and indecency. The setting and content of the videos strongly support a number of the elements of the offences. Additionally, the location where those videos were stored is of significance.

The importance of the evidence in the proceedings

69. The above video files are important. The prosecution case in relation to the first to fourth complainants appears to rely principally upon those video files, the existence of hidden cameras within the bedrooms and the WhatsApp messages between the defendants. There is also other evidence of relevance. The following material was located on Joshua's Samsung mobile phone:
- (a) 2 video files depicting the bedroom used by the third complainant, including images of that complainant moving about the room, getting dressed and being naked;
 - (b) single image depicting the third complainant standing semi-naked in her bedroom; and
 - (c) 5 images depicting the defendants' neighbours' bathroom window, including two depicting the fourth complainant drying herself, with one of those images depicting her partially naked.
70. The exclusion of all the evidence from both the Huawei mobile phone and the HP laptop computer would drastically weaken the prosecution case against both defendants involving the first, second and fourth complainants. That could not be said about the prosecution case involving the third complainant, due to the videos depicting her on the Samsung mobile phone.
71. The exclusion only of the evidence from the HP laptop computer would only drastically weaken the prosecution case in relation to the fourth complainant. The exclusion only of the evidence from the Huawei mobile phone would not drastically weaken the prosecution case involving the first to fourth complainants.
72. Further, the exclusion of the evidence from the HP laptop computer would be decisive in relation to the child exploitation charge against Joshua. The exclusion of the evidence from both devices would be of limited significance in relation to the charge of capturing images in a public toilet against Joshua.

The nature of the offence and subject matter of the proceeding

73. The possess child exploitation material and capturing of visual data offences carry maximum penalties of 7 years and 2 years imprisonment respectively. The former may be dealt with summarily in this Court only if Joshua consents. The latter, while a summary offence, is an offence that involves, in this case, a gross breach of trust and an outrageous invasion of privacy. While these offences are clearly serious, they are not the most serious offences to come before the courts.

The gravity of the impropriety or contravention and whether it was deliberate or reckless

74. I accept that the unlawful nature of the seizure of the Huawei mobile was not deliberate by Senior Constable Kube. I accept her evidence that she believed that she may have had the power to seize the phone in those circumstances. However, that mistaken belief reflects poorly on her understanding of the powers flowing from the premises warrant.
75. In relation to Detective Madders' management of the time limit on the moved items, as indicated above, I do not accept that on 18 May 2019 he made the decision to seize the Huawei mobile phone. I find that on 12 June he was put on notice that neither that phone nor the HP laptop computer had been examined and the period to retain and examine those items may have expired. I find that the period did expire on 11 June. Detective

Madders was informed later on 12 June by email that the examination of the mobile phone had subsequently occurred on the assumption that there was an extension of time and that the laptop computer would be examined the following morning. Detective Madders only responded to that email very late the following morning at a time when the examination of the laptop would have likely already occurred. Detective Madders conceded in his evidence that he was aware of the option to apply for an extension of time. He also indicated he did not seek any advice in that regard.

76. Detective Madders claimed that he had been told that the examinations had occurred all within time. That claim is inconsistent with the evidence of members of the Digital Forensics Team and the relevant emails and other records. I do not accept his evidence in that regard.
77. The prosecution brief compiled by Detective Madders made no reference to the examinations occurring out of time. Detective Madders' statements made no mention of those circumstances. No statements were obtained from other witnesses who could speak to that issue. Further, the copy of Detective Madders' field notebook provided by him as part of the prosecution brief contained an entry relevant to this issue, which was redacted. That entry was dated 14 June 2019 and read:

1340 FOC, MAJURA
NO NEED TO SIGN BIC MOVED ITEMS
MAY CHANGE STATUS ON PROMIS
@ SEIZED @ BELIEF CONTAIN
EVIDENTIAL MATERIAL

78. It is clear from the above, that the 30 day time period had expired days before the items were examined by Digital Forensics, inspected by Detective Madders and subsequently seized. Additionally, the absence of any information within the prosecution brief disclosing that breach is suspicious. The redaction of the above relevant field notebook entry and Detective Madders' initial denial about ever being told the items were examined out of time leads me to find that Detective Madders deliberately attempted to cover up that breach.

Whether the impropriety or contravention was contrary to or inconsistent with a right of a person recognised by the International Covenant on Civil and Political Rights

79. The unlawful seizure of the Huawei mobile phone and the unlawful retention and examination of the HP laptop computer contravened article 17 of the *International Covenant on Civil and Political Rights*, which protects individuals from unlawful or arbitrary interference with privacy and correspondence. That right is echoed at s 12(a) of the *Human Rights Act 2004* (ACT).

Whether any other proceeding has been or is likely to be taken in relation to the impropriety or contravention

80. There was no evidence put before me about any other proceeding, disciplinary action or remedial training arising out of the above illegalities having occurred or being planned.

The difficulty of obtaining the evidence without impropriety or contravention of an Australian Law

81. At the time Kenan's Huawei mobile phone was taken, it appears there may have been no basis to obtain a search warrant to seize his phone. He was not a person of interest.

There is a chance he may have voluntarily attended or approached the house, and in doing so become subject to the power of search under the premises warrant.

82. The HP laptop computer was simply examined late. It was open to Detective Madders to monitor the impending deadline, request a timely examination by the Digital Forensics Team and, if necessary, request an extension of time. If he had done so, he was likely to have been granted that extension.

Consideration

83. I do not accept the defendants' overall characterisation of the investigation. They claim a multitude of illegalities and deceptions. While the investigation was plagued with a series of errors and mistakes, including poor documentation and unclear coordination, the only illegality involved the unlawful seizure of the Huawei mobile phone, the unlawful retention and examination of the HP laptop computer and possibly the unlawful detention of Kenan. I have accepted the error in relation to the mobile phone was genuine. Unfortunately, the actions in relation to the laptop computer appear to have been at least reckless and subsequently deliberately covered up. That is particularly unfortunate, as the issue could have easily been avoided by simple administration and, if necessary, an extension of time. There is a public interest in not sanctioning such illegalities. To do so potentially encourages future breaches, which in turn could undermine the confidence the community has in the professionalism and discipline of the AFP. That would be a significant loss in the longer term and could potentially affect future prosecutions. See for example *ASIC v Sigalla (No 2)* [2010] NSWSC 792; (2010) 240 FLR 327 at [128].
84. Against that I must weigh the public interest in admitting relevant and compelling evidence in support of the prosecution of these defendants. As described above, the exclusion of the evidence found on the laptop computer, in particular, would have a significant impact on the prosecution case.
85. While I have found the unlawful nature of the Huawei mobile phone seizure was inadvertent, that seizure from a person on the street without any basis other than he was the brother of a person of interest, represents a significant departure from the protections afforded to individuals in our society. His phone was taken from him and he was effectively detained without an adequate basis. In contrast, the delayed examination of the HP laptop computer, although unlawful, represents a much smaller departure of an expected standard. That is because the laptop computer was already in the possession of the police, and the lawful examination of that laptop could have occurred days earlier or with an extension of time. This departure could not be said to affect an individual's happiness by compromising their quiet enjoyment of a place or involve any detention or use of force.
86. Ultimately, I have determined that in the case of Kenan's Huawei mobile phone, the desirability of admitting the evidence does not outweigh the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained. The evidence from that mobile phone will not be admitted.
87. Conversely in relation to Joshua's HP laptop computer I have determined that the desirability of admitting the evidence does outweigh the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained. The evidence from the HP laptop computer will be admitted.

88. As indicated above at [35], the evidence from Joshua's Samsung mobile phone will also be admitted.

I certify that the preceding eighty-eight [88] numbered paragraphs are a true copy of the Reasons for decision of his Honour Magistrate Theakston

Associate: Neerja Thirunavukarasu

Date: 6 April 2021

Timeline of Meetings with AFP where HIGGINS investigation was discussed

2 February 2021 – Higgins interview with The Project

15 February 2021 – Higgins interview with The Project aired

24 February 2021 – Higgins EIC 1 (Madders / Frizzell)

17 March 2021 – SACAT/DPP Monthly Meeting

The following people were present:

1. Skye Jerome
2. Andrew Chatterton
3. Det Sgt McDevit
4. Det Sgt Saunders

During a SACAT/DPP monthly meeting where various issues are routinely discussed, Det Sgt McDevit and Det Sgt Saunders spoke about the investigation into the allegation made by Miss HIGGINS. AFP expressed some frustration with the limited communication with Miss HIGGINS and gave examples of HIGGINS not showing up for appointments and refusing to hand over certain pieces of evidence. AFP also expressed a concern with her credibility.

We were also advised that Det MADDERS had conducted the EICI. I expressed some concern with MADDERS being involved in this investigation given my experience with him as the informant for the matter of Madders v Tiffen & Tiffen.

DPP had not been put on notice that the HIGGINS matter would be discussed at this meeting. It was later confirmed that the information provided by AFP at this meeting was not formal.

31 March 2021 – Briefing at Winchester

The following people attended the briefing on 31 March 2021:

- | | |
|-----------------------------|----------------------------|
| 1. Shane Drumgold SC | 5. Det Sgt Jason McDevit |
| 2. Skye Jerome | 6. Det Sgt Gareth Saunders |
| 3. Andrew Chatterton | 7. Det Trent Madders |
| 4. Inspector Marcus Boorman | 8. C Emma Frizzel |

The briefing was mainly an oral account from the police officers explaining the timeline of the offence, reports made and the investigation to date as at 31 March 2021. We were shown the CCTV footage of Miss HIGGINS and the suspect [REDACTED] on the night of the incident. AFP expressed some concern with Miss HIGGINS' credibility. However, Shane Drumgold SC stated that putting aside the strong media interest and Miss HIGGINS' participation with the media, overall, this case, *(based on how it had been described in the briefing)*, was unremarkable in regards to the strength of the evidence overall. The DPP did not hold the view that Miss HIGGINS had been so discredited that she could not be believed beyond a reasonable doubt. At the completion of the police briefing, I recall that the DPP members were in agreement and stated that there was sufficient evidence to charge the suspect with one count of sexual intercourse without consent pursuant to s54 *Crimes Act 1900* (ACT). AFP indicated that there were still outstanding lines of inquiries and were yet to interview the suspect.

06 April 2021

Magistrate Theakston published a decision in the matter of *Madders v Tiffen and Tiffen* (No 1) [2021] ACTMC 4. One of the issues in the voir dire was the admissibility of electronic devices which had been examined out of time pursuant to s3K *Crimes Act* 1914 (Cth). Magistrate Theakston found at paragraph 78, that Det Madders had deliberately attempted to cover up the breach (late examination of moved electronic items).

07 April 2021

Shane Drumgold SC and Skye Jerome telephoned Det Sgt McDevit about the Tiffen Decision. Shane Drumgold SC stated that it was entirely a matter for the AFP whether Det Madders remained involved in the Higgins investigation.

12 April 2021

Superintendent Scott Muller attended DPP office and spoke with Shane Drumgold SC and Skye Jerome. Again, Shane Drumgold SC stated that it was entirely a matter for the AFP whether Det Madders remained involved in the Higgins investigation, after the published Tiffen's decision. Shane Drumgold SC, reiterated that his understanding of the brief so far was that there was sufficient evidence to charge the suspect.

19 April 2021 – Lehrmann TROI (Boorman / Frizzell)**28 April 2021**

Attended the launch of the ACT Sexual Assault Prevention and Response program, and spoke to Inspector Marcus Boorman who advised that he had interviewed the suspect and made the following points:

- Suspect had denied sex had occurred
- Said he and Higgins went into office to work
- He went to his desk and she to the lounge in the Ministers office
- He completed his work and left.

20 May 2021

During a monthly SACAT/DPP Meeting, Det Sgt McDevit, informally advised Andrew and myself that AFP intended to interview the suspect again. Det Sgt McDevit stated that they wanted to speak with the suspect about in/consistencies but could not or did not explain to us the reason/s for the second interview. Det Sgt McDevit also stated that Heidi Yates, Victims of Crime Commissioner, was now the formal spokesperson for Miss HIGGINS. Miss HIGGINS has still not provided to AFP her mobile phone or the photographs of the bruise.

Andrew Chatterton contacted Inspector Boorman and asked him to contact the Director about the progress of the investigation.

26 May 2021 – Higgins EIC 2 (Madders / Frizzell)**1 June 2021 – Briefing at DPP**

The following people attended the briefing on 1 June 2021:

- Shane Drumgold SC
- Skye Jerome
- Superintendent Scott Muller
- Inspector Marcus Boorman

Advised there was a second EIC with Higgins.

Boorman and Muller ran through a series of perceived weaknesses most succinctly:

- a) Higgins stated in first EIC that she went to a Dr for morning after pill, and after investigations could not reveal a Dr, in second EIC Higgins stated this was a lie.
- b) Higgins provided phone, and there was a message on it to Dillaway that she was erasing phone to give it to the police.
- c) Concerning message that Higgins had already made \$50k from complaint.
- d) Concerning message one month before event, referencing Barnaby Joyce sex scandal saying wouldn't it be cool to have another sex scandal.
- e) [REDACTED]

I expressed that these things are not automatically inconsistent with an honest and believable complaint, that it was about context, and we would need to see the entire brief for context.

I have concerns police are attempting to persuade us to advise them not to lay charges, and I will go through the brief in some detail myself.

I requested that we be provided with the entire phone content, rather than messages selected by investigators.

I ran through the decisions and tests for charging:

- Section 26 Magistrates Court – can lay an information where person suspected of having committed an offence
- Section 2.2 Collaborative Agreement between AFP / DPP can seek advice from DPP on our view on the brief of evidence and whether we think there are reasonable prospects of conviction (see s2.6 Prosecution Policy)

Advised brief of evidence should be with us in coming two weeks.

Reflections:

A number of aspects of this matter cause me concern.

- [REDACTED]
 - This is incorrect as section 26 Magistrates Court facilitates that AFP can lay an information where there is a person suspected of having committed an offence.
- **Media on Tuesday 25 May states**
 - **A brief of evidence is sent to prosecutors once investigators consider enough evidence has been gathered to substantiate a criminal charge.**
 - This is contrary to the other report that the ACT DPP will decide whether charges are laid.
- **In at least two meetings (17/3/21 & 1/6/21) I have been left with the strong impression that both Inspector Boorman and Superintendent Muller are trying to persuade me that there are no reasonable prospects of conviction, then at the second meeting, the complainant was too vulnerable to pursue prosecution.**

- **Considering the totality of my exchanges combined with the media, I am concerned**
 - **Police do not want the matter to result in charges**
 - **Police want to construct a scenario where that decision is made by the ACT DPP rather than the AFP**
 - **This is contributed by the media of 25 May that they only forward a brief of evidence where the AFP consider “*enough evidence has been gathered to substantiate a criminal charge*”**

7 June 2021 – call from Superintendent Scott Muller

Received call from Scott Moller seeking further guidance on charging powers.

I again ran through the decisions and tests for charging:

- Section 26 Magistrates Court – can lay an information where person suspected of having committed an offence
- Section 2.2 Collaborative Agreement between AFP / DPP can seek advice from DPP on our view on the brief of evidence and whether we think there are reasonable prospects of conviction (see s2.6 Prosecution Policy)

21 June 2021

Brief of evidence served on us.

Email same day asking for clarity and ETA on remaining items.

28 June 2021

Sent minute advising reasonable prospect of conviction

1/7/21

Email from Moller asking not to go to media – reply same day advising that I would answer questions honestly and transparently.

2/7/21

Email from Chew asking not to go to media – nil reply

7/7/21

Received media enquiry about progress of advice.

Emailed Chew/Moller advising:

As anticipated, I have received an enquiry from the ABC asking “*have you made an assessment in the Brittany Higgins case and passed it back to the police? Or can you tell me if the prosecution will proceed or not*”

As outlined, I propose responding:

In relation to this matter, the DPP provided an advice to the AFP on Monday 28 June 2021. The content of that advice is subject to Legal Professional Privilege, and cannot be disclosed by the DPP.

I will delay my response until tomorrow morning to allow you to prepare as you see fit.

8/7/21

Emailed response to media enquiries.

13/7/21

Had a meeting with DCPO Hal [REDACTED] about another issues.

I raised concerns with the timing and:

- a) The 2nd EIC contaminated the complainants evidence
- b) The delay made me fear the matter was being over-investigated

He undertook to raise it with Superintendent Mick Chew and get back to me.

28/7/21

- AFP Commissioner **Reece Kershaw** – Question at National Press Club
 - Q: *There is another issue that has been in the news, Commissioner, and that is the allegations that emerged five months ago, the allegation of rape in Parliament House that Brittany Higgins alleged that has been many months ago. It took her some time before she went to the AFP and made a further statement. Can you offer any indication on the timing of any decision on whether to lay charges in that case?*
 - Kershaw: *"I have been on the public record on this. It is a matter with the ACT DPP right now so it wouldn't be appropriate for me to comment any further."*
- Minister for Home Affairs **Karen Andrews** – interview with Brisbane Radio 4BC reported Canberra Times 29/7/21.
 - *"Well my understanding is that there has been a brief that has been put through to the DPP. So it is being looked at now and evaluated as to whether or not charges can be laid, which would take into consideration a range of factors including the likelihood of a conviction. So that's going through its process now. But look, the sooner that this gets resolved, I think for everyone concerned – particularly for Brittany Higgins – but everyone who has been affected by this, the better".*

29/7/21

Received media enquiries in relation to Kershaw and Andrews comments.

Emailed Chew/Moller advising I had received media enquiries about comments by Kershaw and Andrews, advising my response.

Emailed responses to media

- *The Director forwarded his advice to the AFP on Monday 28 June 2021, and the matter currently rests with the AFP.*
- *On Monday 21 June 2021 the ACT DPP received a partial brief of evidence and a request to provide advice for consideration of prosecution. The Director of Public Prosecutions provided that advice to the Australian Federal Police on Monday 28 June 2021. The content of that advice is subject to Legal Professional Privilege, and therefore, cannot be disclosed by the ODPP.*

6/8/21

First copy of brief of evidence served on defence.

16/9/21

First mention PNG

Advised by Moller that brief of evidence served on defence by AFP on 6 August 2021

17/9/21

Email to Moller about brief service and sought confirmation non disclosable material was not served.

21/9/21

Email to Moller, asking for response to email of 17/9/21.

22/9/21

Received forwarded email from Bob Rose (21/9/21) advising that all non-disclosable material was served.

22/9/21

Email to Moller expressing deep concern and suggested

- a) Immediate remedial action in relation to defence and complainant
- b) Information about why and how brief was served directly on defence

23/9/21

AFP wrote to Defence asking them to delete brief of evidence served on 6/8/21 (held 1 month 17 days)

Advised by Heidi Yates that she was having a meeting with complainant to raise disclosure issue.

24/9/21

Email from Crozier to Higgins providing explanation for service of protected material on defence.

Email from Moller referring to my email of 22/9/21, advising that he had he had sent email to Korn on 22/9/21 and confirmed he had not accessed the brief, and agreed to destroy – and will provide written confirmation when done.

30/9/21

Replacement copy of brief of evidence served on defence via Sharpoint

6/10/21

Korn phoned about different issue, and I referred him to email from Moller on 23/9/21 and asked for confirmation, and he said he did not have time or knowledge of how to delete. He asked me to send email again, and he would confirm when done. I forwarded email from Moller to Korn again.

7/10/21

Letter from CPO (dated 2/10/21) re communication with Yates.

7/10/21

Additional material (including Yates ROC) provided.

8/10/21

Meeting with Jerome and Moller and again asked for material on brief service.

8/10/21

Email to Korn advising replacement brief on Sharepoint

Posted hard copy of brief to Korn

2/11/21

Korn advised that he could not get into brief, and sought it to be sent to instructing solicitor

3/11/21

Sent memory stick copy electronic brief

18/5/22 – Interview with Lisa Wilkinson conducted by Madders and Saunders

Sought statements from Moller supporting erroneous service of brief of evidence on defence

- 22/9/21
- 24/9/21
- 27/9/21
 - 7/10/21 – Letter from CPO re VOCC/AFP communication
 - 8/10/21 – letter from Moller asking are we “now” seeking written statements
- 8/10/21 – from Skye confirming
 - 12/10/21 – Letter from Moller seeking advice on what statements we require
- 12/10/21 – Director to Moller clarifying in some details
 - 13/10/21 – Letter from Moller advising Chew made decisions to serve
- 16/11/21
- 26/11/21
 - 26/11/21 – Letter from Moller currently being drafted, exact time frames will be dependent upon individual workloads. Regarded as priority.
- 28/1/22 – Email to Moller bounced advising on leave until 3/5/21 (I think should be 22)
- 28/1/22 – Email to Michael **REDA**
- 31/1/22 – Letter to Callum Hughes
 - 1/2/22 – Hughes advised that Moller returned to work yesterday and hoping to raise it with him.
- 7/3/22 – Follow up email
- 12/3/22 – Follow up email

From: Jerome, Skye
Sent: Wed, 26 May 2021 10:45:49 +1000
To: Drumgold, Shane
Attachments: BH Timeline Meetings.docx

OFFICIAL



Skye Jerome
Crown Advocate
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For a full range of victim's rights, please go to www.dpp.act.gov.au and go to the 'Witness and Victim' link.

Timeline of Meetings with AFP where HIGGINS investigation was discussed

17 March 2021 – SACAT/DPP Monthly Meeting

The following people were present:

1. Skye Jerome
2. Andrew Chatterton
3. Det Sgt McDevit
4. Det Sgt Saunders

During a SACAT/DPP monthly meeting where various issues are routinely discussed, Det Sgt McDevit and Det Sgt Saunders spoke about the investigation into the allegation made by Miss HIGGINS. AFP expressed some frustration with the limited communication with Miss HIGGINS and gave examples of HIGGINS not showing up for appointments and refusing to hand over certain pieces of evidence. AFP also expressed a concern with her credibility. DPP had not been put on notice that the HIGGINS matter would be discussed at this meeting. It was later confirmed that the information provided by AFP at this meeting was not formal.

31 March 2021 – Briefing at Winchester

The following people attended the briefing on 31 March 2021:

- | | |
|-----------------------------|----------------------------|
| 1. Shane Drumgold SC | 5. Det Sgt Jason McDevit |
| 2. Skye Jerome | 6. Det Sgt Gareth Saunders |
| 3. Andrew Chatterton | 7. Det Trent Madders |
| 4. Inspector Marcus Boorman | 8. C Emma Frizzel |

The briefing was mainly an oral account from the police officers explaining the timeline of the offence, reports made and the investigation to date as at 31 March 2021. We were shown the CCTV footage of Miss HIGGINS and the suspect [REDACTED] on the night of the incident. AFP expressed some concern with Miss HIGGINS' credibility. However, Shane Drumgold SC stated that putting aside the strong media interest and Miss HIGGINS' participation with the media, overall, this case, *(based on how it had been described in the briefing)*, was unremarkable in regards to the strength of the evidence overall. The DPP did not hold the view that Miss HIGGINS had been so discredited that she could not be believed beyond a reasonable doubt. At the completion of the police briefing, I recall that the DPP members were in agreement and stated that there was sufficient evidence to charge the suspect with one count of sexual intercourse without consent pursuant to s54 *Crimes Act 1900* (ACT). AFP indicated that there were still outstanding lines of inquiries and were yet to interview the suspect.

20 May 2021,

During a monthly SACAT/DPP Meeting, Det Sgt McDevit, informally advised Andrew and myself that AFP intended to interview the suspect again. Det Sgt McDevit stated that they wanted to speak with the suspect about in/consistencies but could not or did not explain to us the reason/s for the second interview. Det Sgt McDevit also stated that Heidi Yates, Victims of Crime Commissioner, was now the formal spokesperson for Miss HIGGINS. Miss HIGGINS has still not provided to AFP her mobile phone or the photographs of the bruise.

From: Drumgold, Shane
Sent: Wed, 26 May 2021 10:53:41 +1000
To: Jerome, Skye
Subject: RE:
Attachments: BH Timeline Meetings.docx

OFFICIAL

Thanks Skye

I have added mine and attached, but I think two events are missing;

1) Where we first raised with them the issue regarding Trent Madders

2) You and I had a meeting with Moller et al about the Trent Madders issue following a meeting about other issues (in our conference room).

Do you remember the details (time/dates) of either of those?



Shane Drumgold SC

Director

Office of the Director of Public Prosecutions (ACT)

GPO Box 595, Canberra ACT 2601 (DX 5725)

T: **REDACTED** (Direct line)

T: **REDACTED** (Executive Officer Katie Cantwell)

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E: **REDACTED**@act.gov.au (EO)

W: www.dpp.act.gov.au

For a full range of victims rights, please go to www.dpp.act.gov.au and follow the Witnesses and Victims link.

Please consider the environment before printing this e-mail

From: Jerome, Skye <**REDACTED**@act.gov.au>
Sent: Wednesday, 26 May 2021 10:46 AM
To: Drumgold, Shane **REDACTED**@act.gov.au>
Subject:

OFFICIAL



Skye Jerome

Crown Advocate

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www.dpp.act.gov.au and go to the 'Witness and Victim' link.

Timeline of Meetings with AFP where HIGGINS investigation was discussed

17 March 2021 – SACAT/DPP Monthly Meeting

The following people were present:

1. Skye Jerome
2. Andrew Chatterton
3. Det Sgt McDevit
4. Det Sgt Saunders

During a SACAT/DPP monthly meeting where various issues are routinely discussed, Det Sgt McDevit and Det Sgt Saunders spoke about the investigation into the allegation made by Miss HIGGINS. AFP expressed some frustration with the limited communication with Miss HIGGINS and gave examples of HIGGINS not showing up for appointments and refusing to hand over certain pieces of evidence. AFP also expressed a concern with her credibility. DPP had not been put on notice that the HIGGINS matter would be discussed at this meeting. It was later confirmed that the information provided by AFP at this meeting was not formal.

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28 April 2021

Attended the launch of the ACT Sexual Assault Prevention and Response program, and spoke to Inspector Marcus Boorman who advised that they have interviewed the suspect and made the following points:

- Suspect had denied sex had occurred
- Said he and Higgins went into office to work
- He went to his desk and she to the lounge in the Ministers office
- He completed his work and left.

20 May 2021,

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