



Government of **Western Australia**
Department of **Justice**
Office of the Commissioner for Victims of Crime

Overview

DISCUSSION PAPER 1

Improving experiences for
victim-survivors:

Review of criminal justice
system responses to
sexual offending

Overview

DISCUSSION PAPER 1

Discussion Paper 1 includes background information about victim-survivor experiences of sexual offending that may help you think about the issues involved and answer the questions in Discussion Paper 2, 3 and 4.

There are no questions in Discussion Paper 1.

The Department of Justice respectfully acknowledges the traditional custodians of the land being the first peoples of this country.

We embrace the vast Aboriginal cultural diversity throughout Western Australia and recognise their continuing connection to country, water and sky. We pay our respects to Elders past, present and emerging.

The Department is committed to fostering respectful partnerships with our Aboriginal colleagues, clients and those in our care.

Support

Reading about sexual violence can be upsetting, particularly for victim-survivors. You may want to read this paper with a support person or check in with someone about how you are feeling afterwards. If reading this discussion paper is upsetting, please ask for support from a person you trust or contact one of the support services below.

1800 RESPECT 1800 737 732

Women's Domestic Violence Helpline (WA) 1800 007 339

Men's Domestic Violence Helpline (WA) 1800 000 599

Crisis Care 1800 199 008

Mensline Australia 1300 789 978

Lifeline Australia 13 11 14

Our focus

The Attorney General has asked the Office of the Commissioner for Victims of Crime to look at the experiences of victim-survivors who have experienced sexual offending in the criminal justice system in Western Australia (WA) (the Review) to see what is working well, what can be improved and to recommend options for reform. In particular, the Attorney-General has asked us to look at:

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

A big part of the Review is consulting with the public to hear their views on what works well now and what can be improved.

Who can make a submission

Any person or organisation is welcome to make a submission to the Review. We are interested in hearing from sexual offending victim-survivors as well as their families and loved ones.

We are also interested in hearing from people who work with sexual offending victim-survivors and/or who work in the criminal justice system.

The Discussion Papers

We have written four Discussion Papers that focus on different parts of the criminal justice system. We summarise the content of each discussion paper below.

Discussion Papers 2, 3 and 4 ask questions that you may want to answer when you submit your response (see how to make a submission on page 5). You can answer as many or as few questions as you like. You can also write your submission in your own words, without responding to the specific questions in the Discussion Papers.

The Discussion Papers contain information that is relevant to the questions we are asking. The final report will contain a more detailed discussion, including research and the outcomes of public consultation.

Discussion Paper 1 Overview

Discussion Paper 1 includes background information that may help you think about the issues involved and answer the questions in Discussion Paper 2, 3 and 4. There are no questions in Discussion Paper 1.

Discussion Paper 2 Reporting sexual offences

Discussion Paper 2 looks at why some people choose not to report their experience of sexual offending, the police reporting process and some options for improving the reporting process.

Discussion Paper 3 Journey through the criminal justice system

Discussion Paper 3 looks at sexual violence victim-survivors' journeys through the criminal justice system – from the time of reporting to the police, to the time an offender is released from prison. This paper includes questions about each stage of this process, and asks what went well, what did not go well, and how things could be improved.

Discussion Paper 4 Alternatives to the criminal justice system

Discussion paper 4 looks at processes outside the criminal justice system, which may help victim-survivors to heal after a sexual offence as well as holding perpetrators accountable. This paper includes some examples of alternative models used in other places. We ask for your opinion on what models could work in WA.

How to make a submission

You can make a submission by:

Online:	https://consultations.justice.wa.gov.au/
Email:	experiences@justice.wa.gov.au
Mail:	Improving experiences review consultation Office of the Commissioner for Victims of Crime GPO Box F317 Perth, WA 6000
Phone:	08 9264 9877

Please contact us if you would like to talk about different options for making a submission or participating in the consultation process.

We acknowledge there have been other inquiries and reviews related to sexual violence and violence against women and children. If you do not have time to respond to this Review, you can send us any relevant submission you have made before.

Language used in the discussion papers

In the Discussion Papers we use the term 'sexual offences' or 'sexual offending' to refer to sexual violence that is a crime.

In the Discussion Papers we use the term 'victim-survivor' to refer to people who have experienced sexual offending to recognise both victimisation and resilience. We have used this term because it is familiar. We also use the term complainant to refer to a person who has made a report to police.

We use the term 'perpetrator' to refer to people who have sexually offended against another person. We use the term 'accused' to refer to the person who is alleged to have committed the sexual offence. We use the term 'offender' to refer to people who have been convicted of sexual offences.

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

We acknowledge that not all people prefer or use the terms and acronyms used in the Discussion Papers.

Other terms and acronyms used in the Discussion Papers include:

ALRC	Australian Law Reform Commission
ARO	Alternative Reporting Option
CALD	Culturally and linguistically diverse
MIST	Multiagency Investigation and Support Team
ODPP	Office of the Director of Public Prosecutions
PFK	Preliminary Forensic Kit procedure
PRB	Prisoners Review Board
SARC	Sexual Assault Resource Centre
UK	United Kingdom
VLRC	Victorian Law Reform Commission
VMU	Victim-Offender Mediation Unit
VNR	Victim Notification Register
WA	Western Australia
WA Police	Western Australia Police Force
WALRC	Western Australian Law Reform Commission
WSJT	Women's Safety and Justice Taskforce (Queensland)

Introduction

There has been a lot of public discussion about sexual violence. Community understanding about what is and is not acceptable behaviour has changed.

Part of this discussion has been about whether our criminal justice responses to sexual offending are fair, and whether criminal justice processes allow victim-survivors to get justice, support and outcomes that help them to heal and move forward with their lives.

This Review is part of a bigger project in WA which is looking at how our community deals with sexual violence. The Sexual Violence Prevention and Response Strategy (the Strategy) is being developed at the same time as this Review. The Strategy is broader than criminal justice responses, and will look at education, prevention, early intervention and non-criminal responses to sexual violence. It will also consider non-criminal sexual violence, such as sexual harassment. The Strategy will be a framework for addressing sexual violence in WA. There is more information on the Strategy website at: <https://consultations.justice.wa.gov.au/>

This Review is focussed on the criminal justice system — from the time a person reports (or chooses not to report) to police, all the way through to the time an offender is released from custody. We are asking about how the different parts of the criminal justice system are working in practice, what impact these practices have on sexual offence victim-survivors and what could be done differently or better.

The Western Australian Law Reform Commission (WALRC) is conducting a review of sex offence laws in WA, particularly laws about consent, and whether they should be changed. The findings from the WALRC will also contribute to the Strategy. You can find more information about the WALRC Review on their website: www.wa.gov.au/government/publications/project-113-sexual-offences.

It is important to understand that in this Review we are not asking about whether criminal laws about sexual offending should be changed.

A note on children

The Attorney General asked us to only look at adult victim-survivor experiences of the criminal justice system. This includes adult victim-survivors who were offended against when they were children but reported the offence when they were an adult. Considering the experiences of children victim-survivors in the criminal justice system is an important, sensitive and specialised topic that needs to be done by experts in that field.

Defining sexual offending

Sexual violence is a broad term used to describe sexual activity that happens where consent is not freely given. Sexual violence refers to a range of behaviours including comments, touching, harassment, assault and rape.

This Review is looking at sexual violence that is capable of being a criminal offence. The terms we use in the Discussion Papers to refer to sexual violence that is capable of being a crime are **sexual offence or sexual offending**. Sexual offences are contained in WA and Commonwealth criminal laws.¹ Sexual offences can be charged by police and prosecuted in a WA criminal court.

Sexual offences include:

- Sexual penetration without consent
- Rape (historical offences)
- Sexual coercion
- Indecent assault
- Indecent dealing
- Incest.

Sexual offending in WA

It is difficult to say exactly how many sexual offences are committed in WA each year. This is because most victim-survivors do not report the offending to police. In a study done in 2016, 9 in 10 women said the police were not contacted for the most recent sexual offence against them.² According to the Western Australia Police Force (WA Police) crime statistics, 6,510 sexual offences were reported to police in the 2022 calendar year.³

However, the actual number of sexual offences committed during this time is likely to be much higher than that. In 2016, researchers estimated that across Australia, 1 in 6 women and 1 in 25 men had experienced at least one sexual assault since the age of 15.⁴ Some studies show that trans and gender diverse people may experience sexual offending at higher rates than cis-gendered people.⁵

Attrition

Sexual offences that are reported to police do not always progress through the criminal justice system. This 'dropping off' of sexual offences cases throughout the process is called attrition. Sexual offences have one of the highest attrition rates compared with other types of offences in WA.⁶

In 2021 only 1 in 8 reports of sexual violence led to police laying charges.⁷ In cases where a person was charged, rates of conviction for sexual offences were the lowest compared to other offences.⁸

Impacts of sexual offending

Sexual offending is an abuse of power. The perpetrator removes the victim-survivor's right to control their body and sexual choices. Sexual offending can cause significant and long-lasting harm to victim-survivors. While each victim-survivor's experience is different, impacts often include emotional and mental suffering which can continue to affect victim-survivors long after the crime happened.⁹ A smaller number of victim-survivors also experience physical injuries from the incident.¹⁰

Sexual offending can have negative impacts on other areas of the victim-survivor's life, including:

- relationships
- financial security, employment and education
- sexual orientation and/or behaviour
- connection to culture
- spirituality and religious involvement
- interactions in their community.¹¹

Sexual offending can cause a person's nervous system to become overwhelmed because of the extreme stress of the situation.¹² These events and their overwhelming impact on a person are sometimes called trauma. When faced with a very threatening situation, a range of physical and mental reactions are triggered in our body to help us survive — these are often called the 'fight, flight, freeze, fawn' responses.¹³ This is the body's normal response to stress and things usually calm down soon after the threat has passed. However, if these responses continue in the body and mind for a long time after the incident, this is called a trauma response and it can negatively impact on a victim-survivors' life and wellbeing.¹⁴

People impacted by trauma often feel shame, fear, hopelessness, and helplessness and it can stop their body systems from working together properly, making it hard for them to function day-to-day.¹⁵ Trauma responses can be triggered by things that remind the person of the traumatic event (whether they are aware of it or not), causing them to react strongly with anger, sadness or confusion and making it hard for them to manage these emotions.¹⁶ This behaviour may be hard for other people to understand, especially if they don't know much about trauma.¹⁷

Victim-survivors may experience repeated sexual offending, for example when it is committed by an intimate partner. Victim-survivors may also experience other types of abuse or betrayal in their lives, as well as sexual offending. Where a victim-survivor suffers repeated harm from other people over time, it can lead to 'complex trauma'.¹⁸ Complex trauma has a bigger impact than single-event trauma on a person's long term physical and emotional health, as well as their relationships and daily functioning.¹⁹ Research shows that people who have experienced sexual abuse as a child are at a greater risk of becoming a victim of sexual offending again in the future.²⁰

Children or young people who have experienced complex trauma may not realise the effects of the trauma until much later in their lives.²¹ The effects of complex trauma are made worse if the person also experiences discrimination or disadvantage in the community.²² Trauma can also affect whole communities and be passed on through generations.²³ For Aboriginal peoples and communities the impacts of colonisation have resulted in intergenerational trauma.

Victim-survivors can and do move towards healing from the experience of sexual offending and trauma with the right support. Victim-survivors may get this support from counsellors and doctors as well as from trusted family and friends.²⁴ Research also shows that everyday interactions that are respectful and empathetic can help victim-survivors to heal.²⁵ The opposite is also true: interactions that are not respectful and empathetic can cause further harm to victim-survivors.²⁶ This is particularly important for people working in the criminal justice system, where the way they interact with a victim-survivor has the potential to help or hold back their recovery.

While there have been some improvements in how the criminal justice system in Australia treats sexual offending victim-survivors, many victim-survivors still say that moving through the criminal justice system is a traumatising experience.²⁷ Some victim-survivors go so far as to say that going through the criminal justice system was more traumatising than the sexual offence itself.²⁸ Many victim survivors chose not to continue through the criminal justice system because of these negative impacts.

Intersectionality

Sexual offending is often called a gendered crime. Research shows that in Australia 97% of sexual offenders recorded by police are male and 84% of victims are female.²⁹ We know that in WA most victim-survivors of sexual offending are women and girls aged between 10 and 17 and most perpetrators are men aged between 25 and 44 years.³⁰

It is also called a gendered crime because it is influenced by community attitudes and beliefs about gender and is linked to gender inequality (when men are perceived to hold more value and have more power and resources in a community than women).³¹ Ideas about men being more powerful than women, that men have the right to sex and have uncontrollable sexual urges and that women are passive and sexual objects, all contribute to the way individuals act, including choices to perpetrate sexual violence.³²

Although we acknowledge that sexual offending is a gendered crime, it is important to recognise that people of all genders are victim-survivors and people of all genders perpetrate sexual violence. Perpetrators are usually known to the victim, often as intimate partner or family members, but they can also be strangers.³³ For this Review we are interested in the experiences of all adult victim-survivors with the criminal justice system, regardless of their gender or their relationship to the perpetrator.

Certain groups in the community are at greater risk of experiencing sexual offending because perpetrators target those groups more than others. The risk of being a victim of sexual offending can increase when a person belongs to more than one of these groups. Intersectionality is the word used to describe this concept – when overlapping parts of a person’s identity and experience increase their risk of harm or discrimination.

For example, while women are more likely to be victims of sexual offences, young women and girls are at even greater risk.³⁴ Aboriginal and Torres Strait Islander women are estimated to experience sexual offending at three times the rate of non-Aboriginal women.³⁵

Some people in the LGBTIQ+ community are at greater risk than heterosexual people, for example bisexual and lesbian women are more likely to have reported sexual offending than heterosexual women.³⁶ Trans women experience more sexual violence than cis-gendered women and transwomen of colour are most at risk.³⁷

People living with disability are more likely to experience sexual offending than people without a disability.³⁸ Women with disability are twice as likely to be victims of sexual offending than women without disability.³⁹ Between 39% and 60% of women with a cognitive disability will be sexually assaulted before the age of 18.⁴⁰

Certain groups of people also face more challenges accessing the criminal justice system and getting the support they need to move through the system. Sometimes these are the same groups of people that are more at risk of being victims of sexual offending. Victim-survivors from culturally and linguistically diverse (CALD) communities may face language barriers, as well as cultural and community barriers to reporting a sexual offence.⁴¹ Victim-survivors living in regional and remote areas of WA may find it hard to get to a police station or support service and may also be reluctant to report if the perpetrator is well known in the community and/or they are worried about their privacy. People with disability might find it difficult to communicate with people in the system and may be fearful of reporting if the perpetrator is a carer.⁴²

In WA, minimal information is collected about victims of crime as they move through the criminal justice system. This makes it difficult to fully understand who is accessing justice and support and how the system is impacting on different groups of victim-survivors.

39% - 60% of women with a cognitive disability will be sexually assaulted before the age of 18.

- Royal Commission in Violence, Abuse, Neglect and Exploitation of People with Disability

Aboriginal peoples' experience of sexual offending

Some research shows that Aboriginal people experience sexual offending at higher rates than non-Aboriginal people.⁴³ We do know that Aboriginal women are three times more likely to experience sexual offending than non-Aboriginal women⁴⁴ and the Wiyi Yani U Thangani Women's Voice report from 2020 found that across Australia three in five First Nations women have experienced physical or sexual violence.⁴⁵ However, in WA there is limited data on rates of sexual offending against Aboriginal peoples.⁴⁶

Aboriginal victim-survivors also face greater barriers to accessing justice and receiving the support they need. There are a range of reasons for this including:

- mistrust of police, the justice system and government
- fear of children being removed
- lack of culturally appropriate services
- communication barriers
- shame or taboo in talking about sex or sexual violence
- lack of services in regional and/or remote areas
- lack of knowledge about the law and their rights.⁴⁷

It is important that we acknowledge the impact of the colonisation on Aboriginal communities when thinking about Aboriginal people's experiences of sexual offending and the criminal justice system.⁴⁸ The colonisation of WA harmed Aboriginal people in many ways, including through murder, rape and sexual exploitation, by damaging people's connection to land and culture, taking children away from their families and using racist policies and laws to control their lives.⁴⁹

The criminal justice system, and the other institutions of government may represent harm to many Aboriginal communities.⁵⁰ Aboriginal people tell us that to improve things for Aboriginal sexual violence victim-survivors, responses need to be place-based and community led.⁵¹

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- Wiyi Yani U Thangani
Women's Voice

Community attitudes and 'rape myths'

Although community understanding of sexual offending has increased in recent years, there is still shame and silence around the issue. Many victim-survivors say the experience of sexual offending left them feeling a deep sense of shame and that they felt they could not speak openly about what happened to them.⁵² Because our community does not talk a lot about sexual offending, perpetrators and victim-survivors, the 'stories' we do hear often don't fit the experience of victim-survivor causing them to feel ashamed and silenced.⁵³

There are still false beliefs and misunderstandings about how and why sexual offences are committed, as well as negative attitudes towards victim-survivors. These attitudes influence the choices that a victim-survivor makes about whether to report a sexual offence as well as how they are treated as they move through the criminal justice system.⁵⁴ People involved in the criminal justice process (police, judges, lawyers, juries etc) are also members of the community and therefore these beliefs may impact on the way they do their jobs, sometimes without them realising it.⁵⁵

The term 'rape myths'⁵⁶ is sometimes used to describe community beliefs about sexual offending. Rape myths are harmful because they can make people think that if a sexual offence does not match the myth, then it must be untrue or not as serious. One rape myth is that sexual offending is usually committed by a stranger in a public place (e.g., a dark alley at night-time). In fact, most sexual offending is committed by someone the victim-survivor knows.⁵⁷ In most cases this is an intimate partner or another family member.⁵⁸

Another myth is that a sexual offender will use physical violence or force during the offence, and that the victim-survivor will always resist or fight back. In reality, many victims will freeze or go along with what the offender is doing.⁵⁹ Choosing not to resist or to go along with what the offender is doing, may also be a conscious decision by the victim to stop the offender becoming more violent and forceful.⁶⁰ Given that most victim-survivors know the perpetrator, this may be based on previous experience of their behaviour.⁶¹ Where sexual offending is part of a pattern of intimate partner violence, resisting an assault has been shown to increase a victim-survivors' risk of homicide.⁶²

Sometimes victim-survivors, particularly children, or people with cognitive disabilities, have been groomed by the offender over time to make them think that the offending is 'normal' or they have stopped the victim-survivor resisting by making threats against them, without needing to use physical violence.⁶³

One rape myth is that sexual offending is usually committed by a stranger in a public place (e.g., a dark alley at night-time).⁵⁷

Another rape myth is the belief that victim-survivors, particularly women, are partly to blame for a sexual offence, because:

- they were wearing revealing clothes
- they were drunk or had used drugs
- of their sexual history
- they were flirting or being intimate with the offender before the offence happened
- they went out alone or behaved in way that was 'risky'.⁶⁴

None of these behaviours mean that the victim-survivor consented to sexual activity, however they continue to be brought up in sexual offending cases and contribute to 'victim blaming' of victim-survivors. Many myths and misconceptions are related to community beliefs about gender roles, which say that men are entitled to sex and that it is up to women to be gatekeepers of sex and their bodies.

According to this myth if women do anything that might be seen as sexual, they are 'asking for it' or 'tempting' men to give in to their sexual urges.⁶⁵

Other myths that make people less likely to believe some sexual violence victim-survivors include that:

Victim-survivors will report the offence straight away. Research shows that most victim-survivors of sexual violence do not report it straight away or never report it at all.⁶⁶

Men are rarely victim-survivors of sexual violence. Rates of sexual offending against men are between 14-22%.⁶⁷ Men with psychological or cognitive disability are more at risk of sexual offending.⁶⁸ Gay and bisexual men also experience higher rates of sexual offending than heterosexual men.⁶⁹ Male victim-survivors of sexual offending may feel shame about reporting their experiences.⁷⁰

Victim-survivors would not continue to have contact/a relationship with the perpetrator. Many victim-survivors will continue to have contact with the perpetrator after the offence. This is often because it is an intimate partner or family member, who has power and control over the victim-survivor.⁷¹

Victim-survivors will be able to remember and talk about what happened clearly. Research shows that traumatic events such as sexual offending, are often not remembered clearly by victim-survivors, and sometimes aren't remembered at all.⁷² The stressful experience of giving evidence in court can be a further challenge for victim-survivors telling their story and being believed in the criminal justice process.

People often make false reports of sexual offending for revenge. The rates of false allegations of sexual violence are very low, between 2% and 10%.⁷³

Victim-survivors will always act upset or sad. People respond to sexual offending in different ways. Some victim-survivors may become shut down and numb (this is sometimes called 'dissociation') while others might become very upset.⁷⁴ Sometimes victim-survivors will go between different responses at different times.⁷⁵

The National Community Attitudes Towards Violence Against Women Survey 2021 showed of people surveyed:

34%

believe it is common for sexual assault accusations to be used as a way to get back at men

19%

agreed women prefer men to be in charge of relationships

15%

agreed there is no harm in sexist jokes

41%

agreed many women mistakenly interpret innocent remarks as sexist

24%

agreed a lot of times, women who say they were raped had led the man on and had regrets

21%

agreed that if a woman sends a naked picture to her partner, then she is partly responsible if he shares it without her permission.⁷⁶

Endnotes

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- 16 Blue Knot Foundation, Trauma Response, <https://blueknot.org.au/resources/blue-knot-fact-sheets/trauma-related-experiences/trauma-response/>
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Improving experiences
for victim-survivors:
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DISCUSSION PAPER 1



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