



Australian Government
Attorney-General's Department

Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault

Discussion paper

March 2023

*The Australian Government acknowledges the Traditional Custodians of this Country.
We pay our respects to Aboriginal and Torres Strait Islander peoples' continuing connection to the land, waters,
community and cultures past, present and emerging.*

This discussion paper was drafted on Ngunnawal, Ngambri and Nipaluna country.

Help and support

This paper includes discussion of potentially distressing content about sexual violence and related issues. If reading this paper or thinking about these issues brings up any difficult feelings or memories for you, the following services may be of assistance (except where indicated, the phonelines below operate **24 hours a day, 7 days a week**):

- [1800RESPECT](#) (1800 737 732) – National Sexual Assault, Domestic and Family Violence Counselling Service
- [Lifeline](#) (13 11 14) – National Crisis Support
- [13YARN](#) (13 92 76) – Aboriginal or Torres Strait Islander Crisis Support
- [Beyond Blue](#) (1300 22 4636) – National crisis support
- [Kids Helpline](#) (1800 55 1800) – National crisis support tailored for children and young people (aged 5 to 25)
- [MensLine Australia](#) (1300 78 99 78) – National Crisis support for men
- [Blue Knot Foundation](#) (1300 657 380) – National support with complex trauma
- [Suicide Call Back Service](#) (1300 659 467) – National crisis support for people experiencing difficult thoughts
- [QLife](#) (1800 184 527) – LGBTI peer support and referral, **3pm – midnight**
- [Headspace](#) – Mental health and wellbeing support, online service, **9am – 1am (Melbourne time)**

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Introduction

Sexual violence remains underreported to police in Australia.¹ For those victims and survivors who choose to report sexual violence, many find the process traumatic, have limited support to protect their legal rights, and rarely see perpetrators held to account.² Everyone has the right to feel safe and live free from violence, and seeking justice must not add to victims' and survivors' trauma. Victims and survivors must be supported to work through their trauma sooner, guided by their own goals.

The Australian Government is committed to working with victims and survivors, states and territories and support services to strengthen criminal justice responses to sexual assault. Under the [National Plan to End Violence Against Women and Children 2022-2032](#) (National Plan), the Government sets an ambitious goal to eliminate gender-based violence in one generation. An important component of this goal is to hold offenders to account for their behaviour. This can only be achieved if victims and survivors have full and supported access to the justice system. As such, the National Plan aims to enhance access to fair justice outcomes for all victims and survivors, and identify and remove barriers to reporting violence and engaging with criminal justice process.

Similarly, the Standing Council of Attorneys-General (SCAG) [Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027](#) (SCAG Work Plan) commits each Australian government to work together, and individually, to improve the experiences of victims and survivors in the criminal justice system. A key initiative under the Work Plan is to consider how to better support and protect victims and survivors by assessing their understanding of, and access to, legal services.

The pilot

Consistent with the National Plan and the Work Plan, in the 2022-23 Federal Budget, the Government provided **\$8.4 million over three years** (from 2023-24 to 2025-26) to pilot a legal services model (or models), in **three locations** across Australia, with the aim to provide victims and survivors of sexual violence with greater access to specialised and trauma-informed legal services to support their recovery and safe participation in the criminal justice system. Funding will be delivered through a **funding agreement with participating states and territories**.

The Attorney-General's Department (the department) is undertaking a **national consultation process to inform the development of the legal services model(s) and location of the three pilot sites**. This discussion paper seeks views from all stakeholders, and in particular from victims and survivors, on:

- victims' and survivors' **specific legal needs** when they contact, or are considering coming into contact with, the justice system
- which **barriers present the biggest challenges** for victims and survivors in accessing justice
- what **types of legal services** best meet victims' and survivors' needs and expectations, and
- gaps in the legal services currently available for victims and survivors that should be **addressed as a priority**.

There are many different ideas about how to make the legal system safer for victims and survivors.³ The department believes people who have lived experience of sexual violence, and the services that support them through the justice process, are the experts on what needs to change.

The department does not have a formed view about the model(s) or where services will be provided. This will be informed by our consultations (including through this discussion paper). However, based on past consultation, our view is the pilot service model(s) should aim to be:

- **Trauma-informed:** Trauma-informed care is a framework for human service delivery that is based on knowledge and understanding of how trauma affects people's lives, their service needs and service usage.
- **Victim and survivor-centric:** Service responses focused on each victim and survivor as an individual in their own right.
- **Culturally safe:** A service approach that creates and maintains services that are safe and accessible for First Nations people.⁴ Cultural safety centres the victim or survivor experience and includes practitioners and services working to enhance, rather than diminish, Aboriginal and Torres Strait Islanders' individual and collective cultural identities.⁵
- **Integrated with existing services:** Improving access to specialist legal resources by locating them in or linking them to places of trust (e.g. hospitals, counselling services and Aboriginal and Torres Strait Islander community-controlled organisations), where victims and survivors are more likely to feel safe and secure.

This pilot will be evaluated to measure its success and inform the development and funding of future legal services for victims and survivors across Australia. This pilot provides an opportunity to explore new ways for legal assistance services to be delivered to achieve better access to justice and better justice outcomes for victims and survivors.

The department acknowledges the many consultations, research and advocacy efforts that have preceded this process, and recognises the personal costs associated with making these contributions. To leverage these and minimise stakeholder fatigue, the **background information** in this paper summarises what stakeholders, including victims and survivors and their advocates, have already told governments, including through consultations on the National Plan and *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-30*,⁶ as well as what the research tells us about existing challenges and opportunities for future change.

How to share your views

In this discussion paper, we have identified a range of specific questions for victims and survivors and their supporters, as well as general questions for all interested parties and stakeholders. You do not have to respond to all discussion questions.

You can share your views via an online survey or through making a written submission.

- Online submissions can be made on the department website by following the links: <https://consultations.ag.gov.au/crime/sexual-assault> and click 'Make a submission'.
- Written submissions can be uploaded through the department website using the link above or can be sent by email to Sexual.Violence.Responses@ag.gov.au.

If you wish to submit your response in a different format, for example, audio visual submission, please contact Sexual.Violence.Responses@ag.gov.au to coordinate this response.

The closing date for submissions is Sunday 7 May 2023.

Privacy

Your participation in this consultation process is voluntary. You are encouraged to include your name and contact details for the department to be able to contact you to discuss your submission should there be a need to do so. Please do not include the names or identifying details of any other individual or family. The department may use this consultation process to identify interested individuals and organisations for further consultation in relation to the development of the legal services pilot model.

Please note that this is a consultation process to inform policy development, and that the department cannot assist with, or intervene in, individual cases.

The department may publish submissions received, although we may redact any submission, or part thereof (for example, if it contains sensitive information). Information we receive in response to this discussion paper may also be shared with The Healing Foundation, who is assisting us with the consultations. If you consent to your submission being made public (anonymously or in your name), it may also be referenced in reports we prepare. You may indicate if you would like your submission to be kept confidential.

Submissions may be subject to freedom of information requests, or requests from the Parliament. Personal information shared through the consultation process will be treated in accordance with the *Privacy Act 1988*. For more information on how the department collects, stores and uses personal information, please visit the department's Privacy Policy at www.ag.gov.au/about-us/accountability-and-reporting/privacy-policy.

Discussion questions

Questions for victims and survivors (and their supporters):

1. Did you get help from a lawyer following your experience of sexual violence? If yes, you might reflect on:
 - What **type of legal help** (for example, information or advice) did you access, what was **most helpful** to you, and why?
 - What **legal issues** did you have? For example, assistance with understanding the criminal justice process, family law, obtaining court orders, housing advice, employment law, migration law, civil law, privacy law, consumer credit and financial law or others.
 - Did the lawyer provide you with the help you needed and about **all issues that were important** to you?
 - How did you **access help** from a lawyer?
 - Is there an **emotionally and physically safer** (trauma-informed) way the legal services could have been delivered to you?

2. If you did not get help from a lawyer, what was the **most significant barrier** to access for you?
You might like to think about:
 - Did you know you needed help from a lawyer?
 - What legal help would have **best assisted** you?
 - Was legal help offered to you? If so, by whom?

3. In your experience, what **non-legal support(s)** (for example, medical support, counselling, housing or financial advice) did you need after your experience of sexual violence?
You might like to think about:
 - Where do you think legal services could be **located or embedded** for victims and survivors to **access** them easily, safely and at the **earliest opportunity**?

4. If you **chose not to report** your experience of sexual violence to police, what were the **most significant reasons for this decision**?
You might like to think about:
 - What would be the **most important support to offer, or change to make**, for you to have **reported your experience to police**?

5. If you reported your experience of sexual violence to police, and then withdrew from the criminal justice process, what were the **main reasons for withdrawing**?
You might like to think about:
 - What support or change would have helped you stay in the criminal justice process.

6. In your experience, **at what point(s)** in the criminal justice process would you get the **most benefit from a lawyer helping you**? In particular:
- initial and (if relevant) formal reporting to police
 - forensic processes e.g. medical examination
 - police interviews and investigations
 - meetings with prosecutors
 - a criminal trial
 - after a trial, for example, in accessing compensation or in relation to post-custodial concerns (when the perpetrator is released from prison) and safety concerns.
7. In your own words, describe what your **ideal legal service** would look like to help you navigate your journey through the criminal justice system and assist your recovery. You might like to think about:
- Have you accessed legal help in the past? Consider what specific needs and preferences you had when you were seeking help from a lawyer.
 - How could the legal service be **best tailored** to meet the **unique needs** of population cohorts which are overrepresented in sexual violence statistics. These include:
 - First Nations peoples
 - People with disability
 - Children and young people
 - People from Culturally and Linguistically Diverse backgrounds
 - People who identify as Lesbian, Bisexual, Gay, Transgender, Queer, Intersex, Asexual, Brotherboy, Sistergirl, or with other diverse identities (LGBTQIA+)
 - People from rural, regional and remote locations
 - People who have been convicted of crimes and been to prison
 - People who are employed in sex work
 - Older people, especially those in residential aged care settings.

Questions for all stakeholders:

8. How can we best ensure legal services are **trauma-informed, victim- and survivor-centric, culturally-safe** and **accessible** for victims and survivors and service providers?
9. What **legal service delivery approaches or models** should the pilot explore **as a priority**? Some examples of potential models include:
- legal services co-located with other support services (like health or social services)
 - multi-disciplinary centres incorporating specialist legal services
 - funding for civil proceedings
 - end-to-end legal service support, including in-court legal advocacy
 - expanded access to choice and control over how and when victims and survivors report to police, submit to forensic examination, provide other evidence, and engage with prosecutors and the court
 - restorative justice.

10. What legal service gaps and barriers should the pilot prioritise addressing?

11. How should we **measure the success and impact** of the legal service pilot? What data do we need to collect?

12. Are there **any other issues** that should be considered in the development of the legal services pilot?

You might like to think about:

- The appropriate role of the proposed legal service, based on the needs and gaps identified by those with lived experiences who have engaged in the criminal justice system.
- The type(s) of service providers that should be considered for this pilot?
- Recommendations for particular locations for this pilot. Factors to consider include: the ability for clients to access services, the location's demand for services and the availability of complementary support services.
- How to structure services to respond to victims' and survivors' unique and individual needs.
- How services should be offered, for example, in person and through technology-enabled systems to enhance accessibility.
- How victims' and survivors' legal rights, preferences and wellbeing can be better protected in the courtroom process.
- Whether this service should provide advice other than in criminal law, such as advice on civil law claims or compensation claims. Are there resourcing and other impacts of including multiple fields of law in the one service that should be considered?

Background information: The case for change

This section summarises what victims and survivors, and their advocates, have already told governments through previous national consultations. You may find it helpful to reflect on this information when responding to the discussion questions. We acknowledge that the information in this paper may not reflect the experience of all victims and survivors, their advocates, or service providers.

“Too often, people who have experienced sexual violence do not get what they need or want from the justice system. They need to be supported; to be heard; to have a voice; and to see the person responsible held to account.”⁷

Why can accessing justice be difficult for victims and survivors?

The criminal justice system is the primary way that perpetrators of sexual violence are held to account. Entry into the criminal justice system is currently limited to making a report to police. However, for many reasons, not all victims and survivors choose to report sexual violence to police.⁸ Once victims and survivors enter the criminal justice system, they lose control over what happens next and how quickly. Some victims and survivors may choose to withdraw their complaints to police and withdraw from the criminal justice process.⁹ Others may find that the police do not investigate their complaints or that their complaints are not prosecuted in court. Challenging experiences in the criminal justice system can add to the trauma victims and survivors experience.¹⁰

National stakeholder consultations, including on the National Plan, identified key barriers for victims and survivors to access services or report to police, which include:¹¹

- feelings of fear, shame, guilt or embarrassment¹²
- discrimination and racism¹³
- historical context of exclusion¹⁴
- cultural and community expectations¹⁵
- lack of information, clear referral pathways, and specialist services (for example culturally-safe services,¹⁶ dedicated advocacy, support and therapeutic treatment services, and services for secondary victims)
- lack of trust in the system (including the police, courts and services)¹⁷
- disclosure leading to unwanted consequences¹⁸
- a lack of cooperation between different services to support people with multiple and related needs (sometimes due to resourcing and other constraints)¹⁹
- gaps caused by uncoordinated action between federal, state and territory programs,²⁰ and
- workforce issues²¹ (including a lack of standards and guidelines around treating trauma, lack of accessible education and training around trauma-informed care, lack of professional supervision, lack of available staff in certain locations and lack of funding).²²

Due to discrimination and disadvantage, people from the following groups disproportionately experience sexual violence, as well as experience additional barriers to accessing the help they need:

- First Nations peoples²³
- people with disability²⁴
- children and young people²⁵

- people from Culturally and Linguistically Diverse backgrounds²⁶
- people who identify as Lesbian, Bisexual, Gay, Transgender, Queer, Intersex, Asexual, Brotherboy, Sistergirl, or with other diverse identities (LGBTQIA+)²⁷
- people from rural, regional and remote locations²⁸
- people who have been convicted of crimes and been to prison²⁹
- people who are employed in sex work³⁰
- older people, especially those in residential aged care settings.³¹

How does trauma inform what services victims and survivors access and how they access those services?

Research suggests that the way many services for victims and survivors are designed and delivered does not consider the initial and long-term consequences of trauma.³² Services that understand that their users' challenging life outcomes can stem from unresolved trauma are better able to support their recovery.³³ Legal services play a big role in supporting people experiencing challenging life outcomes. Engaging with the justice system has the potential to help victims and survivors heal from trauma.³⁴ Trauma-informed legal service delivery seeks to harness this potential for healing. But, participating in criminal justice processes can conflict with healing priorities, putting pressure on victims and survivors to make difficult choices at significant personal cost.

What legal services are available for victims and survivors?

The availability of legal services to support victims and survivors through the criminal justice process varies across Australia. Victims and survivors have wide-ranging legal problems or needs. These may include issues around property, personal and child protection, release of information, financial, employment, civil law (for example, defamation or discrimination), criminal or family law proceedings, or to understand what options might be available to them.³⁵ Those needs, and a person's ability to access the legal services they need, will be determined by victims' and survivors' personal circumstances. These circumstances may be shared by other people in particular groups or life stages.³⁶

Some legal services have used what we know about trauma to shape their service delivery model.³⁷ For example, research shows that services which coordinate and integrate multiple supports are best at meeting victims' and survivors' holistic needs.³⁸ These approaches co-locate legal services alongside other services such as health,³⁹ counselling, policing, social worker support, and other services, either at the same location or through established referral pathways to other service providers. These holistic services make it easier for people to access help and reduces the number of times victims and survivors need to describe their experiences.⁴⁰ This model minimises additional trauma and assists recovery.⁴¹

Other organisations around Australia provide victims and survivors with issue-specific legal services. For example, advice on the release of personal counselling notes during court processes, legal advice to witnesses in criminal trials and assistance to victims and survivors to apply for victims of crime compensation.

However, there is a gap in the availability of legal services for victims and survivors.⁴² Victims and survivors have told us that they continue to face significant challenges navigating a service system that is meant to assist them with the consequences of sexual violence, but which often fails to achieve the level of support required.⁴³

New approaches to consider

In recent years, most Australian jurisdictions have started or completed inquiries, or prepared reports, into criminal justice response to sexual assault.⁴⁴ These inquiries and reports are similar in their calls for significant reform to improve victims' and survivors' access to, and the experiences of, the justice system. They call on governments to change policies and practices to ensure victims and survivors are heard, supported and are not subjected to further trauma. This change will take time. Submissions from victims and survivors, their advocates and other government and non-government organisations and reports from these inquiries have called for many reforms to improve access to legal services and have identified the following legal services models:

- **Multi-disciplinary centres** incorporating specialist legal services, or specialist legal services **co-located** with other support services (like health or social services): multiple services and processes that victims and survivors need or are required to do as part of the criminal justice process in one place.⁴⁵ These services should be holistic, culturally-safe, accessible, welcoming and confidential.⁴⁶
- **Funding for civil proceedings:** public funding for victims and survivors to seek damages from the person they accuse of sexual violence against them.⁴⁷
- **End-to-end legal service support:** specialised and independent legal advice and support for victims and survivors⁴⁸ which may include legal representation in court and legal assistance to navigate the justice system and exercise their rights.⁴⁹
- **Expanded access to choice:** services and criminal justice processes that are structured in a way that gives victims and survivors more choice and control over how and when they report to police, submit to forensic examination and provide other evidence, and engage with prosecutors and the court.⁵⁰
- **Restorative justice:** an alternative to traditional criminal justice responses which includes people who have been affected by a crime, including the person responsible, to communicate about the damage that has been caused and work together to repair it.⁵¹

A number of countries provide, or are in the process of piloting innovative service models. These models include full legal representation from pre-police report to post-trial civil proceedings, and assistance to obtain compensation. For example:

- Canada is currently running a 5-year program in Ontario in partnership with nine legal clinics, to provide trauma-informed legal education, advice, representation and holistic services for survivors of sexual assault and intimate partner violence.⁵²
- Since 2005, in England and Wales, Independent Sexual Violence Advisers are based in local areas to provide support including impartial information to the victim and survivor about all of their options, such as reporting to the police, accessing Sexual Assault Referral Centre services, and specialist support such as pre-trial therapy and sexual violence counselling.⁵³
- From 2018 to 2020, England ran a Sexual Violence Complainants' Advocate scheme. This engaged local lawyers to provide legal advice and support to sexual violence complainants in Northumbria. The final report of this scheme advised that complainants who were able to use the scheme had positive experiences and had an increased sense of confidence in the criminal justice process.⁵⁴

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- ⁵¹ VLRC, [Improving the Justice System Response to Sexual Offences](#), 184-212.
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- ⁵⁴ Sexual Violence Complainants' Advocate scheme – O Smith and E Daly, [Final Report: Evaluation of the Sexual Violence Complainants' Advocate Scheme](#), Loughborough University and Northumbria Police and Crime Commissioner, December 2020, accessed 20 January 2023.