

“This is my story. It’s your case, but it’s my story.”

Interview study: Exploring justice system experiences of complainants in sexual offence matters

NSW Department of Communities and Justice
(NSW Bureau of Crime Statistics and Research)

31 July 2023

—

[KPMG.com.au](https://www.kpmg.com.au)



Acknowledgement

We spoke with 34 victim-survivors of sexual violence as part of this interview study who shared their experiences of coming into contact with various stages of the NSW criminal justice system. The people we spoke with were from a range of backgrounds, identities, geographic locations, and professions. All had experienced a sexual offence and had reported it in some way to NSW criminal justice agencies, which we acknowledge is not the case for the majority of victim-survivors of sexual offences.

All participants were exceptionally generous with their time and in telling what will always remain distinct and personal stories, while sharing strikingly common themes. In particular, many spoke of the healing power of sharing their story on their own terms and of wanting to participate in this research to help improve the experiences of those who may be subjected to sexual violence in the future. We thank them for this generosity and wish them warmth and strength in their healing journey.

We also acknowledge the efforts of all those who have worked tirelessly to address sexual violence in their communities for many years, many of whom have long advocated for the types of reform proposed in this report.

At times, this report contains confronting or distressing accounts, which we have included to highlight the extremities of some people's experiences in relation to the system. While important to share, we acknowledge that these accounts may be triggering to people who have had similar experiences and who, as a result, most want to see change. We encourage anyone reading this report with lived experience of sexual violence to do so in a safe place, with easy access to established supports.

More broadly, we encourage anyone needing support to contact:

- 1800RESPECT, Australia's 24-hour national sexual assault, family and domestic violence counselling line: 1800 737 732
- Lifeline, which provides 24-hour crisis support: 13 11 14
- NSW Sexual Violence Helpline, 24/7 telephone and online counselling for people who have experienced violence or abuse: 1800 424 017
- QLife, which provides free telephone and webchat support from 3pm to midnight every day, delivered by trained LGBTIQ+ community members: 1800 184 527
- Wirringa Baiya Aboriginal Women's Legal Centre: 1800 686 587.

Disclaimer

This report has been prepared as outlined with the NSW Bureau of Crime Statistics and Research in the Scope Section of the contract dated 14 September 2021. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and the reported results reflect a perception but only to the extent of the sample surveyed, being the representative sample of stakeholders approved by the NSW Bureau of Crime Statistics. Any projection to wider stakeholders is subject to the level of bias in the method of sample selection.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by stakeholders consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

Contents

Acknowledgement	i
Glossary	iv
Executive summary	v
Disclaimer	xiv
1. Introduction	1
1.1. Background and context	1
1.2. Scope and approach	1
1.3. Study limitations	4
2. Policy and legislative context	8
2.1. Primary prevention	8
2.2. Early intervention	9
2.3. Response	9
2.4. Recovery and healing	10
3. Findings	12
3.1. Barriers to reporting a sexual offence	12
3.2. Experiences reporting a sexual offence	34
3.3. Investigation and evidence gathering	52
3.4. Attrition prior to trial	62
3.5. Experiences during trial	64
3.6. Experiences post-trial	88
3.7. Challenges faced by informants providing support to complainants	98
3.8. Longer term impacts of the legal process on complainants	100
4. Recommendations for reform	108
Appendix A: Informant consultations	117
Appendix B: Topics of discussion with informant groups	120
Appendix C: Participant Information and Consent Form (PICF)	121
Appendix D: Combined topic guides with complainants	127

Glossary

Term	Definition
AH&MRC	Aboriginal Health and Medical Research Council
Attrition	When matters discontinue between reporting and any conviction. Reasons can include withdrawal of complaints by victim-survivors, but our research indicates that matters more commonly discontinue as a result of police or prosecutorial decisions.
AVO	Apprehended Violence Order
BOCSAR	NSW Bureau of Crime Statistics and Research
CALD	Culturally and linguistically diverse
CIJ	Centre for Innovative Justice
Complainant	In this report, use of the term 'complainant' reflects criminal justice system terminology that refers to people who have reported a crime and are the primary witness in an investigation or prosecution
HREC	Human Research Ethics Committee
Informant	Agencies that have significant experience with the investigation and/or prosecution of sexual offences, and/or the provision of support services to complainants
LGBTIQ+	Lesbian, gay, bisexual, transgender, and queer
LHD	Local Health District
Medical and forensic examination	An assessment of a sexual assault patient by a medical and forensic examiner for the purpose of the collection of medical history and history of the assault, physical injury documentation, and biological forensic evidence collection to assist with a criminal investigation. In NSW, the forensic assessment and examination is offered alongside medical assessment, medical examination and care. This involves assessing the health and treatment needs of the patient, as well as providing reassurance about any fears the patient may have regarding injuries or other health concerns. These occur as parallel, rather than separate, processes.
The National Plan	The National Plan to End Violence Against Women 2022-2032
NSW Plan	NSW Sexual Violence Plan 2022 – 2027
ODPP	Office of the Director of Public Prosecutions
PICF	Participant Information and Consent Form
SAIK	Sexual Assault Investigation Kit
SARO	Sexual Assault Reporting Option
SAS	Sexual Assault Service
SSOL	Specialist Sexual Offence Lists
WAS	Witness Assistance Service
VAN	Violence abuse and neglect
Victim-survivor	In this report, 'victim-survivor' is used to indicate people who have experienced a sexual offence, regardless of whether or not they have reported the offence. This is inclusive of complainants, the terminology used in the criminal justice process once a victim-survivor reports an offence.
VIS	Victim impact statement

Executive summary

Introduction and scope

In response to a recommendation by the NSW Law Reform Commission (*Report 148: Consent in relation to sexual offences*), the NSW Bureau of Crime Statistics and Research (BOCSAR) has led a program of research investigating the experiences of complainants of sexual offences (“complainants”) in the NSW criminal justice system.

KPMG, in partnership with RMIT University’s Centre for Innovative Justice (the CIJ), was engaged by BOCSAR to undertake an interview study to provide a detailed understanding of complainant and stakeholder experiences in the NSW criminal justice system. This research enables complainants to describe, in their own words, both the strengths and challenges present in the current NSW legal system for people who have experienced sexual violence. Importantly, this includes how processes are directly experienced on the ground, rather than as described in policy or legislation, given these experiences may stand in contrast with the efforts and intent of policymakers.

The interview study involved two components:

- **Consultations with informants**, which are agencies that have significant experience with the investigation and/or prosecution of sexual offences and/or the provision of support services to complainants. Between March and July 2022, KPMG conducted focus groups with 118 informants to understand the experience, expertise and observations of practitioners and experts in contact with complainants. Informants included representatives from NSW Police Force, NSW Health Sexual Assault Services (SAS), legal services, judicial officers, Women’s Health Services, Office of the Commissioner of Victims’ Rights, and cohort-specific organisations that work with and/or advocate for specific population groups.
- **Interviews with complainants¹ in sexual offence matters** aged 16 or above, conducted by the CIJ. The CIJ worked with a range of different support agencies in NSW, as well as the statewide SAS network, to establish diverse recruitment pathways which enabled interviews with 34 participants to be conducted. Recruitment then occurred through the NSW Health SAS network, as well as agencies delivering disability and mental health services, agencies supporting wider cohorts of victims of crime, agencies supporting same sex attracted and gender diverse communities, and organisations providing peer support and information to victim-survivors of sexual assault. Interview participants included complainants from metropolitan and regional areas and of diverse sexual and gender identities, cultural and linguistic backgrounds, and educational and occupational backgrounds.

Approach to conducting research with complainants

Using its well-established approach to conducting research with people who have experienced trauma, the project team worked with recruiting agencies to ensure that support was provided throughout the process and any potential risks to the participant’s wellbeing were identified.

Consequently, interview participants with complex needs whose voices may not otherwise be heard in research were able to participate, with a flexible and tailored process ensuring that the interview occurred in a format that best suited the individual.

¹ We refer to ‘victim survivors’ where the person who has experienced sexual violence has not yet reported to police, and ‘complainants’ where the person has reported and therefore interacted with justice agencies in some way. Where referring directly to complainants who participated in the research, we use the term ‘interview participants’ to reflect their central role in the project.

Ethical approval was provided by the NHMRC recognised Hunter New England Local Health District Human Research Ethics Committee and then subsequently endorsed by 14 other Local Health Districts (LHDs) through their individual review processes. The project team also sought and received approval from the NSW Aboriginal Health and Medical Research Council (AHM&RC) for the purposes of specifically recruiting Aboriginal and Torres Strait Islander participants and to explore experiences directly related to their First Nations identity.

Study limitations

Elements out of scope for this research

As noted above, this project was commissioned to focus on the observations of stakeholders working in practice and the direct lived experience of complainants. As such, certain contextual elements were out of scope of this study, namely:

- The experiences of victim-survivors who do not report a sexual offence to police
- An evidence or literature review into the prevalence or experiences of victim-survivors of sexual offences
- A detailed representation of the existing service system for victim-survivors of sexual violence
- Specific research into the impacts or effectiveness of new affirmative consent laws and jury directions that came into effect in June 2022 and which will be the subject of a separate evaluation.

Sample size

The sample size for the complainant interview component of this research was 34 participants reflecting a broad diversity of participants. While smaller than the original target, it should be noted that this sample is significant in the context of qualitative research. Studies indicate that thematic saturation, the point at which point no new themes or content emerge, can occur in as little as nine to 12 interviews and in between three to six focus groups.²

Participation of First Nations complainants

In the context of relevant approval processes in NSW, ethical approval from AH&MRC was necessary to include the insights of, and findings specific to, Aboriginal and Torres Strait Islander participants. This responds to the over-representation of First Nations people in research but under-represented in decision-making processes, with self-determination around how and when First Nations voices are used being a crucial priority in ethical research.

This was a considered process, conducted over many months, both in terms of working closely with community to establish research parameters, as well as then enabling sufficient review time for the AH&MRC. Despite the importance of Indigenous data sovereignty via processes such as these, it is important to acknowledge that this process restricted recruitment, thus sample size, in the primary phase of the research.

² Guest G, Bunce A and Johnson L. (2006) How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability. *Field Methods* 18: 59-82.

Findings

In the body of this report, findings have been presented along the continuum of the legal process and on the specific impacts of the system on informants and complainants. Five key themes cut across all components of our research.

1	Positive experiences for complainants are broadly underpinned by feeling believed by professionals who provide complainants with the information to make informed decisions about their matter.
2	Conversely, negative experiences are associated with a lack of a trauma-informed approach, compounding the lack of trust and agency already caused by the offence.
3	While support for complainants is available from various organisations at various stages across the justice process, variable accessibility for complainants and limited organisational capacity means that most complainants do not have consistent support from the same person across their legal journey.
4	Some groups of complainants face additional barriers to participating in the criminal justice process, with very few of these cohorts proceeding to trial: <ul style="list-style-type: none">• First Nations people• People who identify as lesbian, gay, bisexual, transgender, intersex, or queer• People with communication difficulties, including those from culturally and linguistically diverse backgrounds and people with disability (particularly intellectual and psychosocial disability)• People who have engaged in sex work• People who have previously been in contact with the justice system as offenders.
5	The justice system itself is not trauma-informed nor designed to consider matters relating to sexual offences in an appropriately sensitive way.

The more detailed findings of our research are summarised below.

Experiences reporting a sexual offence

Recognising that the majority of victim-survivors of sexual offences do not report their experience to police, this research provided a direct opportunity to explore any initial reluctance report on the part of interview participants, echoed by informants in consultations.

Interview participants described not recognising their experience as sexual assault; not seeing it as serious enough to warrant reporting; blaming themselves for the assault; or fearing or directly experiencing blame from others. The latter was particularly relevant when the offence involved a perpetrator with whom they had an existing relationship.

Furthermore, interview participants volunteered that a fear of police had contributed to their reluctance to report. Participants described fearing police due to either having no previous interaction with the justice system or, conversely, because they had multiple previous interactions or belonged to a population group with experiences of disproportionate police contact. Informants in consultations also emphasised the significant barriers to reporting faced by particular groups in the community.

Importantly, the research also enabled interview participants to explain why they had ultimately decided to report, despite any initial hesitation. Some described wanting to take ownership of the situation while others felt pressured to report. Rather than wanting the perpetrator to experience punishment, however, the predominant reasons for interview participants reporting their offence were a desire for the perpetrator to understand that the offence was wrong and, overwhelmingly, a wish to prevent a similar experience happening to someone else. The Sexual Assault Reporting Option (SARO), which allows victims-survivors to let police know of a sexual assault without making a formal report, was seen as a positive alternative to the reporting process.

Across the project, interview participants and informants described features of a positive experience once complainants did report. A positive experience was often grounded in complainants:

- Feeling believed and validated by police
- Being provided with a supportive response from all police officers in the process
- Having access to specialist detectives
- Being supported by the same detective throughout the reporting and legal process.

A range of features also contributed to the reporting experience being negative, including:

- A lack of empathy from the first officer with whom complainants speak
- The physical environment of the police station being impersonal or intimidating
- The detailed nature of questioning required of police for a report
- Feeling judged or shamed during questioning
- A lack of a trauma-informed approach from police, including police not understanding why complainants may respond in a certain way or have trouble recalling certain events
- Officers appearing to not treat sexual offences as a serious crime
- Factors specific to the cultural experiences of certain population groups
- Being viewed as an 'unreliable witness'
- Variability in communication following a report.

Interview participants who had accessed a medical and forensic assessment as part of the wider NSW health response generally described a positive experience, highlighting the importance of being linked with a specialist counsellor. However, informants and interview participants described challenges that exist in accessing a medical and forensic assessment, including:

- Variable availability of clinicians to perform an examination, particularly in regional areas
- A lack of awareness about the role of a medical and forensic examination in the wider investigative and legal process, not only from interview participants but some frontline professionals and support agencies. In some cases, the advice that interview participants had received immediately following their offence had meant that forensic evidence that might have made a difference to the prosecution of their offence had not been gathered.

The research identified particular challenges regarding the quality of investigation and evidence gathering for sexual offence matters. Informants discussed the challenges of gathering evidence in matters that were not reported immediately following the offence and identified challenges where the level of detail required by the police to progress a matter was experienced as overwhelming by complainants. Interview participants also highlighted a wider range of challenges, including:

- The process of taking statements feeling rushed, incomplete or inaccurate, or distressing
- Feeling uninformed regarding which information was required for the investigation and how this would be used
- Inconsistency regarding police gathering additional evidence across multiple occasions, including interviewing witnesses or gathering CCTV evidence
- A perceived lack of follow up from police, with the length of investigations and inconsistent communication making complainants feel forgotten or that they had 'fallen down a crack'.
- Complainants not being informed of or understanding the reasons why an investigation had not progressed or was not proceeding to trial.

A small number of interview participants made the decision not to progress their matter any further, either at an earlier stage because of negative experiences at the reporting stage or fear of family or community repercussions, or later because of fear of how they would be treated during the trial or how their experiences may be made public.

Crucial to note, however, the majority of interview participants wanted their matter to progress, despite any negative experiences of reporting, and despite a protracted investigation process in which they had received little information. Participants emphasised that, if they had taken the significant step of reporting to police, then this meant that they wanted something to be done.

Experiences of the trial process

The project confirmed that certain features of a prosecution and trial process are experienced by most complainants as damaging and, as one interview participant described it, “a new trauma”. Informants and interview participants alike explained that the trial process itself was unclear for complainants and that there was a lack of available and consolidated information about what the process entailed.

A specific feature of discussion across the consultations and interviews was that complainants’ status as a ‘witness’ in the trial, rather than as a party in the proceedings, can be especially traumatic and contribute to them feeling a further loss of agency. The research also found that, while support is available at specific points in the legal process, complainants have limited access to consistent end-to-end support from the time of reporting a sexual offence, through the police investigation and, where relevant, the criminal trial.

Informants and interview participants consistently highlighted specific factors that can contribute to a negative experience at trial and the re-traumatisation of complainants, including:

- Significant travel associated with attending court that can result in the complainant being removed from their own support networks.
- The complainant being in close physical proximity with the accused and their support networks while attending the courthouse
- Charges against the accused being negotiated down, with the complainant sometimes finding out after the fact
- Hostile or aggressive questioning under cross-examination
- Delays in the trial process that can stretch to years, impacting on a complainant’s ability to heal and recall events.

Overall, the research highlighted that the trial process can be re-traumatising and those working in association with it require specific and regular trauma-informed training. Further, the research found that positive experiences of the trial process were marked predominantly by factors operating outside the trial process, including ongoing support from relevant professionals, including dedicated detectives or specialist counsellors, or through non-professional supports such as peer networks, family, and friends.

Experiences post-trial

As well as examining the reporting and trial process, the research explored the impacts on complainants following their interaction with the criminal justice system. Informants and interview participants all indicated that trials could take a significant toll on the wellbeing of complainants, even in the event of a guilty verdict or plea, with a lack of support following the process often leaving them feeling forgotten or not understanding what has occurred.

Compounding this was the finding that many services do not have capacity to maintain support over a prolonged period. Interview participants explained that the specialist support from which they had previously benefited had ‘run out’ by the time that their matter had reached trial, despite therapeutic support being especially needed in the event of a distressing outcome at court. To note, a small number of interview participants had pursued other forms of recourse outside the criminal justice process. This included making a complaint to a regulatory body, seeking workers’ compensation where the offence had occurred in the context of a working environment, or bringing civil action. Only one had experienced a positive outcome, however, with this participant volunteering that this was because she had the education and resources to pursue it in a way that most complainants would not.

A particular feature of the wider Victims Services response that was experienced as positive by all interview participants who had accessed it was access to recognition payments. Rather than the

financial support, complainants reflected that the formal recognition by the state that their experience was believed was the most meaningful aspect, with one interview participant explaining that this was the only positive aspect of their experience of the system response overall.

Finally, a finding of the research was that, because of the traumatising nature of the criminal justice process overall – but especially the trial process – many interview participants stated that they likely would not report a future offence, although a small number of interview participants did not regret reporting because they felt that they owed it to themselves to try.

Similarly, many informants, despite working in the system and doing their best to ensure its effectiveness, indicated that they would not encourage a family member to report if they experienced a sexual offence or if they experienced one themselves, with many describing the criminal justice system as “broken”. Similarly, many felt frustrated and restricted in the support that they can provide to complainants and described challenges of high service demand, gaps in service access and the distress the legal process causes complainants.

As the experience of the criminal justice process was very recent for many interview participants, an overarching finding from this research is that considerable work is still needed to ensure recently introduced policy and legislative reform have the intended impact on the experiences of complainants and the personnel working hard to support them.

As indicated by the research findings, there is scope to improve the current experience in reporting and proceeding to trial, both for complainants and for informants within the justice system. There is also potential for the NSW Government to explore alternative justice mechanisms for those who do not wish to proceed through the criminal justice system.

Recommendations for reform

This interview study is one component of a broader research project into the experiences of complainants of sexual offences in the NSW criminal justice system. Other components include analysis of District Court trial transcripts (led by Professor Julia Quilter and Professor Luke McNamara) and analysis of administrative data systems (led by BOCSAR). We also note that this interview study has not been supplemented with a literature review into wider complainant experiences nor assessment against the current and planned service system, although it did involve a scan of recent reforms in NSW and comparable jurisdictions.

Nevertheless, through the generosity of the informants and interview participants that we spoke to as part of this study, we have made a series of recommendations for reform that could improve the experience of complainants in the criminal justice system. These recommendations are directly informed by what we heard, and it is important to note the high level of consistency across the informant consultations and complainant interviews.

1	Deliver targeted public awareness campaigns and associated resources for the community, and GPs and other frontline health professionals	<p>These campaigns would seek to improve victim-survivors' understanding of their experience as well as build a more nuanced understanding in common disclosure points – such as family, friends, and frontline health professionals – of the reporting process and available supports.</p> <p>Campaigns would benefit from being tailored to different community groups (such as victim-survivors, family and friends, and the broader community) and different professions (such as GPs and other frontline health professionals, counsellors, and other key points of disclosure).</p> <p>Resources may include details of the process from reporting a sexual offence through to trial, with examples and/or anecdotes of 'success stories' in order to support victim-survivors' understanding.</p>
2	Consider establishing a model of care which connects victim-survivors with a consistent source of support	<p>The proposed approach would involve support that is distinct from other specialised roles already in existence and should be focused on information and advocacy, as well as coordination of care. It would ensure that victim-survivors are provided with consistent end-to-end support.</p>
3	Explore options which facilitate access for complainants to timely and accurate legal information regarding the legal process	<p>Access to legal information and expertise will ensure that victim-survivors have access to timely advice which can help them understand the process, access support on procedural issues, and improve their confidence in the legal process overall.</p>
4	Introduce a multiagency protocol that outlines the roles and responsibilities of all stakeholders in the criminal justice process in the context of sexual offences	<p>The agencies involved in this protocol could include NSW Police Force, ODPP, NSW Health, and Victims Support.</p> <p>The intention of this protocol is to inform improvement and support across the reporting and prosecution process.</p>

5	Introduce a NSW Police Code of Practice for Sexual Violence to standardise a trauma informed approach to working with complainants and investigating sexual offences	This Code of Practice would act as a companion to the Code of Practice for Domestic and Family Violence.
6	Roll out training for NSW Police across all commands on trauma, sexual offence myths, and impacts of sexual violence	<p>Training will enable consistent police practice in line with the proposed Code of Practice for Sexual Violence. Ideally, this training would include co-design and delivery by victim-survivors with lived experience of sexual offences and the criminal justice process, supported by frontline practitioners.</p> <p>Consideration will need to be given to the capacity of frontline officers to ensure that this training is appropriately scheduled and prioritised by Commands.</p>
7	Pursue initiatives to improve access to, and quality of, medical and forensic examinations	<p>This could include:</p> <ul style="list-style-type: none"> • Conducting a statewide review of the process of evidence collection and recording to determine where gaps are occurring within the system and within the state. • Developing guidelines and associated training for NSW Police Force officers and mainstream frontline health professionals (such as GPs) on the medical and forensic examination process.
8	Adopt a Sexual Offence Model Litigant approach in all sexual offence trials	A Sexual Offence Model Litigant approach is designed to realise the intent of the relevant legislative reforms in recent years, including the introduction of new jury directions. An approach of this kind would include establishing a form of ‘ground rules’ between the parties’ representatives and the presiding judge to ensure that expectations around appropriate lines of questioning and trauma-informed approaches are shared and understood.
9	Develop and deliver consistent specialist training regarding the impacts of trauma and the provision of trauma-informed approaches for judicial officers and court personnel	This training would target judicial officers and court personnel, as well as legal practitioners who work in the jurisdiction. This recognises that all interactions that a complainant has, at all points of the process, can contribute to new trauma and potentially deter them from continuing with the process.

10	Commission research into areas identified by this study as warranting closer examination	<p>This study has highlighted a number of areas that would warrant further research to understand drivers and identify areas for improvement:</p> <ul style="list-style-type: none"> • The experiences of people who are victim-survivors of sexual violence but who have not made a report to police to identify ways to address barriers to reporting. • Why, despite stronger case management approaches in the District Court, complainants are still experiencing adjournments and associated delays in their sexual offence matters. • The experiences of Aboriginal and Torres Strait Islander communities in relation to sexual offending and engagement with the legal process.
11	Conduct a demand, funding, and service model assessment of the WAS to determine what level of investment would ensure consistent provision of the service across the state	<p>The research found that complainants experienced the WAS role as more limited than they expected and that they would have preferred access to greater consistency and support. Similarly, informants spoke of variable access to WAS officers due to capacity within the service.</p> <p>Supplementing recommendations above, the NSW Government should assess whether additional investment could support attendance at court by WAS officers where this is the complainant's preference or where other forms of support are not available.</p>
12	Conduct a demand and funding review of the statewide NSW Health SAS network to determine what level of investment would ensure consistent provision of specialist, therapeutic supports across the state	<p>We heard that capacity and workload pressures mean the NSW Health SAS network is not able to consistently provide specialist support for victim-survivors of sexual violence. A thorough assessment is required to understand the level of existing and future demand for NSW Health SASs and the funding required to meet that demand with the full suite of specialist, therapeutic support required by victim survivors. The funding model should also recognise the role of SASs in providing clinical supervision and advice to other health services and external agencies.</p>
13	Explore the development of a sexual violence Restorative Justice Service to deliver restorative approaches in sexual offence matters	<p>A Restorative Justice Service could sit alongside the traditional legal process to enable victim-survivors to pursue a justice response that suits their experience and recovery. This could include having an opportunity to tell their story experiencing recognition of what had occurred, receiving information about relevant events, and receiving an apology and reparations.</p>
14	Commit to public reporting on the timeliness of sexual offences, the number of sexual offence matters that are withdrawn, and reasons for the outcomes of sexual offence matters	<p>Public reporting will provide greater transparency on decisions that are made during the reporting and investigation process. This will improve understanding of attrition patterns and improve accountability of police and prosecution agencies for their actions and decisions at different stages of the investigation and prosecution process. It will also enable monitoring of the impact of implementing the recommendations outlined above to determine if more needs to be done.</p>

Disclaimer

This report has been prepared as outlined in the Review objective, scope and methodology section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by stakeholders consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis.

Third Party Reliance

This report is solely for the purpose set out in the Introduction section and for the Department of Community and Justice's information, and is not to be used for any other purpose or distributed to any other party without KPMG's prior written consent.

This report has been prepared at the request of Department of Communities and Justice in accordance with the terms of KPMG's contract dated 2 December 2021. Other than our responsibility to Department of Communities and Justice, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.



1

Introduction

1. Introduction

1.1. Background and context

In response to a recommendation by the NSW Law Reform Commission (Report 148: Consent in relation to sexual offences), the NSW Bureau of Crime Statistics and Research (BOCSAR) has led a program of research to investigate the manner in which the NSW criminal justice system and its processes are directly experienced by people who report a sexual offence. In the context of this system, people who report a sexual offence are referred to by the term ‘complainants’.

Prior to this, the most recent research examining complainants’ experiences in NSW was the 1996 report, *Heroines of Fortitude: The experiences of women in court as victims of sexual assault*, produced by the then Department for Women. The study analysed transcripts of 150 sexual assault trials heard in the NSW District Court between May 1994 and April 1995. The purpose of the 1996 research was to examine how victims of sexual assault were treated in the criminal justice process and the effectiveness of legislative provisions designed to protect the rights of complainants in sexual assault proceedings. No similar study in NSW has been conducted in the 27 years since.

The objective of the current BOCSAR-led research program is to go further than the *Heroines of Fortitude* report by collecting data from multiple sources, including trial transcripts, interviews with complainants and key informants, and administrative data systems. This program of research is intended to improve complainant support and protections in the criminal justice system.

KPMG, in partnership with RMIT University’s Centre for Innovative Justice (the CIJ), was engaged by BOCSAR to undertake a component of this program of research: an interview study to provide a detailed understanding of complainant and stakeholder experiences in the justice system. This work was guided by a Sexual Offences Research Advisory Panel, which included representatives from policy areas of government agencies, non-government organisations, and academia.

Importantly, this research enables complainants to describe to us, in their own words, the strengths and significant challenges present in the current NSW legal system for people who have experienced sexual violence. Given recent reforms in the area of sexual violence, these direct experiences may often contrast with the objectives or efforts of policymakers at a policy or legislative level. As such, these insights are vital to understand the experiences of those the system is intended to support.

1.2. Scope and approach

The aim of this interview study was to understand the experiences of complainants of sexual offences at different stages of the criminal justice process. The study did not include a focus on the process relating to any sexual offences committed against child victims (i.e., those against whom an offence is committed when under the age of 16 years and who experience the legal process as a child).

The research questions and sub-questions that guided this work, as outlined by BOCSAR, were:

1. How do victims experience their interactions with NSW justice agencies from the time of reporting and through the justice process?
 - What are the reasons complainants make an initial report and what do they hope to gain from this process?
 - What parts of the process work well for victims? What are victims’ key concerns with the process, and do they feel supported?
 - Which justice agencies do victims have contact with and what are their experiences with these agencies?
 - How can agencies improve to better respond to victims’ needs, goals and expectations?

2. What are the major points of attrition for reported sexual offences?
 - At the key points of attrition, what factors influence the decision not to continue? Who makes this decision?
 - What are the barriers to reporting sexual offences to Police?
 - What are the reasons for criminal proceedings not commencing?
 - What are the reasons for the withdrawal of sexual offence charges and at what point in the process does this typically occur?
3. What is the nature and extent of sexual offence complainants' participation in court processes in NSW?
 - How do complainants wish to participate in these processes?
 - What aspects (if any) enable complainants to effectively participate in court processes?
 - What are the barriers to effective victim participation in court processes and how can they be overcome?
4. To what extent are support services available and accessible to complainants in sexual offence matters in NSW?
 - Are these support services used and, if not, why?
 - What improvements can be introduced for victims who report sexual offences to reduce the trauma associated with the investigation process and criminal prosecution?
5. What is the experience of sexual offence complainants in the conduct of trials in NSW?
 - To what extent do complainants feel they were adequately prepared for and supported during the experience of giving evidence?
 - Was there any information that complainants were not informed about that would have assisted their preparation?
 - What are the most challenging elements of the trial process for victims? How can the trial process be improved for victims?

There were two components to this interview study:

- Consultations with informants, which are agencies that have significant experience with the investigation and/or prosecution of sexual offences, and/or the provision of support services to complainants
- Interviews with complainants in sexual offence matters aged 16 or above.

1.2.1. Consultations with informants

Between March and July 2022, KPMG conducted focus groups with a range of informants (n=118) to understand the experience, expertise and observations of practitioners and experts in contact with complainants. These included representatives from:

- NSW Police Force
- NSW Sexual Assault Services (SASs)
- Legal services
- Judicial officers
- Women's Health Centres
- Office of the Commissioner of Victims' Rights

- Cohort-specific organisations that work with and/or advocate for:
 - Victim-survivors of sexual violence
 - Culturally and linguistically diverse (CALD) people
 - Asylum seekers and refugees
 - Sex workers
 - Aboriginal and Torres Strait Islander people
 - People with disability
 - Lesbian, gay, bisexual, transgender, intersex, and queer (LGBTIQ+) people.

A full list of informant organisations consulted is set out at Appendix A. A list of discussion topics with informant groups is set out at Appendix B.

1.2.2. Consultations with complainants

The CIJ has extensive experience in conducting research with people who have experienced trauma. This includes people who have experienced sexual, domestic, and family violence, as well as structural trauma from interacting with different statutory and legal systems.

The CIJ's established approach to conducting trauma-informed research includes recruiting participants through agencies with which they already have a relationship. This is so practitioners assisting with recruitment can employ their knowledge of a potential participant's needs to identify any supports that may assist a participant during the process, as well as to assess the risk that a participant may experience re-traumatisation or an escalation of other forms of harm. Recruiting through practitioner networks also enables participants to be supported through the process, including by accessing de-briefing, without having to re-tell their story. Through this approach, participants with complex support needs, who may not otherwise have an opportunity to contribute to research, are more likely to be included.

Recognising that many people who experience sexual assault do not receive support from a specialist sexual assault service, the project team worked with a range of different support agencies in NSW to establish diverse recruitment pathways. This process enabled recruitment to be conducted not only through NSW Health SAS practitioners, but also through organisations delivering disability and mental health services, supporting wider cohorts of victims of crime, supporting LGBTIQ+ communities, and providing peer support and information to victim-survivors of sexual assault. Following an extensive scoping process through which agencies agreed to support the research, the project team engaged extensively with those agencies in the development of the recruitment approach and in providing briefing sessions at the point at which recruitment could then commence.

A tailored approach was then adopted for each interview participant, with the project team working extensively with the participant and practitioner prior to the interview. Each interview participant's preference for de-briefing was then established, with multiple points of de-briefing arranged by the project team in some cases. This process was carefully conducted over a period of weeks – and, in some cases, months – to identify the best possible time and way for a participant to be involved. In the context of this particular research, this included:

- Waiting until relevant legal proceedings (including associated civil complaints) had been resolved
- Rescheduling where a participant's mental health was in decline, particularly where the participant had received an unfavourable court outcome and needed acute care
- Where a participant's preference was to have the interview in person, arranging for CIJ researchers to travel to a location nominated by the participant as feeling safe, private, and supported
- Continuing to engage with many of the participants to ensure that they feel supported on an ongoing basis, particularly where extended legal processes can otherwise lead people to feel forgotten by the system.

The project team sought and received approval from a National Health and Medical Research Council recognised Human Research Ethics Committee (HREC). As the NSW Health SAS network is formally part of the NSW Health system, the project team sought review by the Hunter New England Local Health District Human Research Ethics Committee. Overarching ethical approval from this committee was subsequently endorsed by 14 other Local Health Districts (LHDs) through the individual review processes associated with these LHDs.

The project team then sought and received approval from the NSW Aboriginal Health and Medical Research Council (AH&MRC) for the purposes of specifically recruiting Aboriginal and Torres Strait Islander participants and to explore experiences as directly related to their First Nations identity. This approval enabled the CIJ to recruit First Nations participants in one regional and metropolitan area of NSW respectively, with the process related to this component of the research discussed in more detail below.

The project team will provide a summary and full copy of the findings to all participants to ensure that they are aware of how their voices have contributed to the research.

1.3. Study limitations

1.3.1. Elements out of scope for this research

As noted above, this research comprised solely of consultations with informants and interviews with complainants. As such, there were certain contextual elements that were out of scope of this study and therefore are not outlined in detail in this report. These include:

- The experiences of victim-survivors of sexual offences more broadly. We note that focusing on those who have made a report to police, at a minimum, excludes the majority of people who have experienced sexual violence.³
- An evidence or literature review into the prevalence or experiences of victim-survivors of sexual offences.
- A detailed representation of the existing service system for victim-survivors of sexual violence.
- Specific research into the impacts or effectiveness of new affirmative consent laws and jury directions that came into effect in June 2022, which will be the subject of a separate evaluation. Some of the issues raised by complainants through this report may have occurred prior to these reforms and associated education campaigns being introduced. Nonetheless, we note that the objectives of policy and legislative reform often take some time to translate into practice, or are not always experienced consistently by people working in or seeking the assistance of the system.

1.3.2. Sample size

The ultimate sample size reached in relation to the interviews with complainants was 34 participants. Within this sample, a diverse range of participants was able to contribute, reflecting the CIJ's supported approach and the multiple recruitment pathways established. The sample included participants from metropolitan and regional areas; participants from across a wide age range; participants of diverse sexualities and gender identities; participants from diverse cultural and linguistic backgrounds, including international students; and participants with diverse educational and occupational backgrounds, ranging from tertiary educated professionals to people engaged in casual and regulated sex work.

³ The Australian Institute of Health and Welfare reported that 87 per cent of women who had experienced an aggravated sexual assault by a male in the last 10 years did not contact the police. (Australian Institute of Health and Welfare (2020), Sexual assault in Australia, cat. no. FDV 5, Canberra: AIHW.)

Given the complexities and multiple applications for ethical review required across the research, the initial target sample of 60 participants was revised down. Crucial to note, however, the sample ultimately achieved remains significant in the context of qualitative research. In fact, empirical evidence establishes that thematic saturation – being where no new themes or content emerge – is usually achieved somewhere between nine to 12 interviews and between three to six focus groups.⁴ The established evidence base is echoed in the CIJ’s own extensive experience from similar projects.

The below table is a high-level level breakdown of the diverse demographics reflected across the participant sample. When completing their consent forms, participants were asked to provide additional demographic information on an optional and confidential basis, noting that some did not provide this information or complete every field on the form. Of note, approximately half of the participants were aged between 16 and 34, reflecting wider evidence that this cohort is at particular risk of sexual violence.⁵ Furthermore, all but two participants identified as female. As outlined in the table below, approximately one quarter of participants identified as being from culturally and linguistically diverse communities, while around one fifth identified as having a disability.

Table 2: Demographic Characteristics of Interview Participants (N=34)

Demographic Data	Number of Participants	
Age ranges	16 – 24 years	11
	25 – 34 years	5
	35 – 44 years	7
	45 – 54 years	1
	55 – 64 years	1
	65 years and over	0
People who identify as LGBTIQ+	Gay or Lesbian	3
	Bisexual	7
	Straight	16
	Transgender	1
Gender identity	Male	1
	Female	27
Culturally and linguistically diverse background		8
First Nations		8 ⁶
Currently or previously engaged in sex work		2
Identify as having a disability		6

Source: Project team

Interview participants also had diverse experiences of the criminal justice process, including some with experiences of multiple sexual offences at different times. Experiences spanned the range of the

⁴ Guest G, Bunce A and Johnson L. (2006) How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability. *Field Methods* 18: 59-82).

⁵ Australian Institute of Health and Welfare. (2023). Family, domestic and sexual violence, Canberra: AIHW. Retrieved from <https://www.aihw.gov.au/reports/domestic-violence/family-domestic-and-sexual-violence>.

⁶ Note that ethical approval under the Aboriginal Health and Medical Research Council was only received for 5 First Nations participants. As such, for the remaining three, any findings that are specific to their Indigenous identity was not able to be reported on.

criminal justice process, noting that many experiences involved a combination of the below and as such these numbers do not add to 34:

- Reporting one offence through the SARO process and others to police (1)
- Reporting a single offence through the SARO and subsequently to police (2)
- Reporting to police and receiving no further follow up (8)
- Reporting to police but electing not to make a statement (1)
- Reporting to police with no charges ultimately laid after investigation (9)
- Charges being laid but matter ultimately not pursued by prosecution (1)
- Matters being listed for trial but complainant being advised by prosecution not to proceed (1)
- Matters being listed for trial and then resolved via a guilty plea or early resolution (4)
- Matters involving the conduct of a trial and complainants undergoing cross-examination (8).

1.3.3. Participation of First Nations complainants

During the establishment phase of this research, the project team was advised by the LHD network that specific ethics approval from the AH&MRC was required in order to include the insights of Aboriginal and Torres Strait Islander participants. This important additional step reflects the fact that First Nations peoples are over-represented in research but under-represented in decision making, with self-determination around how and when First Nations voices are used a crucial priority in ethical research.

In line with AH&MRC advice, the project team worked with a particular Aboriginal Community Controlled Organisation as well as an Advisory Group of representatives nominated by the Aboriginal community from a particular regional area in NSW to develop an agreed approach to the participation of Aboriginal participants from two specific LHDs. In relation to the regional area, invitations were extended by initial community contacts to all community representatives to make the process as open as possible and to ensure that the appropriate people were speaking for Country and community. A series of meetings were then conducted, with invitations repeated at various stages to ensure that all community members were aware of the opportunity to be involved in the program. The engagement also included the project team visiting and spending time with community, hearing about their priorities and how they would direct the research to be used. During this visit, additional community members, who had not previously engaged through the invitation process, attended and worked with the project team. At all times in this process, community set the pace and tone, with the development and review of the approach needing time to allow for representatives to attend to their community obligations, including extensive Sorry Business⁷ in the regional community. Approval from the AH&MRC was received following this process of extensive engagement.

The project team acknowledges the importance of Indigenous data sovereignty via processes such as these. However, this process restricted recruitment – and therefore the sample size – in relation to specific incorporation of the experience of First Nations complainants in the context of the broader research across all participating LHDs. For example, First Nations participants were not specifically recruited across wider participating LHDs. Where participants identified as First Nations during the course of the interview, observations that directly related to their Aboriginal or Torres Strait Islander identity, or which referenced their community or associated obligations, were restricted from being included in the broader discussion under the scope of the combined ethical approvals.

⁷ Sorry Business⁷ is an important time of mourning that involves responsibilities and obligations to attend funerals and participate in other cultural events, activities, or ceremonies with the community. This is an important community and cultural tradition for Aboriginal and Torres Strait Islander peoples.



2

Policy Context

2. Policy and legislative context

In NSW, there has been significant recent momentum around improving responses to sexual violence, with policy changes taking place within and at the interface between the health, family violence and criminal justice sectors. This includes the legislative reform surrounding affirmative consent and coercive control, as well as the implementation of the *NSW Sexual Violence Plan 2022-2027*, the *Integrated Prevention and Response to Violence, Abuse (VAN) and Neglect Framework* and the *National Plan to Reduce Violence Against Women and their Children*.

The experiences of complainants as they navigate the legal process and associated service system will be shaped, to differing extents, by emergent and established policy and legislative settings and responses. This includes where policies and new laws have not yet been fully integrated into key components of the justice and wider service system; where work is ongoing to ensure effective and inclusive access and handover points within and across systems; and where certain policy settings or responses are available and well established in specific locations, but do not yet have statewide reach or are not yet experienced in a consistent way.

Recognising the gap that can exist between policy and end-user experience of the system, the following section provides an overview of key policy and legislative settings and initiatives being developed and implemented in NSW to improve the experiences of people who have experienced sexual harm. This is not intended to be a comprehensive account of the legislative and service system applying to sexual violence in NSW which, as noted in Section 1.3.1, was beyond the scope of this research project.

2.1. Primary prevention

Primary prevention is a cornerstone in the gendered violence policy landscape, signalling a commitment to longer-term strategies to prevent this violence before it occurs. This will require ongoing promotion of gender equality, ensuring availability of affordable social housing, and addressing racism and broader disadvantage.

In the NSW context, primary prevention has been characterised by a coordinated, whole-of-state approach to addressing the underlying causes of sexual violence while increasing community education on the issues of gender equality, and safe, respectful and healthy relationships. Key policies that have built mutually reinforcing preventative action include the:

- *NSW Women's Strategy 2023–2026*, aimed at advancing gender equality by improving economic, social and health outcomes for all women and girls in NSW
- *Integrated Prevention and Response to Violence, Abuse and Neglect Framework* (the Framework), which outlines the role of NSW Health in promoting prevention strategies within its own organisational context and through community partnership and advocacy
- *NSW Sexual Violence Plan 2022 – 2027* (NSW Plan).

The NSW Government has also committed to developing and implementing a *Domestic, Family and Sexual Violence Primary Prevention Strategy* which will deliver a comprehensive and holistic multi stakeholder framework to address the drivers of sexual, domestic and family violence across NSW.

An important component of the NSW Government's approach to primary prevention has been increasing community awareness about consent. This is in line with the state's recent reform of the Sexual Consent Law, which is included in the recommendations made by the NSW Law Reform Commission in *Report 148: Consent in relation to sexual offences*. Activities to build awareness and understanding of affirmative consent have included embedding education about respectful

relationships and sexual consent within the Development, Health and Physical Education curriculum in NSW schools, and the statewide sexual consent campaign 'Make No Doubt'.

2.2. Early intervention

Early intervention plays an important role in stopping violence from escalating, protecting victim survivors from immediate and long-term harm, and preventing violence from reoccurring.

Early intervention is a priority under NSW Health's Framework because it can "change the long-term trajectory of chronic disease and adverse health outcomes for people who have experienced violence, abuse or neglect". People and families may present on multiple occasions to different parts of the NSW Health system for issues associated with sexual violence without necessarily disclosing these experiences of harm. This framework is therefore characterised by a 'no wrong door' model with multiple entry points to support across the NSW Health system. This is supported by a workforce development strategy, facilitated by the Education Centre Against Violence, to ensure that staff and practitioners are empowered with the knowledge, skills, and access to information and resources, to help identify affected people and families and to have a clear understanding of how to respond effectively. This is consistent with a review outlined in the *National Plan*, aimed at developing a nationally consistent approach to how health services recognise and respond to victim-survivors and perpetrators of gender-based violence.

Similarly, *the National Plan to End Violence Against Women 2022-2032 (the National Plan)* outlines a particular focus on building capacity within policing and justice systems to provide trauma-informed, culturally-safe and person-centred responses that prioritise the safety of individuals and families who come into contact with the criminal justice system.

2.3. Response

Within the NSW context, response policies have been characterised by efforts to take a person-centred approach to prioritising safety, reducing the reoccurrence of violence, and limiting the risk of re-traumatisation. Response systems also play a crucial role in holding perpetrators accountable.

The *National Plan* identifies a series of barriers for victim-survivors to service access, including a lack of cooperation between different services, fuelled in many cases by workforce issues and a lack of resourcing, as well as inadequate education and training around trauma-informed care. Similarly, uncoordinated action between federal and state programs have left a number of gaps in the service response system.

The Framework is one such policy response and outlines strategies to expand and integrate current violence, abuse, and neglect services to ensure that victim-survivors have timely access to a comprehensive, coordinated and holistic service response. This has involved additional funding to fill critical gaps in the provision of 24-hour integrated psychosocial, medical and forensic services and will be achieved in part by increasing the workforce to meet demand and by providing education, training and professional development to workers.

Multiple policy frameworks also detail increased collaboration and information sharing across sectors to minimise the number of times that a victim-survivor must share their experience and ensure an effective and coordinated response to their needs. These can be seen in initiatives such as the statewide Joint Child Protection Response Program – delivered by Child Protection, NSW Police Force, and NSW Health – that share information in line with the child's needs and interests to provide a coordinated service response to at-risk children.

There has also been an effort within the policy landscape to build the capacity of services to deliver culturally and linguistically appropriate and accessible trauma-informed responses. This includes through the *NSW Health Sexual Assault Services and New Street Services Access Strategy for People with Disability*, which sets out a framework to strengthen access to these services for people with disability who have experienced sexual violence and/or who have engaged in problematic or harmful sexual behaviours. The *National Plan* has also committed to the development of a dedicated Aboriginal and Torres Strait Islander Action Plan that will focus on addressing the safety and support

needs of Aboriginal and Torres Strait Islander families and communities, with a lens on intergenerational trauma and the ongoing impacts of colonisation.

In addition to holding perpetrators to account, the legal system also has an obligation to respond to the needs of victim-survivors in a way that honours their safety and wellbeing. In line with the recent Sexual Consent Reforms, amendments were also made to the *Criminal Procedure Act 1986 (NSW)* with the introduction of five new jury directions designed to address common 'rape myths'. These directions aim to limit the likelihood of secondary, or systems-caused, trauma in recognition of the fact that many complainants who choose to report sexual violence find the process traumatic. This is exacerbated by the fact that many complainants have limited support to address their own legal needs, including issues relating to civil law or family law proceedings, or to understand what options might be available to them. In acknowledgment of this critical gap, the *Standing Council of Attorneys-General Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022-2027* has committed to improving the experiences of, and outcomes for, complainants of sexual offences in criminal justice systems across Australia.

2.4. Recovery and healing

Acknowledging that victim-survivors experience a range of physical impacts – as well as trauma-related mental health concerns, financial hardship, and social isolation – recovery forms an essential component of the policy response to sexual violence. Current policy directions aim to minimise the impact of, and support recovery from, trauma to promote long-term health and wellbeing. To achieve this, they must be delivered in a flexible, person-centred way and recognise that victim-survivors recover and heal in different ways.

Supporting the recovery and healing of victim-survivors requires holistic and wrap-around support for a range of intersecting and compounding needs. Furthermore, as detailed in the *National Plan*, recovery will often be a non-linear and long-term process and thus current and future policies must look beyond the crisis response to ensure that those who have experienced sexual violence can access ongoing support.

Current state-based strategies to support long-term recovery for victim-survivors of sexual violence include:

- Continued collaboration with NSW health's network of Sexual Assault Services to develop holistic and integrated care and support for victim-survivors with complex trauma
- Tailored support for male adult survivors of child sexual assault
- Continued monitoring of compensation and redress schemes to ensure equitable and effective access for victim-survivors
- Investment in pilot support groups designed by and for Aboriginal and LGBTIQ+ sexual assault survivors
- Implementation of a housing policy that prioritises survivors of institutional sexual abuse (including civil claim and redress applicants) and the Stolen Generations
- Implementing recommendations of the Redress and Civil Litigation Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, to improve access to justice and remove legal barriers for survivors seeking compensation for child sexual abuse.



3

Findings

3. Findings

This section outlines the findings from consultations with informants and interview participants in line with the overarching research questions.

In this section, we refer to ‘victim survivors’ where the person who has experienced sexual violence has not yet reported to police, and ‘complainants’ where the person has reported and therefore interacted with justice agencies in some way. Where referring directly to complainants who participated in the research, this report uses the term ‘interview participants’ to reflect their central role in the project.

In addition to statements by informants, this report presents certain key quotes from these interview participants. It is important to remember, however, that this does not reflect the full extent of their experiences, which are rich, complex, detailed and span years of trauma, both from the sexual offence/s and from the subsequent interaction with the criminal justice process. This should be kept in mind by readers of this report.

3.1. Barriers to reporting a sexual offence

- A barrier to reporting is that victim-survivors may not recognise their experience as sexual assault, may not see it as serious enough to warrant reporting, may blame themselves for the assault or fear blame from others.
- Victim-survivors fear repercussions of reporting perpetrators with whom they have existing relationships. This may include repercussions from the perpetrator themselves, from family members (of both the victim-survivor and the perpetrator), or from the broader community.
- A fear of police can act as a barrier to reporting. Victim-survivors may fear police because they have had no interaction with the justice system, because they have had multiple interactions, or because they are members of population groups with experiences of disproportionate contact with police.
- The Sexual Assault Reporting Option (SARO) is seen as a positive alternative to making a formal report.
- A range of reasons contribute to a complainant's decision to report an offence, with some complainants wanting to take ownership of the situation while others feel pressured to report. The predominant reasons for reporting are a desire for the perpetrator to understand that the offence was wrong and, overwhelmingly, a wish to prevent a similar experience happening to someone else.

The NSW Police Force is the primary justice agency that victim-survivors contact to report a sexual offence. Informants advised that most victim-survivors never report the crime to police, while interview participants emphasised not only their reluctance to report, but their awareness that most people do not come forward with their experiences at all. Barriers to reporting sexual offences to police are outlined in the sub-sections below.

3.1.1. Victim-survivors not recognising their experience as sexual assault or as serious enough to warrant reporting

Broader community understanding of sexual violence has grown and matured in recent years. Support services and advocacy groups acknowledged the importance of the #MeToo movement and improved awareness about what constitutes consent, empowering victim-survivors to come forward and report a sexual offence.⁸ Interview participants equally acknowledged that understanding of gendered violence has evolved over time.

Despite this, across the study, informants and interview participants emphasised that community conceptualisations of what qualifies as a sexual offence often act as a barrier not only to reporting, but to victim-survivors' recognition of their experience as an illegal act. Interview participants explained that they had not necessarily viewed their experience as being one of sexual assault until they had described it to someone else or had heard others' descriptions of what constituted a sexual offence.

“And I think in my mind, when I pictured sexual assault, I was thinking of a very extreme sort of thing, like something that only happens to a few people and is very violent and I didn’t put myself in that category. But then...I realised that that did include me after that presentation at school.”

- Participant 7

”

”

“...before I realised that I was sexually assaulted, I wasn’t sleeping... I had all these symptoms of someone who had been sexually assaulted but just didn’t realise. So, I went to the counsellor, really just to get help. And then the counsellor says... ‘you do realise that you’re describing a sexual assault’. And I’m like, ‘what are you talking about?’ Like, I was in shock and denial.”

- Participant 17

“...the first two incidents with him, I didn’t necessarily see them as assault myself because I just didn’t want to think about them and thought it was just, like, embarrassing that’s how my first sexual experiences went. But like coercive, like getting someone to...do something sexual with you under duress is not consensual...and I don’t think the system reflects that. They focus way more on, like, my injuries.”

- Participant 9

”

A disability advocate participating in informant consultations noted that recognising an experience of non-consensual sex as a sexual offence is particularly challenging for people with intellectual or cognitive disability. This is because many people with disability may never have received education on consent or are easily convinced by a perpetrator that the activity is appropriate.

⁸ The #MeToo movement was founded in 2006 by survivor and activist Tarana Burke and is a global, survivor-led movement against sexual violence. The #MeToo hashtag went viral in 2017.

"...they may never have received information about 'if this happens to you, this is what you can do'."

- Disability advocacy informant



Informants participating in consultations also suggested that individual members of CALD communities may not fully recognise intimate partner sexual violence as a criminal offence.



"...the sexual assault is not part of abuse; it is just part of the relationship."

- CALD support informant

Some participants from First Nations communities spoke of the distinct and ongoing impacts of intergenerational trauma and what they described as a normalisation of sexual violence in their communities. This included sexual violence being perpetrated by powerful figures in the community when community members were younger, such as heads of the local church and on local missions where they had lived.

"...you think you heard the worst story, and then you hear someone else's story"

- Participant 31



"[women] think it's normal because it happened to them when they were little."

- Participant 32

"...it's always someone you know, it's never a stranger".

- Participant 33



More broadly several interview participants only recognised past experiences as sexual violence after a considerable period of time had elapsed or when reporting a new incident.

"[Perpetrator of first set of offences] tried to ring me while I was in session with [counsellor about the second assault] and she saw me go from cool, calm and collected to absolutely panic attack... And the repressed memories came out then."

- Participant 11





“...I think it was really about six months. [from the sexual assault to reporting] I went down here really bad and my friend, she basically told me to go to the GP, explain what’s going on...”

- Participant 22

“...it actually took two years to speak to my GP about it. And it was a moment of crises with my mental health... And a lot of trauma from not only the sexual assault, but my own experience of domestic violence was coming up for me.”

- Participant 25



“I had a realisation that another incident occurred where I couldn’t have given consent...it was a really weird moment... [when]I realised... I was absolutely engulfed.”

- Participant 26

The consultations and interviews highlighted an additional barrier to reporting posed by the influence of community conceptions and a fear on the part of victim-survivors of how they will be perceived. During informant consultations, police and support services advised that it is very common for victim survivors to blame themselves and feel a sense of shame about their experience. For example, one support organisation noted that reporting can be impacted by victim-survivors not being aware of the wide range of reasonable responses to threats, including what are described in relevant research as ‘fight, flight, freeze, and fawn’ responses,⁹ such as:

“[Victim-survivors saying] ‘I didn’t kick and scream. I didn’t say no.’

- Support organisation informant



Supporting this, some interview participants described their hesitation and anxiety around reporting where they felt that they would be subject to blame or judgment. This included participants referring specifically to ‘rape myths’ and ideas about who would be more likely to be believed, also referred to as a ‘deserving victim’.

⁹ Freezing and fawning responses can be specific to experiences of sexual offences or domestic and family violence. Freezing involves dissociating, being silent and still, or going limp in the hope of reducing physical pain and/or avoiding further harm. Fawning involves being helpful to the attacker to calm/please them and reduce the threat. For example, see Paredes, R. (2022). Understanding Trauma: The 6 Types of Trauma Responses. Available: <https://mindbetter.com/trauma-response-types/> .



“I didn’t want to go through the whole standing on the like the stand and getting called a liar and getting judged because I was drunk and all that kind of stuff. So, I was more worried about how I would be portrayed.”

- Participant 16

“...sometimes rape myths get in the way of people wanting to speak up, because they feel like ‘oh, I did wear a short skirt’ or whatever, I think... [there should be] more education in general around consent in schools. One hundred percent get them while they’re young. Teach boys not to perpetrate and teach girls to speak up and that it’s not their fault.”

- Participant 19



If victim-survivors were under the influence of alcohol or drugs at the time of the offence, or were engaging in illegal activity, this can also deter them from reporting as they may feel that they were partially responsible for the attack. One interview participant felt shamed not only for her consumption of alcohol but felt blamed when her family and community focused on the rape in terms of it being her first sexual experience, rather than a criminal offence. This participant subsequently went through the criminal justice process without her family or friends being aware or providing any support.



“...My [family] ... were just, like, so angry at me saying like ‘why did you drink so much?’... And like, ‘oh, it’s a shame you’re not a virgin anymore’.”

- Participant 29

Some interview participants felt shamed by the fact that they had either agreed to go somewhere with the perpetrator prior to the assault or had invited the perpetrator to their house. One interview participant was unable to live in her house for a month after the assault given that it was where the assault had occurred. This participant not only felt blamed in the course of justice system interactions for inviting the perpetrator to her home, but also felt distressed that her invitation seemed to have been treated by the perpetrator himself as a licence for sexual offending.

“An invitation to my house is not an invitation to my body.”

- Participant 9



Quite distinctly, some First Nations participants emphasised the powerful role that shame can play in their community and the impact this has on disclosing sexual offences. These participants discussed the way that shame and secrecy had prevented many women from reporting their experiences, with women who were Elders and other respected persons in the community now carrying other women’s stories of harm. Interview participants also explained that shame played a significant role for men in their community in terms of their readiness to disclose their own experiences of sexual violence and seek help.



“...Before I got healing in my life there was no way I would go to the police cos I was too ashamed... I think you can tell when Aboriginal women have gone through what I been through; you know, big hoodies, cover your shame, cover your body until you get healing.”

- Participant 31

“...men won't talk about it, more than women, because they're too ashamed”.

- Participant 33



3.1.2. Victim-survivors fear repercussions of reporting perpetrators with whom they have existing relationships

According to multiple informant groups, people are less likely to report a sexual offence if the perpetrator is known to them or if they fear repercussions from reporting.

Specifically, support services and advocacy groups advised that First Nations victim-survivors can fear the social repercussions of reporting a sexual offence perpetrated by their partner or a member of their local community. An Aboriginal-specific legal service emphasised that confidentiality is very important to First Nations victim-survivors, this was reiterated by police contributing to consultations.

“[Victim-survivors] want a justice response, but they don't want anyone to know about it.”

- Aboriginal legal service informant



“For Indigenous people, a lot have fear around putting people in jail over fear for their safety.”

- Police informant

First Nations interview participants similarly reflected on concerns about the way that a report would be perceived by their local community.

“...they don't report because of the predator's family”.

- Participant 32





“...when you speak up, you’re like a troublemaker in the community...they think you’re a dobber. That’s what they think, blackfullas”.

- Participant 33

Informants participating in consultations also suggested that individual members of CALD communities may not fully recognise intimate partner sexual violence as a criminal offence.

“...the sexual assault is not part of abuse; it is just part of the relationship.”

- CALD support informant



More generally, interview participants volunteered a range of reasons why they were reluctant to report sexual assault by someone with whom they had an existing relationship. Examples included participants feeling responsible for the welfare of their perpetrator, particularly when they are a current or former intimate partner or family member, despite them being the perpetrator of an offence. Other examples included considerations around wider systemic or legal processes, including one interview participant who described being raped by her former partner just prior to family law negotiations. This participant did not want the police response to impede the property settlement, as the settlement was what was going to rid her of the perpetrator’s wider system’s abuse.



“And they were you know, ‘we’re going to serve him with an AVO’, and I was begging them [saying] ‘no, we’ve got mediation next week. My house depends on it... If you give him an AVO we can’t do that’, and they ended up saying, ‘no, it’s actually out of your hands.’”

- Participant 18

More generally, interview participants who knew the perpetrator, whether in an existing relationship or as an acquaintance, felt that they would potentially be stigmatised by their wider circle of family and friends for reporting the offence. Where interview participants had maintained a relationship with the perpetrator after the sexual offence, they feared being blamed for maintaining contact.

“I remember thinking, ‘I’m not going to come to the police, they’ll never believe me.’ You know, ‘I have some fault in this because I should have broken up with him...or I should have not seen him’ or something like that.”

- Participant 3



3.1.3. Victim survivors are fearful of, or unfamiliar with, police

Multiple interview participants feared reporting because they had not previously had any contact with police or any justice agencies. Interview participants were concerned that they might set off a process that they could not then change or control.

”

“I didn’t want to walk in there and go, ‘hey, what happens if I report this?’ And they go ‘...well, you’re here now, so you probably should’, ...and then be pressured into doing it.”

- Participant 11

“...to actually go forward and make the report...even just get to the police station. It took a very long time and a lot of preparation sort of behind the scenes.”

- Participant 25

”

”

“I’d grown up my family telling me that, if I did ever need to go to police, like, report something, then I would somehow end up in jail or in trouble. Which doesn’t make sense, but [that] was in my head.”

- Participant 28

Participants also felt ashamed about police having access to their intimate information.

“I had sent [the perpetrator] a lot of sexts and nudes... That was a massive barrier. I kind of thought, ‘I’ll give up now’, like, gross. ... police officers that had never met me had to look at those photos”

- Participant 3

”

”

“...they’ve taken my phone and stuff. It’s scary because I didn’t delete anything because...I didn’t want to look like I was lying”

- Participant 27

At the other end of the spectrum, some interview participants had extensive prior contact with police, having been previously arrested as a result of their marginalised status and support needs. As a result, they feared that reporting an offence would lead to further criminalisation or harm.

It is crucial to acknowledge that historical and ongoing negative experience with police impacts on the willingness of members of some communities or cohorts to report a sexual offence. This includes people from First Nations communities; people engaged in sex work; people with prior history in the justice system as offenders; people with a negative experience in seeking help for family violence

which deters further reporting; asylum seekers and refugees; and people who identify as LGBTIQ+. ¹⁰ Support services and advocacy groups advised that a lack of diversity and representation of some of these population groups in the NSW Police Force also impacts on the willingness of victim-survivors to report an assault.

The following sub-sections provide a summary of experiences of population groups that experience distinct challenges when interacting with police. It is worth noting that these identities do not occur in siloes, with a number of interview participants sitting across multiple population groups.

People from First Nations communities

Legal services discussed the ongoing and historical trauma, including the Stolen Generations, that contribute to a reluctance to report to police and that:

“Police has never been a place of safety [for Aboriginal people] and there is so much trauma around that process and system.”

- Legal practitioner



First Nations interview participants reflected on the significance of the role of police and other statutory authorities in their capacity to report experiences of harm. These included both historical and current experiences.



“...when I was growing up, you see a police car, you run and hide. And the black cars were welfare, come to take the children away. We made sure that the kids with the fairest skins were safely hid first, then the rest of us hid. ... Now I’m trying to teach my grandkids that police are safe, but they see them taking our people away in handcuffs. They think they’re the bad guys... Then [child protection] march into our communities and rip our children away too.”

- Participant 32

“... the police [in my area] are known to be racist”.

- Participant 30



“...of the 20 people who may go through something, only one will have the courage to go up to the police.”

- Participant 31

¹⁰ It should be noted that those who identify as belonging to more than one of these groups may experience heightened fear.

Just as importantly, some participants emphasised that the over-policing and disproportionate incarceration rates of First Nations communities meant that victim-survivors of sexual offences were reluctant to contribute to these incarceration rates. While explaining that they wanted accountability for perpetrators of sexual harm, participants also reflected on the impacts that incarceration could have on a whole family.

“...these women do the time too, taking the children to visit every week”.

- Participant 32



People from culturally and linguistically diverse communities

Support services noted that there is often a fear amongst new migrants and asylum seekers that reporting to police will impact their visa arrangements.



“...because they are migrant women who have relied on their partners to come here, who are waiting for visas, they don't have money, it's embarrassing – they feel like they can't do anything.”

- Disability support informant

This was supported in complainant interviews. One interview participant described an experience in which an investigating police officer raised queries about her immigration status in the context of the sexual offence investigation. This, in turn, appeared to be related to the officer's views about the interview participant's work in the sex industry. More broadly, two interview participants who were international students explained they did not necessarily know what to expect when reporting to police because they had no knowledge of Australian criminal justice processes, did not speak English as their first language, or were concerned about their ability to complete their studies if they pursued a criminal justice response.

Other interview participants who were from CALD backgrounds but who were not recent arrivals volunteered particular concerns related to family and community perceptions around sexual assault. One interview participant described her family focusing on the rape as the loss of her virginity, as noted above, while another spoke of feeling embarrassed to disclose her experience to her extended family, because of their particular cultural background.

“Telling my parents was one of the hardest things to do. They're Vietnamese, they're conservative, they're Catholic...”

- Participant 13



Police informants who were involved in consultations acknowledged the cultural barriers that can exist when officers engage with certain population groups and emphasised that their approach to interactions with complainants is guided by empathy and clear communication. Police representatives also noted that there is a lack of training available regarding this skill.

People who identify as LGBTIQ+

Wider evidence indicates that members of the LGBTIQ+ community often have prior experiences of discrimination when interacting with police which can deter them from reporting sexual offences.¹¹ Informants from LGBTIQ+ organisations advised that people who identify as transgender have particularly poor experiences with police – both in terms of receiving negative responses to reports of violence, as well as receiving overly punitive responses from police while in public spaces. Transgender people may also fear being misgendered or being required to use their birth name, as is reflected in the experiences of the interview participant below.

”

“I was actually deadnamed¹² ...from police during their investigations as well, despite me formally and legally changing my name...and I mean that particular officer would have had to have done some digging because my legal name was changed for quite some time...I believe that they were seeing whether or not I was going to snap and bark and be aggressive...I felt, like baited into something.”

- Participant 1

LGBTIQ+ interview participants spoke of heteronormative assumptions and stereotypes that were damaging and could discourage people from reporting their experiences or seeking help.

“I already knew from the get-go I’m going to have to be dealing with discrimination, right. Gay woman. Angry lesbian trope...”

- Participant 4

”

This particular participant also felt their experience was being diminished by a discriminatory response from a medical professional following disclosure.

”

“...I’m sitting with the [medical professional] and she’s asking, ‘anything traumatic happen recently?’ I’m like, yeah [and] told her my situation... without flinching she goes ‘are you still a lesbian?’ I go ‘why, was it supposed to fix me?’”

- Participant 4

Furthermore, an informant from an organisation that works with LGBTIQ+ people noted that some members of the LGBTIQ+ community can experience multiple and intersecting forms of disadvantage which can compound their reluctance to engage with police. For example, victim survivors who are homeless or have their own legal issues may be deterred from reporting.

¹¹ Fileborn, B. (2012). Sexual violence and gay, lesbian, bisexual, trans, intersex, and queer communities (ACSSA Resource Sheets). Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies.

¹² Deadnaming is the act of referring to a transgender person by a name they used prior to transitioning, such as their birth name.

“social determinants are a huge barrier to reporting and accessing justice.”
- LGBTQ+ support informant



People engaged in sex work

People engaged in sex work grapple with significant stigma surrounding their profession. Interview participants engaged in sex work either informally or in a regulated environment described negative treatment from police based on stigma around sex work as a barrier to reporting.



“I did not feel comfortable calling police... I wasn't out as a sex worker, that was like a big concern for me that once I would be on government records as being a sex worker.”

- Participant 6

Informants from a sex worker advocacy organisation noted that victim survivors who engage in sex work can be deterred from reporting to police due to a:

- Lack of understanding about the nature and laws of sex work from police officers
- Lack of understanding of sexual assault matters as it relates to people engaged in sex work, including a detailed understanding of how sexual assault occurs in the context of sex work
- Discrimination against people engaged in sex work.

“It's a lens shift – and when sex work is disclosed, that lens changes and it's layered with morality, [with] all of the messages [police officers] ... have received about sex work, [and] whether they understand the laws.”

- Sex worker advocacy informant



Interview participants stated that this was underpinned by beliefs that sex workers could not be sexually assaulted, given the nature of their work. This reflects a failure to recognise that agreement to engage in certain activities as part of sex work did not equate to consent to other sexual activities, including those involving violence. The combination of this community perception and stigma made it particularly difficult for these victim-survivors to see themselves as justified in coming forward.



“I had previously had negative experiences with police and reporting sexual assault...because you're a sex worker and you're selling one service, you've [been seen as having] given up your right to be upset about an assault that wasn't within what you agreed to. Sort of saying that it doesn't really matter what happens to you because you're in a different category.”

- Participant 6

“...they didn’t do anything [about sexual assault] until the #MeToo, until Brittany Higgins and they saw the nice girl, you know, not a f--king prostitute...”

- Participant 27



People with previous contact with the justice system as victim survivors

Multiple interview participants had previous contact with criminal justice agencies when reporting prior experiences of harm and expressed some hesitation about reporting a sexual assault to police. These previous experiences included negative response experiences when previously reporting other offences (including domestic, family, and sexual violence) and negative interactions with police in the context of homelessness, mental health, or substance abuse.

Several interview participants had prior experience of domestic and family violence or sexual violence during childhood, with a lack of appropriate police responses contributing to their lack of confidence that police would respond any differently to their experience of sexual assault in adulthood. One interview participant described a history of police declining to follow up on breaches of an Apprehended Violence Order (AVO) which made her think that reporting anything else would not be taken seriously.



“I didn’t trust police anyway because...growing up I used to have to call the police a lot being in domestic violence and like there was like nine of us in the three-bedroom house.”

- Participant 27

“I copped like a whole range of different victim blaming stuff [when reporting childhood sexual abuse] which then has pretty much impacted any other time I’ve needed to go [to police].”

- Participant 28



“I had been to other police stations before around domestic violence...nothing was really done about it, and that violence continued.”

- Participant 25

Legal services contributing to the research also recognise that negative experiences in reporting to police can be shared via word-of-mouth in people’s local communities resulting in others being deterred from reporting their experiences.

People with previous contact with the justice system as offenders or charged with offences

People who experience multiple forms of disadvantage, including histories of trauma, are more vulnerable to interact with police as offenders. A regional Women's Health Centre similarly shared that they were aware of instances of hostility from male police officers towards complainants with criminal histories, raising previous apprehended violence orders or examples of when the individual had failed to appear at court.

"It's not uncommon to have complainants [of sexual offences] who have also been a defendant in a criminal matter and that can cause complicated relationships with police."

- Legal practitioner



Interview participants who had previously been arrested or charged by police, including as a result of their own experiences of marginalisation, considered it very unlikely that they would be believed or experience a positive interaction with police if they reported a sexual offence.



"[Former abusive partner] got arrested a few times, but I got arrested with him. Because I was with him, so they arrested both of us. ...I used to automatically think, even when I haven't done anything and I see them, oh they're coming to arrest me."

- Participant 23

"[My mental health and disability issues were triggered by the assault] and I couldn't remember anything [but] the police and ambulance were called... and then when I've run past the police, I was charged with assault..."

- Participant 27



"The police judged me 'cause I got COVID fines. It doesn't matter what I've done, I'm a victim of crime here".

- Participant 34

It is important to highlight that people with intellectual disabilities or cognitive impairments are also disproportionately likely to have had prior interaction with police. As such, they may be less likely to report in the first instance or to disclose all details relating to the offence if they feel that this may lead to them being disbelieved or charged themselves.

Prior histories of trauma

Multiple interview participants had extensive experiences of trauma prior to the specific offence they were discussing in the context of this research. These often involved extensive histories of family violence, as children and as adults and, in some cases, these histories were associated with multiple,

ongoing support needs. For example, two participants with disability explained that the fact that they were 'known to' police was associated with their disabilities, as well as with their prior experiences of trauma. To highlight the particular vulnerability of some victim-survivors of sexual assault, one interview participant had been in hospital for acute psychiatric care and subsequently experienced the reported sexual assault upon leaving care. Another interview participant experienced their sexual offence while still in hospital for acute psychiatric care. In these cases, police had escorted the participants to hospital or had otherwise interacted with them in their experiences of crisis. This contributed to a mistrust of police in terms of being able to provide a supportive response.

3.1.4. Victim survivors perceive stigma around elements of the trial process and its public nature

Many interview participants noted that the increased profile of sexual offences – and, more relevantly, the highly publicised trajectory of associated prosecutions – was a major factor in their hesitation to report. Multiple complainants nominated the devastating impacts of the proceedings involving Brittany Higgins as a complainant in an ACT matter and that they were also aware of the way in which sexual assault advocate Grace Tame had been targeted by media commentators. They also nominated other high-profile cases that were in the media at the time or described the way in which sexual offence matters were known to everyone in smaller, regional communities.

"...the Jarryd Hayne case was happening at the time... Every single detail was mentioned. Yeah, they spat on the victim, and I was like, 'I don't want that to happen to me at all.'"

- Participant 17



"A lot of people who go to [regional town] court for sexual assault offences get off...it's quite a small town...so it wasn't something I was willing to go through and everyone know about it if it was just going to be thrown back in my face, which I kind of knew it would have been."

- Participant 12

Multiple informant groups supported this, advising that widely known elements of the trial experience – such as long processes, cross-examination, and low conviction rates – are a major deterrent to reporting. Notably, high profile cases of sexual offences and portrayals of trials in popular culture have contributed to this fear. Organisations that work with First Nations people noted that this fear is compounded in their communities, with an Aboriginal-specific legal service emphasising that:

"[Media coverage] doesn't set up good faith in the system... And this [negative treatment] is happening to white women – [so they] can't imagine [what it would be like for] women of colour."

– Aboriginal organisation informant



3.1.5. The Sexual Assault Reporting Option is an effective alternative

Support services engaged in consultations spoke to the strengths of the Sexual Assault Reporting Option (SARO)¹³, regarding it as a sound alternative to formally reporting to police. NSW Health SAS informants noted that it can facilitate access to Victims Services for victim-survivors, helping them access support without being required to make a formal report or engage in the investigation or trial process.



“SARO helps clients deal with their sense of terrific responsibility [to protect others from the same harm].”

- NSW Health SAS informant

Some NSW Health SAS practitioners also noted that SARO reports are made less frequently by victim-survivors when their SAS has adequate resourcing to support victim-survivors to make a formal report to police.

A small number of interview participants had completed a SARO, either as an initial step or as an alternative to reporting formally to police, and described this process as very valuable. The contexts in which this occurred were varied but echoed the comments from NSW Health SAS informants that victim-survivors were keen to have their experience on record in the event that any other victim survivors came forward or, effectively, to put the accused on the system’s ‘radar’.

“...first I reported it to [Support Worker], and she let me know about the SARO reporting online. ...I didn't want to go forward with it at first because I was a bit paranoid...”

- Participant 27



“We initially did a SARO. It was easier than sitting in front of a cop, funny that yeah. It was still pretty hard though... It seems more real when it's on paper.”

- Participant 26

“... initially I wasn't sure if I wanted to directly report it to the police. So...I did a report on Victim Services NSW where you can do an online form and you fill that out, because I wanted it to be documented...in case...the perpetrator ever did it again...”



¹³ SARO is an online form that victims of sexual assault can complete if they do not want to speak directly with a police officer but want the police to know they have been sexually assaulted. A SARO questionnaire is not the same as making a formal report to police and will not initiate a criminal investigation. The primary purpose of SARO is to make a record of what occurred, in addition to allowing the NSW Police Force to gather information on sexual offences and offending.

- Participant 7

One interview participant distinguished between making a formal report to police about one assault and completing a SARO for other offenses perpetrated by a family member. In this situation, the interview participant was anxious about the impact a formal report would have on her relationship with her wider family but wanted her experience on record in case this individual was accused of any other offences.

"[The SARO is] the one, the one that kind of goes in the vault, and if they actually get charged [with something else], then it'll come out. I did it that way because it's [a family member]."

- Participant 11



Importantly, participants emphasised that the experience of completing a SARO could still be confusing and distressing and that having support when doing so was crucial.



"It was stressful, really stressful, but [support practitioners] were good... I wouldn't have been able to do it without them, to tell you the truth. I think it's very important that women have someone help them do that"

- Participant 30

3.1.6. Reasons why victim-survivors report their experiences

Given that the majority of victim-survivors of sexual assault do not report to the police¹⁴, the project team spoke to interview participants about the reasons driving their choice in reporting and what they had expected from the process.

Wanting the perpetrator to experience a negative consequence

Some interview participants explained that they had reported because they wanted to see the person who had assaulted them experience some kind of negative consequence as a result of being connected with the case, including having to answer questions from police or attend court.

"I wanted him to be arrested that same day... I really just wanted him to go to jail because it's, I don't think anyone should be able to walk free after doing that."

- Participant 16



¹⁴ Australian Bureau of Statistics. (2021-22). Personal Safety, Australia. ABS. <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>.

”

“...the next part was that ‘ok what do you want to do with it?’ I go ‘we’re reporting it! ...I’m gay, there’s semen in my vagina. I didn’t put it there and I didn’t ask for it to be put there... I’m not on the pill and a stranger has just drugged and raped me, f--king report the bastard.”

- Participant 4

Seeking accountability from the perpetrator

Multiple interview participants explained that they had reported their experiences to police because they wanted some form of accountability. This did not necessarily mean punishment or a negative consequence, but rather they wanted the perpetrator to be told, and to recognise, that their behaviour was wrong.

“I obviously don’t know what other people are hoping for when they give their statement, but... from the start I let the officer know that all I want is for the... guys to realise that what they have done is wrong.... I just want him to talk to them and explain to them so that they won’t do it again...”

- Participant 15

”

”

“I think it came down to the fact where I was like ‘well, I know he needs to be held accountable.’ I could not do it and be totally fine with that. Or I could not do it and then six months later be like, ‘what if I’d?’ You know, yeah like if I heard or saw him on the news or something”

- Participant 9

“I actually just wanted a simple apology from the perpetrator ... I know that sounds like not enough or anything but that’s what I wanted.”

- Participant 17

”

Reflecting the endemic nature of sexual assault across Australia, many interview participants had family or friends who had experienced sexual assault or had experienced sexual assault from multiple perpetrators over time. This made them keenly aware that their experience was not an isolated incident or extreme example but, rather, a common occurrence that they felt an obligation to stem. Adding to this, some victim-survivors explained that they felt that they were expected to report by others or felt that they otherwise had an obligation as a member of a civil society.

”

“real or imagined, I definitely felt a pressure that everyone else was working really hard to get this person to be held accountable, and... that my involvement would really help.”

- Participant 8

"I had some issues like physical injuries. So, I went and saw [a GP and gynaecologist] and then was kind of told or insinuated by a lot of people that I had a responsibility to report it."

- Participant 9



"I thought that that was what you were supposed to do. Someone does something wrong, you go to the place, you go through this thing, they don't do the wrong thing anymore. ...And you know, if you didn't do that, then this behaviour keeps happening...you just go to the police so that they can be like, 'hey, what you do is bad' and that person goes 'OK, sorry, it was bad'."

- Participant 20

One interview participant was encouraged by wider media coverage and greater community recognition of sexual assault at the time.

"The 'Me Too' movement was, you know, really, it was everywhere at that point so there was this huge push for me to go to the police."

- Participant 17



Reporting being initiated by others

Other interview participants had not actively chosen to report their offence. Rather, it occurred because the police were contacted by a family member, friend or colleague, or because a professional had encouraged it.



"I was intoxicated when it happened to me and one of my friends came and found me...just called the police. So it wasn't a conscious like, 'I'm going to report what happened', it just happened."

- Participant 8

"...my colleague actually called the police. So, I was unsure as to whether I wanted to go ahead with it...and didn't want to get anyone in trouble"

- Participant 12



"...so my psychologist actually called the police for me. Because I was like, scared to make that initial contact. So she called the police, spoke to the detective. And then got her number and I had to call her. And from the get-go, to be honest, it was a bit like, 'oh God, like this is going to be s--t'."

- Participant 9

In one case, an interview participant with a disability had been assaulted in a public place and contacted her caseworker to disclose it. The caseworker then then contacted the police.

“The police came looking for me. And they found me, and I was all upset.”

- Participant 23



In another, police contacted the interview participant directly after having become aware that they might be connected in some way to the perpetrator.



“I was actually approached by the police... I’ve never met anyone else who that’s happened to, I think that’s a rare experience, and that’s because there was already an investigation ongoing.”

- Participant 3

For one interview participant, the initial disclosure to family and friends, followed by repeatedly retelling their story to health and other support services, made them feel that reporting was not much of a step further as they had lost control of the information.

“So many people were involved I just thought, I might as well just tell everyone everything because it doesn’t matter, it isn’t my story anymore.”

- Participant 15



“It was more about getting my story out, giving it to someone else and them to go ‘OK, should we charge him, should we not?’ I just wanted it to be in someone else’s hands.”

- Participant 10

Reporting as a result of safety fears

Two interview participants also described the considerable fear that they continued to feel about the accused, particularly where the sexual offence had occurred in the context of ongoing domestic and family violence, or alternatively had occurred in the context of a small, regional community. Reporting was therefore a way of protecting their own safety in the future.

“...the only thing that I wanted at the time was for my ex-husband not to come approach my house again.”

- Participant 5





“...being anxious and living in the same town as my attacker, I kind of wanted to know ... he was going to be charged.”

- Participant 16

Being one of multiple complainants in the same prosecution

Two interview participants were one of multiple victim-survivors of their respective perpetrator. Awareness that there were other victim-survivors who had come forward made them feel reassured about their own decision to report or participate in an investigation, including where they had previously felt reluctant to do so.

“Other women have also come forward against him which made me feel better about myself.”

- Participant 17



“...the police told me it would help the other girls if I did, which didn't end up being true [but] ... I kind of just went 'well, yeah if it will help them then I will do it.'”

- Participant 3

Protecting others

Almost every interview participant volunteered that they reported their experiences to police because they wanted to support other victim-survivors of the same offender, or to prevent their own experience from happening to someone else. This included interview participants who had no expectation that their own report would go any further.

“I knew that, if it did happen again and if the same name comes up then... the second report would have a lot more like weight behind it. I was like, if at least nothing happens with me, if it does happen again...at least I can help somebody else”.

- Participant 7



“I knew I needed to report because...I didn't want my perpetrator to hurt someone else...And so that was the main thing is that I didn't want them to hurt anyone else”.

- Participant 28

"...I wasn't coming in [to report] to protect me, I was protecting the next woman".

- Participant 34



"...one of my friends had actually seen the offender out with another girl...I was like, 'no, I wouldn't want another girl to go through this'....I wasn't more thinking about me, I was thinking about future women."

- Participant 16

3.2. Experiences reporting a sexual offence

Positive reporting experiences are often grounded in:

- Complainants feeling believed and validated by police
- Being provided with a supportive response from all police officers in the process
- Having access to specialist detectives
- Being supported by the same detective throughout the reporting and legal process.

A range of features contribute to a negative experience for complainants when first reporting a sexual offence to police, including:

- A lack of empathy from the first officer with whom complainants speak
- The physical environment of the police station
- The nature of questioning required of police for a report
- Feeling judged or shamed during questioning
- A lack of a trauma-informed approach
- Officers appearing to not treat sexual offences as a serious crime
- Factors specific to the cultural experiences of certain population groups
- Being viewed as an 'unreliable witness'
- Variability in communication following a report.

The interviews and consultations indicated that a victim-survivor's experience in making a report can vary significantly as they interact with three main groups of stakeholders: police, health, and wellbeing support services. Informants also spoke to the need for wellbeing support during the reporting process, often resulting in victim-survivors being linked to another group of stakeholders such as NSW Health SASs or counsellors.

3.2.1. Features of positive experiences in reporting

Numerous informants and interview participants described features of positive experiences with police personnel, ranging from interactions with detectives, general duties officers, and members of the Child Abuse and Sex Crimes Squad. Crucially, multiple informant groups explained that positive experiences are often grounded in complainants feeling believed and validated by police. Examples given of this included:

- Officers displaying patience and empathy
- Allowing the victim-survivor to tell their story at their own pace
- Sensitively discussing legal options
- Referrals to appropriate supporting services.

Multiple interview participants similarly described features of a positive reporting experience:

"I called the police...and there were two policemen here within 20 minutes... And then within an hour of that, there were two detectives here. So, they arranged for me to have my girlfriend take me up to the...hospital to do an assault test...and while we were at the hospital...they'd served the [AVO]."

- Participant 18





“...within 10 minutes they already had a detective on my case, like all ready to look after me...and they were just super supportive...and then he picked me up from my house, dropped me off at the hospital and then picked me up from the hospital and dropped me back home with one of my friends...I did feel quite invalidated...like when it first happened. Like ‘oh I just got too drunk’, this and that, but the detective was like,...‘you were a victim in this whole situation’. Like, not at one point did he take anything away from my experience...the police were just wonderful...I don’t think there is anything more the police or the hospital could have done for me.”

- Participant 12

Multiple victim-survivors described the features of a supportive experience while making a report or giving a statement at the police station. This included:

- Having a safe and private space in which to be interviewed
- Having a female officer available where this was the victim-survivor’s wish
- Being questioned in a calm and respectful manner that indicated that the victim-survivor could take their time
- Being listened to, and – most of all – feeling believed and supported that they were doing the right thing in reporting.

“they were all very nice... [the male officer] said we needed to have a woman in the room with us as well.... I had, like, actually quite a good experience with them. They were very sympathetic...”

- Participant 20



“I had a female police officer because I requested one.... She was really good. I felt like she was a good person, genuine... like, the way she asked questions and stuff”.

- Participant 30

“[The detective] was very, very sort of calming and he didn’t stand over me... [he just] sat down and listened to me. And he was very patient, didn’t talk over me...and when I’d stop and say things like ‘oh, you know, it’s probably nothing’...he would say ‘no, it’s not nothing...what you’re saying is really serious’ and things like that...just really calm and not intimidating at all.”

- Participant 5





“The detectives were really good at reassuring that I was doing the right thing as in filing the report...but also reassuring me that whatever I said there’s no wrong answer and, if I couldn’t remember something that’s ok and it wasn’t going to be held against me...”

- Participant 8

Informants also spoke about the importance of referring complainants to a specialist detective, noting that this did not always occur in regional areas. Interview participants described this as being more dependent upon the individual and whether they appeared to care and be invested, rather than the specialisation of the role.

“...they still found the time to, you know, be invested in the case and really seriously want justice for me and for the other girls. That was just so powerful.”

- Participant 3



“...the way that he spoke to me so calmly and gently in his approach...I was crying and I actually said to him, can I give you a hug because you are the first person that has truly believed me.”

- Participant 21

More broadly, the length of the relationship with a detective (where this was not impacted by absences and turnover) meant that the quality of the interaction with the investigating detective was of more significance in terms of interview participants’ experiences overall.

“If I hadn’t heard from the legal team...I would ring [my detective] and he would give me an update on what he knew or what he could find out on his system.”

- Participant 5



“You could just tell that she cared so deeply about how outcomes, and I think ...there’s so much power I guess, in police officer’s getting a little bit personally involved in it.”

- Participant 3

“...I’m literally lucky that I got a detective who actually was experienced, you know, kind of learned in all of these like areas and learning. So, I felt really safe and everything...but I’m sure a lot of other complainants have not really had that experience...”

- Participant 17



Despite the positive experiences outlined in the examples above, it is important to note that a positive experience at one point does not necessarily equate to a positive experience overall. This means that some of the examples described above were volunteered by interview participants as a positive feature of an otherwise varied or negative experience.



“And [the female officer is] like, ‘I totally understand’. And, you know, ‘I’m really sorry. And you’re so brave for reporting this.’ And you know, giving the process a go and, you know, made me feel really good about reporting it, yeah. But then I had the sergeant who took me through the actual statement and that was a completely different experience. Even though I know they have to be kind of you know, impartial...but just there was no empathy in his voice.”

- Participant 14

In fact, only one out of the 34 interview participants had a positive experience throughout her entire interaction with police. Of significance, this was also the only participant out of the 34 who actively elected not to pursue her matter further. In many ways, it was clear that this particular complainant felt sufficiently supported and believed for her to make a clear and active choice about what was best for her in the circumstances, rather than feeling that the decision was out of her control.

“It was completely my choice throughout the whole process...from the word go, it was if this is what you want to do then we can do this.’ If you just want to make this report and not charge, we can put this on a shelf, and if you want to revisit this is five years, we can charge him in five years because we’ve got all the evidence from when the event occurred.”

- Participant 12



Noting the above participant’s experience as the exception rather than the rule, the following sub section provides examples of the points of interaction which need to be considered to ensure a consistently positive experience for future complainants.

3.2.2. Matters not progressing as a result of the reporting experience

The term ‘attrition’ refers to matters not progressing or discontinuing between the point of the initial report and ultimately reaching trial. Consultations with informants suggested that reporting a sexual offence can be a point at which complainants choose not to continue any further with the legal process, the primary reasons for which are outlined below.

For some interview participants, however, the fact that their matter was not pursued was not the result of a deliberate choice to ‘opt out’ or withdraw their report or statement. Rather, it generally occurred either in the context of choosing not to follow up when they had heard nothing further from police or, most commonly, when the decision not to pursue the matter lay with the police or prosecutions. This, in turn, occurred either as the result of an overt decision not to progress the investigation, or by default when the investigation was not conducted in a timely or thorough manner. A striking finding was that, despite negative experiences of reporting, the vast majority of interview participants wished to persist with the process and go to considerable lengths to see this occur, as will be highlighted in the sub-section below. This is important context, summarised by one interview participant’s reflection as:



“...if somebody’s gone to the police, they obviously want you to do something.”

- Participant 27

3.2.3. Impact of the initial police interaction

An individual’s experience at the front desk or when police attend a callout can deter them from going further with their report. Interview participants shared negative experiences of their first contact with police when they presented to a station to report or when they called police for help. These experiences included feeling that the police receiving the initial report lacked empathy or understanding of their situation, as well as feeling that there should have been more specialist support available for them from the start.

“...from the get-go, anyone that’s [reporting] something to do with DV or sexual assault, coercive control, or anything, [straight away] the police should be offering forms of support...”

- Participant 1



“I asked at the front desk ‘I need to talk to somebody about my ex and the way he’s been treating me’...and they’re kind of like, ‘Oh, no one’s here to talk about that right now’. I was like, ‘OK, well, is there anyone from the domestic violence unit here today that I can speak to?’ ‘No, they’re not here today, they’re in court.’ It’s like, ‘OK, so, is there anybody else I can speak to?’ And the officer said to me, ‘...What do you want to speak to them about?’ And I said ‘the way he’s treating me’...he’s very violent.’ [And the officer says] ...‘well, you know...the domestic violence people will be in on Monday’. And [it was only when] I said to him, ‘look, I don’t feel safe...let’s put it this way, he hits me and he rapes me.’ And [he] just went, ‘oh yeah, I’ll see if there’s somebody that you can talk to.’...I almost walked out.”

- Participant 5

Some participants specifically volunteered that having a trained support person to explain what to expect from the process – to sit with them while giving their statement, or to provide debriefing and support immediately afterwards – would have made the difference to their experience and, in one case, to having any further contact with police afterwards.

“Just someone who can get to know you a bit beforehand, get an idea of how you work and what your responses might mean. And someone to sit with you afterwards and have a cup of tea and check that you’re alright before you go home. Just treat you like a human being if that’s not the job of the police”.

- Participant 24





“I would have liked...the offer of something like... ‘are you going to need to see a counsellor afterwards? Do you want a social worker or a support person in the room with you? Do you want to have a chat with one of them before you make your statement just so you know what to expect?’... Like ‘what can we do to make this more comfortable for you?’”

- Participant 9

One interview participant explained that police had been immediately dismissive of their experience of an assault on the basis of a perception that the participant was physically large and could have defended themselves.

“I...had a police officer say to me, ‘well, you were a dude, why didn’t you just knock him out’....”

- Participant 1



This issue was also raised by multiple informant groups, and summarised by a general duties officer participating in informant consultations:



“I’m probably the first person they are telling this story to – and if it’s not a positive encounter, it’s going to affect the rest of how they proceed.”

- Police informant

3.2.4. Physical environment of the police station

Police informants acknowledged that police stations are clinical environments, with offenders presenting on bail and general duties officers occupied juggling competing demands. Detectives consulted for this study noted that this may be confronting and intimidating for victim-survivors, for whom this may be their first interaction with police. Some interview participants echoed this observation about the environment of the police station, with examples of participants feeling frightened in that setting.

“...when we got into the police station...because we were in that waiting area and there’s people that were violent....there was this guy going off at the police.”

- Participant 23



“...the room was very cold metaphorically, but also physically... It didn’t feel very welcoming at all. It’s just kind of a desk. Kind of funny smell, and just cold, hard facts.”

- Participant 25

“...those big doors and the, you know, glass shields and the guns. It's a funny place to report a crime...I understand that they're going to get all kind of walks of life coming through and that they need their protection and whatever, I get that. But someone's coming to report a crime, surely there's a more inviting and healing environment that you could provide just to make going in there, not such a barrier, let alone...an Indigenous person going in there.”

- Participant 14



“It wasn't a very good atmosphere to be doing something like that ... they should be doing it in a more comfortable environment, like nice lounges, nice atmosphere, no criminals around singing out...”

- Participant 30

Participants also offered examples in which they simply wished to have privacy once they arrived.

“I was helping a friend report a sexual assault and the woman who greeted us in the police station didn't take us into a private room...just, over the desk, middle of the police station, [she] was like ‘OK, tell me what happened.’ And I was like, ‘she shouldn't have to tell you here, can she tell you in a private room’? And the woman was like ‘no I need an overview first’. And I was like, ‘well, we'll give you an overview privately,’ like,[what would've happened] if...I wasn't there.”

- Participant 3



“...you're halfway through [your story], next minute there's a cop sticking his head around the door asking about something else entirely.”

- Participant 30

3.2.5. Nature of questioning when taking statements

Another theme to emerge across the research was the very detailed and specific questions that police are required to ask when taking a report or statement, the nature of which complainants can find extremely intrusive and distressing. During informant consultations, police acknowledged that, when taking a sexual offence report, they must ask personal and detailed questions to ensure that the report can accurately meet the evidence threshold for building a case. Multiple informant groups noted that the nature of this can make victim-survivors feel blamed for the sexual offence, with questions like “did you say no when they did that?”.

General duties officers emphasised that it is important to make victim-survivors feel at ease and acknowledged difficulties in achieving this with the required line of questioning, calling for further education and training around handling sexual offence matters.

Interview participants confirmed that they found the nature of the questions that they had been asked confronting and very detailed, with one interview participant explaining that she felt quite overwhelmed.

“...after the first few questions I was like, ‘Oh my God, how am I going to survive this?’ Because it started with questions about the Uber drive...and even though I only remembered a few details of it, it was like...15 questions, maybe more.”

- Participant 15



“...they asked me about the ins and outs of my whole life...I guess wanting to test whether I was truthful...they asked horrific questions, like not even my therapist would be that invasive...”

- Participant 34

Nonetheless, interview participants generally accepted the rationale for police questions when they were put respectfully, and ideally when the reason for asking them was explained, as indicated in the example below.

“I feel like [the police member] informed me of everything...And like telling me that I can have a female cop, officer talk to me. Or I can have a support person... So, I really appreciated ‘hat...it’s very graphic in a way, when you do the report like, some of the questions he asked, I had never even thought of. And it was very confronting. But the way that he approached it, he was very respectful...”

- Participant 7



Informants noted that language can be a significant barrier to their experience of questioning by police and this was acknowledged by support services, advocacy groups and police representatives themselves. Use of interpreters can also be a challenge as interpreters may not accurately translate what victim-survivors are saying. Additionally, appropriate translators may not be immediately available, leading to partial translation efforts, using online tools like Google Translate, this impacts the way in which complainants experience questioning, as well as the quality of information that they are able to provide. Some interview participants experienced language barriers in accurately answering questions and found this distressing. This included one participant who did not have English as a first language, and another who lived with a disability and found it difficult to remember the sequence of any events or to describe things. These participants felt that their own limitations in being able to use accurate terminology— either for specific body parts or for particular geographical features about the location where the assault took place – undermined the interest of police in investigating further.



“It was tricky because it was trying to remember everything that happened.”

- Participant 23

“My [support person] and I asked them to reframe or break down the questions so that I could answer them properly, but they wouldn’t.”

- Participant 34



Furthermore, the consultations highlighted that police may not be immediately aware that the complainant has a disability, particularly where this is a cognitive impairment or intellectual disability, or where neurodiversity is present. An informant from a disability advocacy organisation explained that some people with intellectual disability may be very skilled at masking their disability. Police may then perceive any gaps in statements or re-telling as lies, rather than evidence of disability.

Informant consultations also highlighted that First Nations complainants may be assisted if they can share their experiences in a culturally specific manner. An Aboriginal-specific support service shared an anecdote about a First Nations complainant who needed to talk about her culture and her dreaming to find the strength to discuss her story as a victim of sexual offences.

First Nations interview participants suggested that having community Elders or respected persons present would help Aboriginal victim-survivors to feel supported and understood during an interview. They further explained that it was culturally inappropriate and unsafe for Aboriginal women to describe their experiences of sexual offences to a male police officer. This meant that the presence of a female, Aboriginal police officer was crucial if First Nations women were going to be encouraged to report and disclose their experiences of sexual harm. More generally, First Nations participants explained that access to an Aboriginal-identified police member was very limited, with one faced with a choice between accessing culturally safe support and progressing her report in a timely way.



“I requested an Aboriginal worker, an Aboriginal female, and was advised that I couldn’t have one. I was told that it would delay the investigation and I would have to swap to another area. And I thought ‘well, I don’t really want to go for that, then’. Then they brought another female officer in and stood beside [the investigating officer] just to tick the box. Then I never saw her again”.

- Participant 30

3.2.6. Feeling judged or shamed during questioning

The research indicated that police responses during the reporting process were often mired in concepts of ‘real’ rape and judgments about the victim-survivor. Interview participants observed that police appeared to be more inclined to respond respectfully and proactively where the assault fitted the stereotypical conception of a sexual assault. For example, one that is committed in public as a one-off by a male stranger against a female victim-survivor, that is reported to friends, family, and police immediately before presenting for forensic examination. Clear themes from the research also indicated that complainants who did not meet this expectation were more likely to receive a dismissive or overtly negative response. This includes complainants who had been affected by alcohol at the time of the offence, those who were engaged in other risk-taking behaviours, those who had not reported the offence/s immediately; and victim-survivors who did not fit the mould of a ‘real’ victim.

Examples from interview participants included police offering opinions about their behaviour or what they could have done in the circumstances.

“... [The police officer] said ‘what have you learned from this?’ And I felt a bit kind of taken aback because it was like, what? What am I supposed to have learned from this?’ Like, it’s not exactly a learning lesson. And he kind of talked about how ‘shouldn’t put myself in risky situations and that as a teenager, it is common to take part in risk taking behaviour, because I was drinking underage, but I mean, I don’t think drinking underage warrants being sexually assaulted.”



- Participant 7

”

“I remember vividly one of them saying ‘why were you so naïve?’”

- Participant 21

“[The police officer] said, ‘I have daughters, so I know about guy problems.’ I was so confused, this was not a guy problem...after I finished giving him my statement, he [asked] ‘So, what is it that makes you think that this was a sexual assault?’ Which I then had to explain it to him.”

- Participant 15

”

Some interview participants had spent some time gathering the courage to report, only to feel that, on reporting, they were dismissed because their matter had occurred over three months prior to the report and was therefore deemed to be ‘historic’.

”

“[The police officer] was just like, ‘look, if it did happen, there’s no evidence.... Why did you report it? What were you hoping for?’...and he just said ‘we can’t do anything about it.’ And then that was it.”

- Participant 7

One interview participant who experienced an assault by a female in a position of authority took some time to come forward to report given the stigma and the impacts of the trauma. Once he had done so, the participant described the two male police officers dismissing it entirely:

“They asked ‘did you enjoy it? You must have enjoyed it.’ And there’s me sitting in my trauma and they’re laughing.”

- Participant 24

”

This interview participant noted leaving the police station unsupported, distressed, and considering self-harm.

3.2.7. Understanding the impacts of trauma and having a trauma-informed approach

NSW Health SAS and support service informants reported that police were sometimes not familiar with how trauma can impact on people’s behaviour. Memories can be fragmented and disorganised

after an experience of trauma¹⁵ and inconsistent statements can sometimes be interpreted as lying. More broadly, NSW Health SAS informants and support services also spoke to a limited understanding by police of the freezing or fawning responses to threats and trauma. For example, an informant from a NSW Health SAS described an example where a victim-survivor had driven the perpetrator home after the sexual offence, and police were not understanding as to why she had accepted the ride. Some interview participants echoed their concern that their behaviour that was designed to manage their trauma and keep themselves safe after the offence would be misunderstood.

”

“So fawning was my primary trauma response... and I didn't think I fully understood that.”

- Participant 17

“...being in a relationship with the perpetrator does complicate things in court or in this reporting stage because, when the police are gathering the information, ... they want to know if a jury member, any sort of reasonable person, would think that you were at fault for it.”

- Participant 3

”

”

“They said ‘you're in a relationship, nothing to see here’...and we weren't even in a relationship, [the perpetrator] had just convinced them we were.”

- Participant 34

One participant explained that a lack of a trauma-informed approach was illustrated through her initial request for a female police officer being ignored after her statement had been completed and the investigation was taken over by a male police officer.

“Like, you don't do that to someone who's been through what I've been through with multiple males and then throw a man into the mix halfway through and expect me to be alright with it. It changed...the whole investigation.”

- Participant 30

”

In some instances, this lack of understanding about trauma responses led police to discourage complainants from taking the matter any further, as illustrated in the example below.

¹⁵ For example, see Christianson, S. & Loftus, E.F. (1987), 'Memory for traumatic events', *Applied Cognitive Psychology*, 1(4), pp. 225-339 and Foa, E.B. (1993), 'Posttraumatic stress disorder in rape victims', *American Psychiatric Press Review of Psychiatry*, 12, pp. 273-303.



“I’ll never forget this part, he said, ‘If this was to go before, you know, a jury or, you know, a defence lawyer would jump all over this his...now, you can recognise it for what it was, but back then they were enjoyable experiences for you, weren’t they? They were fond memories.’”

- Participant 10

Police stakeholders acknowledged the importance of a trauma-informed approach and provided insight into their own approaches. For example, police consulted in this study spoke to the importance of ensuring that complainants feel that they have control and agency in the reporting process. However, they also acknowledged that some police might not understand or have the capability to respond consistently to the experiences of victim-survivors with a trauma-informed approach, and that this is a gap in current training and education for police. Equally, interview participants frequently nominated that this area required specialised training, expressing surprise that somebody would want to work in the area if they did not care about the subject matter.

“I think sort of trauma-informed police officers would have been great, but I guess that’s a big ask for some people – emotionally intelligent, trauma-informed detectives, anyone doing the interviewing.”

- Participant 19



“I understand that it might not be the kind of job for everyone, but if you specialise in that field, then you should at least be like interested to help people. And if you’re not, then please be so honest and let me know so that somebody else can do it.”

- Participant 15

Some interview participants felt that police were “going through the motions” (Participant 30) in terms of their obligations to take a trauma-informed approach. These participants stated that they would have preferred police acknowledging their limitations, rather than trying to suggest that they understood the complainant’s experience.

“...don’t try and act like you know everything because it’s OK if you don’t. ...So, like own that and be like, ‘I know this is not a great environment, but like we’re trying’.... Don’t just say that you care because it’s written on a piece of paper that you have to say that you do.”

- Participant 9



This participant was one of multiple interview participants who suggested that police and complainants alike would benefit from a social worker or other specialist practitioner being present during a police interview. One volunteered that having a specialist support person available at the time of reporting was one of the primary things that would have made a difference to their experience and that they would like to see this result from this research.

3.2.8. Recognition of sexual offences as a significant crime

A further theme to emerge from the interviews with complainants was the way in which police often appeared to regard other types of crime as being more serious. A number of interview participants reported experiences with police in which they overtly expressed or conveyed the strong impression that other types of offences took priority.

”

“... [the detective said] ‘I’m really sorry there’s a home invasion we have to reschedule.’”

- Participant 19

“... most detectives aren’t interested in dealing with that sort of stuff, they want the big, you know, like the murders and the like the stabbings and all that stuff.”

- Participant 10

”

“[The detective] agreed for me to go in to talk to him about what happened and then when I got there, he said, ‘uh, sorry, you know, I’ve been really busy. I’m dealing with the [serious violence offence]...around the corner’...and then...‘oh, you’ve got cameras outside the front of your house, haven’t you?’ ... And we spent half an hour going through my cameras [in relation to the other offence].”

- Participant 18

Compounding interview participants’ perceptions that police did not regard their offence as serious was the lapse of time that often occurred between the incident and reporting. Participants experienced this as a signal that their matter was not important in comparison to other crimes.

“And it can just be put on the back burner because the assault already happened, and nobody died so no more investigating needs to be done. You know, there’s the robbery or fingerprints need taking or there’s a car chase.”

- Participant 18

”

“...it’s like almost like sexual assault victims...are seen as like kind of nuisances or like kind of like ‘Oh, this case isn’t important, it happened like six months ago. Someone’s been assaulted in the club tonight. Or like, punched or like glassed or something.’”

- Participant 9

3.2.9. Being viewed as an ‘unreliable witness’

Informants from NSW Health SAS, Women’s Health Centres, support services, and advocacy groups advised that some complainants felt discouraged to proceed to trial due to being seen as an

'unreliable witness' by police. This was particularly the case for complainants with an intellectual or psychosocial disability, sex workers, First Nations peoples and victim-survivors of domestic and family violence. For example, a representative from a metropolitan Women's Health Centre spoke of a person with disability whose case did not go to court:

"...she was told she was not a credible witness because of her disability."

– Women's Health Centre informant



As noted above, interview participants also observed that they were more likely to be met with a positive and proactive response from police where they presented as what wider research in this area describes as a 'deserving victim'.



"I was lucky that I walked into a police station in a well-funded area... I was lucky that I walked in at the time that a detective who gave a s--t about this kind of stuff was there. I was lucky that the person that I accused was not so sympathetic... I was lucky that I was white and the officers were white... Like so much stuff would have gone differently and it shouldn't be that close of a call."

- Participant 20

Conversely, interview participants who did not fit this profile reported negative experiences. This included interview participants who had agreed to a sexual act of some kind and were therefore assumed to have consented to the whole experience.

"...it's like 'oh she gave oral sex so she can't have been raped."

- Participant 19



"If you're a sex worker, like you have all the difficulties that general victims have, but you also have the additional impact of [the perception] that sex workers are, like, unrapable."

- Participant 6

Many of the interview participants had experienced what they felt to be a judgmental response from police, particularly where they had been intoxicated at the time of the assault or had ongoing contact with the perpetrator. This was supported in informant consultations; for example, an informant from a Regional Health Services Group recalled instances where police deterred a complainant from going forward with a report because she had been intoxicated, with police reported to have stated:

“...you’ve had a couple of drinks, so you’re going to struggle to get this across the line.”

- Regional Health Service informant



However it should be noted that, where the interview participants had reached the stage of reporting the offence, this judgemental response did not impact their determination to proceed with the matter or their desire to have the matter investigated further.

3.2.10. Setting expectations around prosecution

Informants from NSW Health SAS, Women’s Health Centres, support services, and advocacy groups advised that some complainants felt discouraged at the point of reporting from going further in the investigation process, with police indicating that the case would not result in prosecution, as highlighted by one of the participant’s experiences above.

Low rates of prosecution for those reporting historical offences

NSW Health SAS and legal services informants raised particular challenges faced by complainants who had historical reports of sexual offences presenting to police. Further, complainants who reported offences which were even a few months old stated they often received a discouraging response from police and were told that their complaint was ‘historical’.



“I contacted [the detective] every month or so, just asking...[and she would say] ‘Oh, you know, sorry I don’t have any time to see you. Historical complaints aren’t treated as a priority.’”

- Participant 10

“I walked out of there, no support, no care, no interest. It had taken so long to get up the courage to come forward, and then nothing.”

- Participant 24



The value in police appropriately setting expectations

Some interview participants similarly suggested that they would have appreciated knowing about the challenges of the legal process upfront. While harsh or dismissive responses are re-traumatising, participants explained that the good intentions of police and emphatic language that some officers might use can create unhelpful expectations which are ultimately not able to be realised by the system. This indicates there is an appropriate balance to be struck where police are supportive and indicate that they believe the complainant, while also advising of the challenges of the investigation and prosecution process.



“...they don’t want to scare you out of the process so when they do give you information it feels a bit sugar-coated.”

- Participant 3

“A lot of promises [were made by police] about what was going to happen, but just never happened.”

- Participant 18



By contrast, some interview participants had experienced some fairly blunt advice from the police who had taken their statement:



“I asked him. ‘So, what if you find out that this actually happened and it gets to court, like, do they have to apologise to me...?’ And he was like, ‘no it would be way worse than that. Like they might go to prison, and in case it gets to court, like, you have to prepare yourself because it’s going to be really hard, but I wouldn’t worry about that right now because usually it doesn’t get to court...’”

- Participant 15

While many interview participants had a negative experience of reporting to police, few wished to see their matter left there once they had done so. When the likelihood of prosecution is low, informants reported that some victim-survivors appreciated police outlining the challenges in successfully prosecuting a sexual offence. While this could arguably be a factor that contributes to attrition, informants believed that this can be a positive outcome for victim-survivors’ safety and recovery. Indeed, only one interview participant indicated that a realistic assessment about the prospects of a conviction would have caused them to withdraw their complaint.

3.2.11. Variability in communication

A strong theme across the interviews was participants’ disappointment in a lack of follow up or further information from police. This included examples in which they had experienced a very positive initial interaction with police but had then received very little or no follow up, particularly where an investigation was taken over by a different police officer once the initial statement was taken. Alternatively, some received a dismissive response when they followed up themselves.

“...if somebody’s made a phone call and left a message, respond to that message...so I just became really uncomfortable that I was being a nuisance.”

- Participant 18



”

“I'd call, and I'd ask for [the investigating officer] and he wouldn't be there. And then, like, who else do I talk to? So, if he wasn't there, then I couldn't talk to him they'd just hang up.”

- Participant 7

“I think like it made things even more complicated was it actually got passed on to the police station in [other regional town], so hours away...and all just information relayed over the phone or, you know, in the statement itself. So, I hadn't even met who was going to be looking at that case.”

- Participant 25

”

”

“Whereas [the female officer] ...would always tell me what was going on, when [the investigating male officer] got a hold of it, it was like his investigation. He didn't really give a f--k about it...he didn't get back or tell me what he was doing...he just kept saying 'I can't tell you that information.'”

- Participant 30

As well as feeling ignored or forgotten, interview participants felt scared about repeatedly following up information. In one case, an interview participant described feeling targeted by police for having agitated for their matter to be investigated.

“I was scared to ask too many questions...[police officer] treated me like I was a nuisance and tried to get off the phone very quickly and I hung up. ...I just need to not be sort of raped again by someone treating me like a nuisance.”

- Participant 19

”

”

“I actually was then targeted by police. So, then actually I received a mental health referral where they were trying to section me just to like silence me, you know like back off.”

- Participant 6

This experience of feeling ignored by police and not knowing what was happening was incredibly distressing for many of the interview participants. Some interview participants volunteered, without prompt, that they were aware that they had rights under the Charter of Victim's Rights to be kept informed of their matter's progress and that these rights had not been upheld.

“I've read like, you know, the Victim's Charter of Rights...and they're supposed to provide you with like a card...that tells you where to go for support and tells you the number for sexual assault. I never got that. They never said anything. It was just like, 'OK, thanks for coming in, see you later'”

- Participant 9



“I still do not accept that the circumstances surrounding my case did not warrant adhering to the Charter of Victims' Rights...my only thought was if I can't do it, then what about people from other compounding, you know, disadvantaged backgrounds...? What can this possibly be like for them?...I think that there needs to be a third-party service that keeps that keeps them honest and keeps them on the Charter of Victim's Rights.”

- Participant 2

Nonetheless, some interview participants acknowledged that, where police had followed up, they often had little to report. This was as a result of multiple adjournments of procedural hearings and very little tangible progress. One interview participant described this information as *“updates about nothing”* and suggested that complainants should be given the choice to ‘opt out’ of being provided with procedural updates.

“...I giving people the heads up, 'you're going to get a lot of no news phone calls' or maybe like an opt in, opt out sort of thing. Because if I'd know more about how it was going to be like I probably would have said 'don't let me know when there's a mention...'”

- Participant 8



Informants from police reflected that there are often high caseloads and competing priorities for their time. One informant from police indicated that often, depending on the severity of the sexual assault being reported, complainants may have a general duties officer or a detective take on the case. Informants from police also noted that a large caseload may impact the amount or quality of support they can provide to complainants.



“Support is quite limited, and it can depend on the police officer's workload and capacity to provide support. We could have 15-20 sexual assault case load. You may not have any contact with victim until the trial and they are left in limbo if we don't have any information to update them.”

- Detective

3.3. Investigation and evidence gathering

Complainants who had accessed a forensic and medical assessment as part of the wider NSW health response generally had a positive experience, including being linked with a local NSW Health SAS.

Challenges exist in accessing a medical and forensic assessment, including:

- Variable availability of clinicians to perform an examination, particularly in regional areas
- A lack of awareness about how it contributed to the wider investigative and legal process, from both victim-survivors but also some frontline professionals and support agencies.

Informants and complainants raised similar issues regarding the nature of investigation and evidence gathering for sexual offence matters. These issues included:

- The process of taking statements from victim-survivors by Police being rushed, incomplete or inaccurate, or distressing
- Complainants not being advised of the information required from them for the investigation and how this would be used
- Inconsistency in of police gathering additional evidence across multiple occasions, including interviewing witnesses or gathering CCTV evidence
- A perceived lack of follow up from police, with the lengthy duration of investigations at times making complainants feel forgotten
- Complainants receiving inconsistent communication from police during an investigation
- Complainants not being given enough of an understanding of the reasons for a matter not proceeding to trial.

The interviews with informants and complainants present a number of findings related to investigation and evidence gathering. When a complainant reports a sexual offence to the police, this may result in charging the perpetrator with an offence if police consider there is sufficient evidence. Police involved in consultations noted that, in some cases, taking the initial report and the making of a formal statement by the complainant can take up to one week. However, multiple interview participants – including those who reported immediately following an offence– described this process as taking months when officers failed to follow up to complete the statement process. Furthermore, multiple interview participants reported that no formal statement was taken by police in the context of offences that were not immediately reported but instead were reported some months later or even longer.

Key findings related to investigation and evidence gathering are presented in this section across three key themes:

1. Access to medical and forensic examinations
2. Variability in the quality of information and evidence collected
3. Reasons for not proceeding with an investigation or charge.

3.3.1. Timely access to a medical and forensic examination as part of a broader health response

SASs provide medical or forensic assessment and management to victims of sexual assault as part of an integrated psychosocial and medical and forensic response. Despite the important role of forensic information in the context of an investigation or prosecution of an offence, some interview participants said they had not been aware of this process at all or had not been made aware of it in time for the relevant DNA evidence to be collected.

“It was not explained to me, like I just didn’t understand it and I was also really terrified because the thought of, first of all, being touched after a rape is so terrifying, like...[the idea] of this person I didn’t know touching me in places that were still hurting, kind of thing, was so overwhelming...and then everyone, my family, all got really angry at me that I didn’t do it. So then I went back, did it. But by the time I’d done that, it was already like, all the evidence is gone, kind of thing.”

- Participant 29



“...when the crime had happened, I...called Lifeline. And the person...told me pretty much just have a bath and have a self-care afternoon. And it’ll be all OK. And then I can maybe go to the police next week. So obviously I did that. And then the next week, I get the courage to call the police and I’m getting in trouble from the police officers because I bathed. And they couldn’t then take me in for any forensics. They got, like...pretty angry that I didn’t go. ...So that pretty much stuffed up a lot of stuff as well, 1000%...and that’s why I know from now on and everyone that comes into my life I always told them anything happens, no matter how big whatever it is, go to the hospital straight away.”

- Participant 28

Interview participants also noted a lack of awareness from their existing support networks, including GPs or counsellors. This lack of understanding concerned what a reporting process entailed, either prior to or following the medical and forensic examination. This points again to the need for greater community-wide awareness around sexual offences and associated legal and health processes. Interview participants particularly emphasised the importance of the fact that they were most likely to disclose to a GP and that GPs should be better supported as a result.

“I read that GPs handle like five disclosures a week on average...[and] they don’t know what to do, then all these people that are making disclosures are also going to not know what to do. And then, yeah, if it’s the blind leading the blind, it’s not conducive to healing and recovery...my GP and my gyno had no idea what to do... Like my GP’s been my GP since I was [young], and she... was like ‘s--t, like what the f--k do we do?’ ...‘I have no...idea where you need to go”

- Participant 9



Furthermore, informants from SASs, Women’s Health Centres, legal services and police spoke to challenges in seeking timely and accessible medical and forensic examinations. In regional and remote areas, these informants advised that victim-survivors are required to travel hours to the local hospital to undertake an examination; sometimes, the only transport available is in a police car.



“I had a complainant go to Albury [Hospital] to get a forensic test and then there were no doctors available, so she was told to go home, not have a shower and come back tomorrow.”

- Legal practitioner

Informants also spoke to difficulties in accessing medical and forensic examinations in metropolitan areas, sharing anecdotes of victim-survivors being required to travel from hospital to hospital before finding a clinician who can perform the procedure.

Informants also remarked that confusion and lack of clear, consistent messaging from support services, police and health services can deter victim-survivors from seeking a medical and forensic assessment as part of the wider crisis response. Police representatives noted that some complainants decide to withdraw their complaint after a medical and forensic examination.

“Sometimes a victim agrees to a SAIK [Sexual Assault Investigation Kit] – and then they talk to a counsellor at the hospital who tells them they don’t have to, and police feel they have missed the opportunity to get forensic evidence.”

– Detective



However, it is important to recognise that interview participants said that this sense of choice and agency is often the only reason that they undergo the medical and forensic assessment, being reluctant to proceed with one at all unless they know that they are not compelled to report or give a formal statement to police.



“I had the option to do a rape kit. But at that point I was really scared of talking to the police...they let me know that doing the rape kit doesn’t mean that I have to speak to the police, I still have the option to reach out to them afterwards. ...I gave an official statement a month after the rape.”

- Participant 15

Given that some complainants may simply be reporting because they feel that they are obliged to, or because they feel pressured to do so by family or friends, this sense of choice is important to maintain. It is also potentially more likely to be contributing to the effective gathering of evidence given that some complainants would not go through with it all if they felt that it was mandatory or automatically propelled them into the criminal justice process.

The interview participants who had accessed an examination through a SAS generally reported positive experiences when doing so. This included one interview participant who specifically went to a SAS first because of fear of discrimination when reporting to police.

“The examination itself is very, really very intrusive... But I knew that it was an important part of the process.”

- Participant 13



“... being a [healthcare worker] ... I knew that I couldn’t shower. I knew that I couldn’t do anything like that until certain processes took place and to wait for over an hour and a half just to have someone arrive was really horrible and you know, sitting there in that feeling of self-disgust and questioning.”

- Participant 1

“I went to RPA, the sexual assault clinic, and the reason I went there is because of my sexuality, like I face a lot of discrimination.”

- Participant 4



Important to note, one interview participant felt particularly distressed by her experience of trying to access a forensic and medical examination. Despite her experience occurring after COVID-19 restrictions had been removed, this participant described being subject to an examination by practitioners in full personal protective equipment, with much of the communication taking place via video link from the next room. The process took eight hours overall.



“They wouldn’t let my support person in with me. [Despite a medical exemption] they forced me to wear a mask and have sheets over me. They forced me to do a [COVID-19] test, to get probed further 12 hours after an assault. I wasn’t sick but they separated me and treated me like I had COVID, when I was there because I’d been raped.”

- Participant 34

Importantly, as well as accessing the forensic examination, six interview participants described the value of the NSW Health’s integrated response enabling a connection with a specialist SAS counsellor. The significance of this was a particularly strong finding across the research.

“I went to the hospital before I reported it...because I had pain in my abdomen from the rape...that’s when they gave me the, they did a scan and went to tests and gave me the contact of the counsellor.”

- Participant 19



“...when I was getting the rape kit done, the psychologist...gave me information [about]...Victim Services.... I wasn’t told about this at the police station, I was told about it at the hospital.”

- Participant 12

“...and I went and got the SAIK [Sexual Assault Investigation Kit] done. And I was introduced to a social worker... And she put through all, like the stuff I needed. So, all the support and everything. She passed on my details to [the specialist counsellor] ... And then...she called me I think maybe three days after it happened.”

- Participant 16



Some interview participants seemed to be aware of and understand that firm evidence from the examination was not guaranteed, particularly after a lapse of time.



“I understand that you do need to have evidence and, because it was just me and the perpetrator alone, there was no witnesses...there was no DNA or no, there was no rape kit done. So, I knew that there was a very low likelihood of them being able to do anything about it.”

- Participant 7

3.3.2. Variability in the quality of information and evidence collected

How police take a complainant's statement and what information they obtain upfront can significantly impact on the likelihood of a matter progressing to trial, reaching prosecution, and securing a conviction. During informant consultations, some judicial officers expressed concern about the quality of evidence often being led by the prosecution, a challenge which could be traced back to the standard of initial evidence gathering by police. One judicial officer stated that the standard of investigation by police was deteriorating and that the evidence coming to court was often poor and lacking the required detail for court processes. Informants from legal services raised similar issues, noting that the brief of evidence created by police and the statements taken from complainants are not always detailed enough. This presents issues during trial given that:

“...the standard of proof is high.”

- Legal practitioner



Examples provided by informants discussing the variability in evidence included:

- **Variability in the conduct of medical and forensic examinations** – Police, NSW Health SAS and regional Women's Health Services informants discussed the variability in the collection of forensic evidence. Further to the discussion above, a Women's Health Centre informant noted:



“nobody advised her not to take a shower, police said go to emergency in the morning and let them know.”

- Women's Health Centre informant

- **Failure to adequately document evidence** - Women's Health Centres noted that sometimes there are failures from police to adequately document evidence. The informant provided the example of where someone reported an instance of abuse from their partner. The scratches on her body were not photographed and neither was the property damage that was noted. This informant noted that:

“...burden of proof is often on the victim.”

– Women’s Health Centre informant



Police stressed that the lack of evidence is even greater for reports of offences that had occurred some weeks or months prior. Police informants noted that, in these instances, it may even be more difficult to identify the perpetrator as the complainant may have retained limited information.

The quality of investigation and evidence gathering – as well as the delay which many interview participants had observed as occurring in relation to their matter – was also raised by interview participants as a significant theme across the research. This related to a number of different points in the investigation.

Statements taken by police

Interview participants raised issues with the quality of information and evidence gathering. A number of interview participants described their concerns about what they saw as a rushed and incomplete approach to taking their statements, with some being told that the detail that they were offering was not relevant and others feeling dismissed by the police officer.



“I think there were kind of like, ‘there’s no point in giving all this minute detail’, they probably knew it wasn’t going to go anywhere”.

- Participant 19

For some interview participants, this approach was at odds with their emotional and physical needs, potentially jeopardising not only the evidence available to their case, but their overall wellbeing.

“...the people that have to do the statement, seeing how emotionally distressed I was, it probably would have been in their better interest and in mine to just say ‘look, let’s regroup. Let’s go tomorrow.’”

- Participant 21



Interview participants offered multiple examples in which they felt that the written statement was not an accurate reflection of their story. They felt that this had occurred because police were writing it up while the complainant was speaking, rather than the complainant being able to write it up themselves.



“...to have someone else writing your story for you, you were the only person who was there, who saw the body and language, who knew what you felt and knew what each nuance meant.”

- Participant 19

Evidence provided by complainants

Interview participants expressed that they wished they had better understood what information was likely to be relevant for a statement to police and often regretted offering extraneous detail that was later used against them by the defence at trial. In some cases, participants were told by police taking their statement that information that was not directly relevant to the incident would not be provided to the accused or the defence. Interview participants explained their distress at being asked to hand over photographs, texts, and their mobile phones in general, not having realised that intimate or personal images or messages, including those not relevant to the matter, would be looked at by police and provided to the defence. Later, they were cross-examined about it at trial as a way of discrediting them generally, despite it not being directly relevant to the details of the assault. Participants were also nervous about this information being distributed more broadly.

“... they actually extracted my entire phone. And I didn't know this until afterwards that the police said 'no, we only take the text messages'... They had all my photos, ...my app history...and I understand that even though they only gave like the defence just the text messages, I still suffered from the anxiety of the, you know, just my personal information is sitting somewhere. Yeah. And I have no control over it. Like, had I known that they take my entire phone, I wouldn't have given my phone in like, yeah, first place. That still haunts me to this very day...”

- Participant 17



Gathering additional evidence

A strong theme emerging from the research was complainants' disappointment when police did not appear to follow up with the investigation. Examples given included gathering CCTV footage or interviewing witnesses, either in a timely fashion or at all. For some, this was directly relevant to the success of their matter when it came to trial.



“... they refused to take any additions to my statement, didn't even pick up the CCTV until eight weeks – after the assault... I kept calling them, being like 'you haven't picked up the CCTV... And then later on in the trial that came out that they also failed to take [relevant] statements.’”

- Participant 6

“... my best friends tried to get in contact with my detective [to provide statements] and just couldn't... [the detective] would make appointments and then cancel them. And so like, those statements were never collected.”

- Participant 9



”

“...there is CCTV footage of him following me in the car. That’s stalking and intimidating. But do you think that they had followed up? [There were] many witnesses...[but no] further investigation done”.

- Participant 26

“I got palmed off to multiple detectives. It got held up for months, even though I did my forensic straight away”.

- Participant 34

”

Importantly, several interview participants volunteered their disappointment and confusion when police appeared not to interview the accused, or alternatively, only did so some time after the offence had been reported. Interview participants with this experience had not been advised why a formal interview had not occurred or why there was considerable delay between initial contact and a formal interview.

”

“I could have given them his address, but they never even asked...I had the names of some of his friends and they never asked...they just looked at it and then it was like, yeah, ‘nothing we can do’.”

- Participant 7

“...the police went and saw him at his door. ...And he denied everything. He said he remembered the night, but he was too drunk. So, he can’t say it did happen. Which I actually expected but at the same time, not the level of accountability I would have wanted him to have. ...None of my friends, actually said they were contacted [either]. Which I felt was quite strange. As I, you know, provided numbers and social media handles and addresses and everything.”

- Participant 25

”

”

“... [one of the offenders] told [the police officer] that we did have sex..., but it was consensual... I remember being filmed, being drugged and he denied all of that. And then afterwards [the police officer] told me that [the perpetrator] wasn’t interested in coming to the police station to give an interview and his guess is that the [others] also wouldn’t be interested in that either.... And when [the police officer] contacted me again ... he let me know that he spoke to the ‘nice one’ [and said]... ‘you told me that one of the guys asked the [others] to leave the room and stop filming ...So, he’s the nice one...’ He did ask the [others] to leave, but...after they left, it actually got worse because he then started choking me.”

- Participant 15

Several interview participants had been asked by police to participate in an ‘intercept’ telephone call. This occurred where police had obtained permission to record a conversation between the complainant and the accused in the hope of obtaining some sort of admission. This appeared to be a

fairly common approach in circumstances where there was insufficient evidence available beyond the complainant's statement and any statement or comment provided by the accused. Interview participants who had undergone this experience found it highly distressing and re-traumatising but felt they were obliged to cooperate with the police request for the success of the investigation. One participant had a particularly distressing experience of this process.

"...they wired me up to have a phone conversation with him to see if we could get an actual admission because obviously it was my word against his...then when the call finished, [the detective]...got the little recording device and was obviously trying to rewind it and play something and he's fiddling around with it, sort of looking very confused and didn't know what he was doing with it and I said, 'it hasn't recorded, has it?' And I absolutely lost it...because I thought that [the perpetrator had] said enough to incriminate himself..."

- Participant 18



3.3.3. Reasons for not proceeding with an investigation or charge

Legal and NSW Health SAS informants discussed instances where police demonstrated an unwillingness to proceed or prioritise investigations. These instances included:

- Where it related to an offence that was older and therefore did not have forensic evidence
- When the sexual offence occurs in the context of an intimate partner relationship, which the victim-survivor may choose to continue
- When there is a level of bias, such as the complainant engaging in sex work.

When police did not proceed with the investigation or charges against the offender, interview participants stated that they wanted an explanation from police explaining why this occurred. Interview participants acknowledged that this was often a decision that was out of the hands of the investigating officers but felt it was nonetheless their responsibility to relay. One participant volunteered that news like this could put already traumatised victim-survivors at risk of self-harm or worse, particularly when not conducted in an appropriately trauma-informed way.



"...one thing I really would have liked is for someone to explain to me what else it would have taken to go further with my case...there is a lot of evidence which was collected, and it was the rape kit and...it showed that I had [a particular drug] in my system...which wasn't by choice. ...and also they had the mixed DNA, it showed that it wasn't just one guy, it was multiple guys who did it. I had the bruises. I had the address. I recognised them in the picture.I just don't understand why that wasn't enough."

- Participant 15

"...she called me up and said 'congratulations, we've got some good news, technically you weren't sexually assaulted under the law'"

- Participant 19





“He basically said...we're not going to 'cause we're not going to get a conviction...I know it's disheartening [but]‘we just want to do what's in your best interest like, we don't want to put you through that’, and I was like, ‘you don't know me’. ...you don't know what this means for me.”

- Participant 9

One First Nations interview participant expressed particular disappointment with how the decision not to proceed was handled and eventually communicated to them.

“I think...if they had done it more culturally appropriate and in the right manner than I probably could have had him in court. It's because their attitude... especially with black people, is that they don't really give a s--t. I was driving in my car and I was told over the phone. I was on speaker phone...and so [my child] heard everything about it... Like, how does he know how this is going to affect me? Like, I didn't have any supports with me...like I could have gone and killed myself. How would he have known? I just think that's totally f--king inappropriate. They need to change that s--t, big time”.

- Participant 30



3.4. Attrition prior to trial

Where a complainant decides not to proceed to trial, reasons for this include:

- Negative experiences through the reporting and investigation process
- Fear of repercussions from their community
- Fear of how they will be treated during the trial, particularly during cross-examination.
- Fear of their personal information or experiences being made public.

Matters may not proceed to trial for a number of reasons, although consultations and interviews indicated that this was largely as a result of justice agencies determining that a prosecution is unlikely to succeed. Where the information in a complainant's statement was considered to be complete, informant agencies explained that a prosecution may not proceed because there may be direct divergence between aspects of the information in a statement and physical or electronic evidence, leading police to decide not to pursue charges or the Office of the Director of Public Prosecutions (ODPP) determining that there is insufficient evidence to proceed to prosecution. However, interview participants who had experienced police or the ODPP making this type of decision largely stated that their understanding was that evidence was lacking, rather than being divergent (as outlined in Section 3.1.3).

Complainants themselves may decide to withdraw their statement for a range of reasons. This may be because of an overall experience of lack of support and negative interactions with the system (as described in Section 3.1.2) or due to the negative experiences in preparation for trial (outlined below Section 3.2.1). As noted earlier, complainants may also fear repercussions from the alleged offender or wider familial or community pressure. This was particularly the case in close-knit, regional communities.

"I was hesitant about it. Just because it's one of those things that when it comes out. I feel like it's going to tear the family apart. And I don't want to be responsible for that..."

- Participant 11



"...his friends are quite intertwined with my friends so, it's quite a small town..."

- Participant 12

Important to note is that the few interview participants who had either withdrawn or had considered doing so emphasised that their primary motivation was fear of how they would be treated during the trial.

"I just didn't want to go through that same process. I didn't want to have to sit before people that didn't know me and cross examine me and determine whether or not I'm bulls--tting or whether I'm telling the truth."

- Participant 1



This included some interview participants whose matter was high profile due to the accused's position in the community. For example, despite being believed and supported by the police and ODPP throughout, one interview participant was advised by the ODPP that she would likely be highly re-traumatised while participating in the trial. This was, in large part, because of media scrutiny and the fact that the cross-examination would inevitably focus on the use of alcohol and ongoing communications between her and the accused.



“...the Crown prosecutor...told me about all the options I had. Like, ‘this is what would happen to you if you went to trial...salacious details will be in like the front pages.’ You know, ‘you sent this message and it’s going to be like front page’ and it was just extremely terrifying and they said because of my age that they recommended that I don’t go ahead with it. ...I thought about it, and I said ‘yep, I don’t want to do this anymore’...it was just too scary. ...Like, my mental health takes priority now.”

- Participant 17

3.5. Experiences during trial

Positive experiences of the trial process are marked by ongoing support, including through dedicated detectives, specialist counsellors, peer networks, and informal support from family and friends.

A range of factors in the trial process can contribute to a negative experience and re-traumatisation of complainants, including:

- Attending the courthouse can require significant travel and can result in the complainant being in close proximity with the defendant and the defendant's support networks
- The trial process is unclear for complainants and there is a lack of available and consolidated information about what the process entails
- Complainants' status as a 'witness' in the trial concerning their assault can be particularly traumatic and contribute to feeling a loss of agency
- While support is available at various points of the legal process, complainants have limited access to consistent support during their end-to-end experience from reporting a sexual offence to when the matter comes to trial
- Complainants noted the importance of supports related to other, associated needs (such as housing, domestic and family violence, and migration services) through the trial
- Charges can be negotiated down and matters resolved via a plea, with the complainant not always having input into this process
- While Victim Impact Statements are highly valued, a requirement that the statement can only be made in relation to the charges that were proven can leave complainants feeling like they have not had their full experience recognised
- Cross-examination can be a confronting and humiliating process for complainants
- The trial process is not designed to be trauma-informed
- Delays in the trial process can stretch to years, impacting on the complainant's ability to heal and recall events.

3.5.1. Positive experiences based in support for complainants and for prosecution

Complainants described the value of trauma-informed, ongoing support during the trial process. Some interview participants had experiences of being supported by dedicated detectives, who had stayed with their matter the whole way through and who appeared invested in the process and the result. Participants described the considerable value that this support offered, where they had one detective who knew their story and, in many cases, who came to the hearing despite having been moved to another unit or area. Interview participants also described the value of informal support from family and friends, with some having had their close networks attend the hearing with them, or on their behalf in relevant circumstances.

"[New partner] was incredible, came to court every single day and sat outside the room, and so did my parents. And about four police officers. Like between one and four, like not all of them would be there every day, but I had this massive group of people waiting outside court every single day."

- Participant 3



Nonetheless, a greater proportion of interview participants went through the process without their family being aware of the offence. This was either because they did not feel that they could carry the burden of their family's response in addition to managing their own trauma, or because disclosure of the offence had been a negative experience for them.



"I didn't want my family to hear anything, to be a part of it."

- Participant 29

"I didn't have family come...not one sibling came to support me. So, you don't tell people, because you don't want to be rejected again and again and again. So, you just do it by yourself."

- Participant 4



In the latter examples, SAS counsellors or other specialist supports were the complainant's primary lifeline, although some complainants went through the process without any ongoing form of support at all.

Finally, one form of support nominated as particularly valuable by some complainants was from people with the same lived experience. Complainants described the difference that it made when they had someone beside them who had endured a similar experience. In some cases, however, this was a reminder of how brutal the prosecution and cross-examination process could be.



"I just sat outside trying to just like, [get] the courage, and then [another] survivor came and sat next to me and talked to me and that was when I felt informed for the first time in the process."

- Participant 3

3.5.2. Complainants reported a range of negative experiences during trial

Informants and complainants highlighted the risk of re-traumatisation for complainants as a result of their experiences during trial. Factors that influence a complainant's experience during trial can also impact the quality of evidence that they can provide through the cross-examination process. Negative experiences during trial can contribute to the existing stigma around the trial process, which can impact other victim-survivors' willingness to report and participate in the trial process (as discussed in Section 3.1.1).

Complainants' status as a 'witness'

Informants from legal services, the ODPP, support services, and advocacy groups noted that complainants are often not aware before trial that the perpetrator is able to engage a lawyer whilst the complainant is legally regarded as a 'witness' to the sexual offence and therefore not entitled to separate legal representation. This was described by informants as particularly challenging for complainants as they feel that the perpetrator receives a disproportionate amount of support and

protection of their legal rights. When sharing an anecdote about the trial process, an Aboriginal support service noted:

"...the court system and going to court was an extension of [the perpetrator's] power and control."

- Aboriginal support informant



"I'm a witness in my own trial? Like, how f--ked up is that?"

- Participant 34

Interview participants whose matters had been listed for trial all volunteered that the realisation that they were merely witnesses in their own matter was particularly traumatic. Many explained that they had already had their power and choice removed by the sexual offence – including, for some, in the context of ongoing coercive control – and that this status as a witness entrenched this loss of agency.

"I was just another witness. I couldn't watch it."

- Participant 29



"...a lawyer should be appointed by the state, for the complainant I'm the victim, not the f--king witness. ...they kept saying, "it's not your case" ...my whole f--king life is on hold for three years..."

- Participant 4

"...it was apparent even from that first, you know, court visit with the DPP where they were like 'this is what's best for us' that like, they weren't my lawyers, like they...[don't] work for me, but I like, I work for them in a way, like I'm the reason that they're able to bring this case forward...I'm a material piece of evidence. I'm not a person"

- Participant 20



Legal representatives from the ODPP reflected on the challenging task of managing complainant expectations. A Crown prosecutor noted:



"if they say something different to their statement, we have to pass that on to the other side...people think it's private, but we have duties...that can cause difficulties between the prosecutor and complainant."

- Crown prosecutor

This also contributes to complainants' feeling that they lack control and agency through the trial process. Interview participants emphasised that this realisation increased the trauma that they experienced as a result of the process, cementing the loss of trust in the legal system.

*"I'm the DPP...anything you tell me I have to give to them so be careful'
...What a waste of time."*

- Participant 4



A number of complainants also raised this issue, reflecting that this further entrenched their feelings around a loss of agency. They noted the sense that the ODPP made decisions that were purported to be in their interests, yet they felt were actually about the way that the ODPP preferred to run the case.



"...the prosecution said 'we're not going to raise your sexuality, we think it will play better with the jury'. And I said 'I've already had my identity taken away by the rape, now you're going to do it again'".

- Participant 4

"...the first time I said I wanted to give up my anonymity, they were like, 'no, it'll be bad for our case'. There was not like 'People on the Internet are really mean', it was like, 'no, we have a case to run'...It's like, 'well, we've spent so much money on this case. We're not gonna stop now'...I don't know why they're so angry with me. This is my story. Like, it's your case, but it's my story".

- Participant 20



Complainants also spoke of the difference that access to legal information, advice, and representation would have made for their experience. This included information and advice which could have helped them to understand the reasons for their role and to manage their expectations around this. Some interview participants found this experience particularly distressing.



"...the DPP...gave me a brief overview of like 'we'll ask you to tell us everything and then they'll ask you questions about it'. Umm, they said to me, 'don't elaborate on your questions. Just answer the question that they're asking', which I feel was a bit of a detriment..."

- Participant 20

"I've never heard any of that language before. ...I don't know what any of it means..."

- Participant 29





“I remember having a meeting with the DPP and...my Mum, like her voice was breaking, she was about to start sobbing and I remember her saying, ‘just be honest with us...is he going to be found guilty, is it worth it? ...I don’t want to put my baby through this’... And I remember the lawyers being like ‘oh, we don’t know’, ...But basically [the statistics are] 50/50.”

- Participant 3

Specific advice and representation in relation to confidential communications and disclosure of sexual histories was also important, which some interview participants received from NSW Legal Aid’s Sexual Assault Communications Privilege Service. However, some interview participants felt that they also would have benefited from advocacy in relation to procedural matters.

“I should have had a lawyer saying to me ‘just shut up, you’ve given them that one just let them work with that one’, right.”

- Participant 4



“I actually think that in the application to vacate the trial, the victim should be heard... you can actually provide a brief statement and look at the impact and find out more about the details...”

- Participant 6

Attending the courthouse

In regional and remote areas, informants spoke of complainants who travelled long distances to appear at court, isolating them from their homes and support systems. This particularly impacts First Nations peoples who often are required to travel off-Country to appear at court. Informants from legal services and support services advised that many complainants have financial and caring responsibilities which can be significantly disrupted by being required to appear at court.

During trial, complainants are in close proximity with the perpetrator of their assault, as well as the perpetrator’s family and/or support networks. This extends beyond the courtroom, to bathrooms and local cafes at court break times.

“Everybody goes to lunch at the same time [and it is] not uncommon to run into each other at local cafes... There are points of risk, and safety risks. “

– Victim-survivor advocacy informant



Interview participants also spoke of the fear that they felt when navigating the court building.



“...we're all walking in and out the same entrance... You know, even walking outside the court, ...we're walking around and we walked right past the accused's father...it doesn't worry the DPP, it doesn't worry the court, it doesn't matter. The day goes on, right? ...but I can still see his Dad's face walking past me in that street... Things that don't matter to them because I'm just their evidence.”

- Participant 20

“You go in the backdoor and to the special [remote evidence] place, but that doesn't change the fact that you see them in the corridor in the break. They said it wouldn't happen, but it did, he was right there.”

- Participant 34



COVID-19 caused a backlog in the courts, further delaying many recent trials. This impacted negatively on complainants' experiences of the trial process as it contributed to anxiety about the trial process. Informants from support services and SASs advised that COVID-19 testing had been required before entering the court room, resulting in the high risk of complainants and their support networks being in the same room as the perpetrator and their support networks. Informants from advocacy groups and legal services advised of harassment occurring towards the complainant and their family as a result of this close proximity. Interview participants, meanwhile, spoke more about the impact of COVID-19 on their ability to participate in the proceedings.



“...when it got sent to District Court...that judge...actually paused the court proceedings [and] said. 'No, no, no, we have a victim that wants to be here. We're going to call her in [online] now'... So, I was treated well once I managed to get in. It was mainly the court staff to be honest. ...By the time 2022 came around I was cranky, I was like 'You've had two years to get this right.'”

- Participant 10

The option to provide evidence remotely or via CCTV was regarded positively by informants, but it was noted that this can involve burdensome administrative requirements or be challenging when the complainant can still see the perpetrator. Interview participants who had been able to provide evidence remotely spoke about the benefits of doing so. Nonetheless, one interview participant appeared to have been actively discouraged by the ODPP to give evidence in this way, the implication being that juries would be more likely to believe or feel sympathy for a complainant if they appeared in person.

“...having the video link option was really good. At one point I thought I wanted to go in there, into the [courtroom] and they did say they were like you can but mmm... And then like, as soon as it got closer, I was like, yeah, I don't want to do that. But yeah, having that option felt good.

- Participant 8





"[Giving evidence via video was good but] at first it wasn't because he was on the screen. I could see him as soon as I sat down. So, that kind of threw me."

- Participant 22

"...they told me that I had the option to sit in the courtroom or to go to the like the victims' evidence place around the corner. But they very heavily suggested that I not go... And they basically said that the jury doesn't connect with people on a screen and it's totally up to me. I can do what I want, but 'we don't see good outcomes from cases where the victim isn't in the room'."

- Participant 20



Lack of psychological support through the trial process

Multiple informant groups reflected on the importance of victim-survivors being psychologically supported through the trial process to manage the stress and risk of re-traumatisation. An informant from a NSW Health SAS noted that appearing in court was:



"...like going back to what it was like, but this time...they were really questioned or weren't believed."

- NSW Health SAS informant

Informants noted that, during trial, complainants are often focused on the court process rather than on healing. NSW Health SAS informants noted that there was also lack of coordinated, holistic support for victim-survivors who require adjacent support, such as housing and homeless services, domestic and family violence services, and migration services.

While there is specialised support available to victim-survivors, such as SASs in each LHD, informants stated that there are still complainants who have not been able to access psychological support services through the trial process. This was broadly due to capacity issues in individual SASs and needing to prioritise clients in immediate crisis. However, for those who were able to access this support, interview participants whose matter reached trial praised the incredibly valuable and trauma-informed support they received from their SAS counsellor or other psychological supports where these were specialised in trauma and gendered violence.

"...they're specialists in their field...I found them really knowledgeable, patient, empathetic. Let me have my rants needed them about the system, but also very honest about the system and like wouldn't get my hopes up about the process. And like you know, 'I don't want to be negative. But this is often the kind of outcome that people face. We never know with each case, but I just want you to be prepared for that.' So, they kind of mentally prepared me."

- Participant 14



Indeed, specialisation was considered crucial by interview participants. Some interview participants described negative interactions with more generalist counsellors who were not equipped to support people with their particular type of experience.

”

“... she got me to make a water bottle filled with glitter so that [when] I couldn't sleep, I could shake it and watch the glitter fall...I don't know what to say... that's probably why she thought I was fine after three sessions because she was like, 'well she doesn't talk that much. ...I think you're fine.'”

- Participant 20

“It was like she was just constantly too busy when I was talking, she wasn't quite listening, kept having to repeat myself. She was always on the phone or a computer.”

- Participant 22

”

”

“...I felt really judged and ashamed for stuff...that was anything to do with my body or sex or anything. So, then I swapped to another counsellor and she was just 'I can't give you too much help' because she was only a mental health social worker. Which confused me because why was she able to be a victim services counsellor [if] they're not able to give full extent of help?”

- Participant 28

One interview participant had found the response of a generalist counsellor so limited and ill-equipped in terms of trauma-informed approaches that they disengaged during the first appointment.

“...I've seen a couple of counsellors since [the report], one of which I walked out on...”

- Participant 11

”

”

“I've found you gotta do your research. Like, just because they know about anxiety or eating disorders or OCD or whatever, doesn't mean that they know about trauma.”

- Participant 34

SAS workers interviewed noted that there were competing demands on SAS services, which are further stretched when services are understaffed. In these cases, SAS workers were noted as having to prioritise interviews with children and young people resulting in less support available for complainants.

“When they don’t have fully staffed services, that impacts ability to do the whole scope of work – court support and preparation may become a lower priority than children under 16...”

- NSW Health SAS informant



Interview participants also indicated that access to specialist services was stretched, with many SAS counsellors or private psychologists being required to go outside the remit of their role to provide support through the trial process. Some interview participants also indicated that their access to psychological supports had dropped away by the time that their trial proceeded, highlighting an additional impact on the delay and length of trial processes on the wellbeing and recovery of complainants.

“I called one or two times just sort of being like ‘hey just checking I am still on the waiting list, like help!’ So yeah, I got in for like a one-off appointment at one point...you could tell that the psychologists who work there were doing everything that they could. But they just didn’t have the capacity...”

- Participant 8



“I attended sexual assault counselling for NSW Health. And that was overall really helpful. However, because there was such significant delays in the police response, by the time that charges were laid, I was already not part of the service anymore, ...you can only have that many sessions.”

- Participant 6

Interview participants spoke more broadly about capacity issues for specialist counselling and therapeutic services. This was observed in particular by interview participants who were trying to access these services sometime after an offence, but it should be noted that this was also observed by participants who had accessed the service immediately following an offence.

“... [GP] called the sexual assault service. And they were like, ‘oh, when did that happen?’ And she was like, ‘[two months ago]’. And they were like ‘sorry, we can’t see her, we can only deal with cases have happened in the last seven days...we’re fully like at capacity, overloaded.’”

- Participant 9





“They're incredibly under resourced and they were able to be supporting quite well for the first year, the second-year kind of died off was hit and miss and now...”

- Participant 13

Interview participants from regional areas also reflected on how their geography can impact their access to specialist services. This was supported in informant consultations, with NSW Health SAS informants reflecting on the long wait periods for support services in regional areas.

“So, I just really need to see a clinical psychologist, and there isn't any room availability up here [in regional area]...here it's very...you wait for a long time.”

- Participant 27



Support services, police, advocacy groups, lawyers and judicial officers noted that this lack of psychological support impacts complainants' welfare, as well as their ability to effectively participate in the trial process and provide evidence. Informants from Aboriginal services, NSW Police Force, and NSW Health SAS reflected that there were a number of barriers faced by victim-survivors from certain groups in accessing appropriate psychological support, such as culturally safe services for First Nations peoples.

More specifically, interview participants who had been through the trial process also described the impacts of the distressing nature of the trial process on their ability to provide their best evidence. These experiences were particularly relevant to the devastating impacts on complainants of cross examination, discussed further below in this sub-section.

Unclear processes and decisions during trial

Informant consultations described a lack of transparency in the trial process for complainants, contributing to unclear processes and decisions. For example, complainants can observe certain evidence being omitted or certain personal information being obtained by the defence through a subpoena. A lawyer reflected that some complainants wait months for a trial to commence, before finding out just weeks before the trial date that their counselling notes have been subpoenaed by the defence. This issue highlights the benefit of initial access to legal advice and information, as well as access to specific legal representation in relation to confidential communications.

This can be distressing for complainants and can impact on their ability to continue through the trial process and can extend or undermine their recovery journey. Legal services, legal representatives from the ODPP, police, and judicial officers expressed frustration that the majority of case preparation for these matters is undertaken in the final weeks leading up to the trial. This was described as largely a result of the workload of the ODPP being spread across multiple matters, and Crown prosecutors being engaged close to the trial to accommodate their other matters.

Some interview participants suggested that there needed to be greater accountability for legal professionals in terms of any failure to follow up processes which contributed to delay. A wish for transparency, as well as accountability, about decisions during the trial process echoed interview participants' wishes for transparency and accountability during the process of investigation and preparation for prosecution.

Just as judicial officers noted that the quality of initial evidence gathering could significantly impact the likelihood of a conviction, interview participants expressed distress that they had worked hard to follow-up their own matter. This included providing information to complete their statement, enquiring as to whether other witnesses or the accused had been interviewed and providing CCTV footage yet to be obtained by the investigating police. The discovery that their fears had been realised when evidence in their case was considered insufficient added to the traumatic experience that the prosecution process represented.



“... [the defence] made it up; that I'm just adding to my story. So that was like a common theme, that I'm just adding to my story as I go along...”

- Participant 6

Lack of consistent support to understand and engage with the trial process

The research indicated that complainants have limited access to consistent support during their end to-end experience of reporting a sexual offence and to trial. Informants advised that a significant challenge for complainants during the trial process is to keep track of the multiple services that they engage with and potential re-traumatisation from being required to share their experiences and stories multiple times.

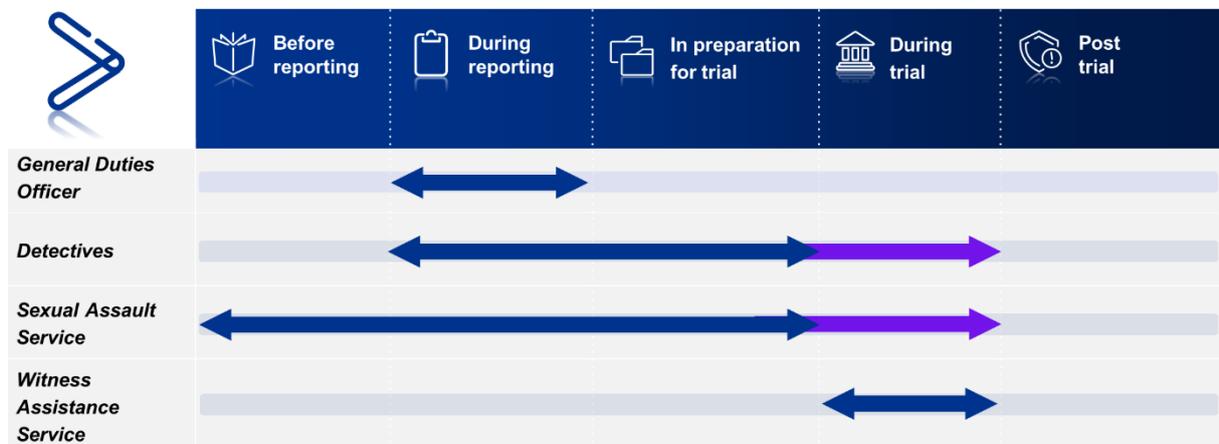
“Each person is a new judgement – and you're thinking: is this person going to believe me as much as the next one does?”

- Police informant



The figure below illustrates the supports available to victim-survivors and at which times in the justice process, which can span years. This figure is not indicative of the spectrum of services and roles victim survivors may have access.

Figure 1: Supports Available to Victim-survivors



Source: Project Team

ODPP representatives and judicial officers acknowledged that complainants' experiences with the trial process can be negatively impacted by a lack of a consistent ODPP team working on their case as a result of resourcing constraints. While the ODPP has implemented initiatives to assist with continuity and address these resourcing challenges, it was acknowledged that there are still challenges in ensuring continuity in the prosecution team. This was noted as unsettling for complainants by ODPP representatives.



"It's a much harder process when there is chopping and changing of legal professionals halfway through... Mixed messaging occurs otherwise, because you don't know what's been said at an earlier point, and everyone has a different approach."

- Legal practitioner

Multiple informant groups repeatedly reflected that fractured communication from justice agencies is difficult for complainants to manage during the trial. There is variability in how much contact complainants receive from the ODPP solicitors, the Crown prosecutor and supporting detectives. Some informants described complainants receiving occasional telephone calls from the ODPP prior to the trial, while others may meet with them several times in preparation for trial. A disability advocacy organisation spoke of a complainant who had no introduction to, or contact with, their case's Crown prosecutor until the first day of the trial.

As noted above, interview participants would have liked to receive information in writing as well as telephone calls, and also have a form of transparency and accountability in how this communication was coordinated and followed up. Furthermore, participants would have liked to receive practical and non-judgmental information about the aspects of their participation that they could potentially control.

"The DPP, I asked them what to wear and they made fun of me for asking, they were like 'that's a silly question'. And I was like 'no its not, that's the only thing out of this whole situation that I can control...'"

- Participant 3



Legal services, judicial officers and NSW Health SAS informants highlighted that the Witness Assistance Service (WAS)¹⁶ plays a role in preparing complainants around what to expect during the trial process, as well as acting as an intermediary for the complainants and prosecutor in the lead up to trial. Some NSW Health SAS informants worked with WAS officers to provide support more effectively during the trial, such as providing a tour of the court before proceedings and WAS officers attending court with complainants. Although the role of the WAS was seen as important by some informants, informants noted that there are issues with accessibility for the service.



"There is not enough training for staff to prepare victims to go to court, more work needs to be done – up-to-date training."

- NSW Health SAS informant

¹⁶ The WAS provides support and information for vulnerable victims and witnesses involved in criminal cases. For more information, see: <https://www.odpp.nsw.gov.au/victims-witnesses/witness-assistance-service>.

“We’re very confused around how you get a WAS worker [which] makes it difficult to advise our clients to navigate the system.”

– Legal practitioner



Interview participants whose matters had been listed for trial agreed that tours of the courts before the trial commenced were useful, while some also gave examples of other information or communication being provided by their WAS officer that they found valuable.



“I think the first time I actually got information, was when I met with the DPP lawyers and they gave me...a WAS officer...She gave me a booklet ...about like, what the court looks like and what to expect. ... at least I knew that she was somebody who would provide me with information if I needed it.”

- Participant 13

WAS officers were also considered very important to lawyers in how complainants are supported at court.

“[We are] not trained in social services. WAS officers are invaluable to our work because we can focus on the legal stuff and then have the WAS officers who are trained, know who to refer the complainants to, and they will speak to complainants about the court prep.”

– Legal practitioner



Complainants who shared observations about this service explained that their interaction with their WAS officer was generally fairly limited and, for the most part, appeared to be constrained by the nature of the role. This included concerns that the primary obligation of the WAS officer was to support the quality of evidence and information exchange between ODPP lawyers and the complainant; disappointment that the WAS officer was not able to attend court with them, and disappointment about turnover in the role which meant that an ongoing relationship was not able to be developed.



“...they’re meant to make you a better witness, they’re not really there for support. I mean, they do provide support but really, they’re there to make you a good witness for the stage.”

- Participant 3

“I had a WAS officer, but I feel like they didn’t really do anything. Like, I still don’t know what their role was... And when I actually asked... ‘I’m happy to go without any of the other service provisions or any of the other phone calls, if I can just have them for court support instead’ and they’re very much like ‘no you can’t just swap the hours’... [plus] there’s so much turnover, like I had three different WAS officers over the how many years it was, yeah... and by that time you don’t want to build a new relationship... Three different WAS officers, but then none of them actually showed up for court.”

- Participant 6



“Sometimes I would e-mail or I would text the WAS, but often they sort of would reply ‘Oh, I’ll have to ask the solicitor that’. And the answer would never really eventuate.”

- Participant 5

The divergence in views between informants and interview participants highlights an important gap between the expectations of complainants and what the WAS can deliver. The above quotes from participants indicate that greater clarity around the nature of the role and the extent to which, and what type of, support can be provided by WAS would be beneficial. In addition, further resourcing and investment in this service may be beneficial so that its function can be clarified and so that its utility can be fully realised for the benefit of complainants, as well as for the administration of justice.

Lack of information about the trial process

Informants and interview participants alike emphasised that the trial process is very unclear for complainants and that there is a lack of available and consolidated information about what the process entails for complainants. As noted previously, a lack of information about the trial process can be distressing for complainants and can impact on their ability to continue through the trial process.

Complainants from a range of backgrounds need better information about the trial process in different formats. An Aboriginal-specific legal service noted that visual aids have been effective in supporting First Nations victim-survivors and their support networks to understand the court process. Complainants with intellectual disability or cognitive impairment are also likely to benefit from information being provided in different formats. More generally, some interview participants noted that they would have liked the information to be provided in a considered way. These complainants described receiving multiple, rushed telephone calls, including from different prosecution personnel, with little time to process or write down the information. Given this, participants stated they would have appreciated receiving follow-up updates and explanations in writing and to have multiple opportunities to receive information in a manner that was not rushed.

“...often I’d be coming home from work or I’d be in the car taking the call because it was sort of the only time between picking up my kids and work...so I’d have pieces of paper everywhere, you know, dot points and trying to scribble down everything that they were...trying to [say]. So, to be followed up with that in in writing...would have been beneficial. I could have been able to process it or potentially even read it over and had other questions and clarification on things.”

- Participant 5



The lack of clarity that complainants experience in relation to the trial process is often compounded by the length of time between reporting and the commencement of a trial. Informants volunteered that this was a major contributor to attrition in the lead up to trial, but interview participants persisted with the process despite the considerable delay that many had experienced.



“So, the second day of the trial, they asked for it to be vacated...and the DPP tried to refute that application, saying ‘you just had an additional five or six months...but the judge just sided with defence and vacated the matter. I had actually missed out on Uni because of that...”

- Participant 6

There are limitations on the information that can be provided to complainants prior to and during their examination in court, with prosecutors constrained by what they can say for fear of interfering with the provision of evidence. This was directly related to a complainant realising that their role was one of ‘witness’, as discussed below. It was also relevant to the discovery that they could not be advised of certain issues in relation to the way that the prosecution’s case would be carried out and the varied extent to which they were prepared for the chief examination. This is linked to the distressing realisation that complainants could not discuss the trial with other witnesses. Due to the nature of the offence, these were most likely to include their closest family and friends, given that these were the people to whom the complainant had likely first disclosed the event.

“It was just hard because a part of it was, legally, I’m not allowed to speak to my friends. So, if they’re giving evidence, I’m not allowed to speak to them. So how am I supposed to process all of this if I can’t speak to my friends about what happened...?”

- Participant 29



Guilty pleas and downgrading of charges

The experience of charges being negotiated down – including immediately before a trial – was another step in the process which many interview participants found distressing. Many who shared their experiences of this had a reasonable and pragmatic understanding, whether from their own research or from wider community understanding, that this was a common occurrence in the prosecution process. What they found distressing, however, was the lack of input they had to the decision; the impact that this had on their opportunity to give evidence where the negotiation was associated with a guilty plea; or the way in which they found out about the outcomes of this negotiation.



“So, on the day, I never got sent a link... And then I just got nothing. DPP had known it was already arranged for me, so they.. just assumed that I had access. ...And then Mum’s, like, called me, hysterical going ‘turn on the TV’. So, I see on the news that he’s pled guilty and that’s how I found out.”

- Participant 10

“I was told wrong information by [the] lawyers, like they had told me if I decide to do a plea deal, he will be, what’s the word? Convicted. And he will also be on a sex offender register. ...And it was like really confusing like, I had to write an entire letter about why I decided to take this plea deal and literally the whole letter was about that. ‘I want him to carry this, and I want him to be put on this’. And then they just tell me last minute like ‘oh that actually doesn’t happen. Like, sorry.”

- Participant 29



“I never got my day with him. He pled guilty...that’s the whole part of solicitors agreeing and you’re going to plead to this and then that bargaining... So, I actually never got to be a part of that process.”

- Participant 2

The impacts of the charges being negotiated down extended well beyond the distress of realising that the accused was not charged with, and therefore potentially not going to be convicted of, the full extent of behaviours that reflected the complainant’s experience. Rather, the negotiation down of charges and associated plea and sentencing for a reduced offence(s) had an impact on the account that the complainant could give of their own experiences.

This included having an influence on the Statement of Facts that needed to be agreed between the parties in a proceeding involving a guilty plea, as well as the matters which complainants could discuss in their Victim Impact Statement (VIS).¹⁷ Interview participants stated that this was a part of the sentencing process they viewed as one of the few opportunities for them to have a voice in the proceedings and describe the impact that the offending has had on their lives, rather than simply answering questions about the offending and associated issues in order for the charges to be tested and proven. Interview participants found this negotiating down of their ‘truth’ to be particularly distressing.

“They kind of just threw that in last minute. Like. ‘Oh yeah. Like we’re just going to check over the Statement of Facts.’ Whatever. I did not understand that the Statement of Facts was, like, what determines the result, kind of thing. And the Statement of Facts was obviously not factual whatsoever. It was like, literally none of it was true. And I remember I had a few things that I said, like ‘this must be included’ kind of thing. And then [the] lawyers were [like]... ‘you can’t say this because then they’ll take away the plea deal and then you have to go to court’ kind of thing.... I had it all these, like, bruises all over my body. I couldn’t include that whatsoever. I couldn’t include any of it. I was never allowed to say that I was passed out, blacked out anything like that... I can say that I was sleeping. “Resting”, I think it was”.

- Participant 29



¹⁷ More information on Victim Impact Statements are available at: www.police.nsw.gov.au/crime/are_you_a_victim_of_crime/victims_of_crime/victim_impact_statements#:~:text=This%20statement%20is%20known%20as,victim%20impact%20statement%20is%20voluntary.

Given that a VIS is only read at the point of sentencing, the sentencing judge can only take into account the impact of the offences which have been proven (either by a guilty plea or a jury verdict). As a result, interview participants described being required to severely curtail their VIS and leave out parts which were vital to their experience of long-term and wide-ranging damage caused by the offending.

”

“...at 4:30 the day before I was meant to deliver my Victim Impact Statement at court, I received a phone call from the managing solicitor for the case who said that the defence have several issues wrong with my statement that you're going to need to [address] and I just remember thinking 'I submitted this to you a month ago, I gave more than enough time to do that'”

- Participant 2

“I appreciated the Victim Impact Statement but because he was found not guilty for [most of the charges] I could only talk about what he was found guilty for, which was a common assault. So, I couldn't talk about the impacts of being raped at all; it is quite silencing. And also, how can you decide whether, you know, nightmares or loss of appetite or you know trouble concentrating, how can you know that that is the common assault or the rape?”

- Participant 3

”

Interview participants also spoke of other challenges which they felt had undermined the value of the VIS in their matter.



“...I just can't see, with COVID, why I couldn't just go in as a single person and read my statement in front of him. That was another thing that was really important to me, and I had to do it by video link ... I had the local newspaper calling me. The journalist [said] 'I'm going to put you on speakerphone'. So, the bloody journalist was in there in the court room. And I couldn't get in there to read my statement.”

- Participant 10

Others spoke of the benefit of being able to read it in person, even with the content curtailed as a result of the guilty plea.

“I don't even like getting up to talk in front of people like, [but I] read this thing out and my rapist is in the room, and... I was looking at it him the whole time and he didn't put his head up once. I was staring at him, so I thought that was powerful.”

- Participant 29



Language and cultural barriers

Informants from legal services, the ODPP, advocacy groups, and the judiciary noted that the trial process can be particularly challenging for non-English speaking complainants. For CALD complainants, these informants reflected that they can be disadvantaged by the court process. Prompt access to translators is not always possible and partial translation efforts can also hinder communication with victim-survivors. Informants from advocacy groups stated that, often, a jury receives no instruction regarding how a complainant from a CALD background may describe their experience differently to an Australian English speaker and therefore may not appear as a 'believable' complainant. Furthermore, complainants from some cultural groups may be very reluctant to discuss their experience when the lawyer is a man.



“You saw how disadvantaged they were, and it was like everyone in the system was at a loss for what to do.”

- Crown prosecutor

Informants from an Aboriginal organisation noted a historical and ongoing distrust of justice agencies that impedes the trial, as well as a lack of culturally appropriate support for First Nations complainants.

“Aboriginal and Torres Strait Islander victims face cultural barriers going through the court process, not being supported in a culturally appropriate way.”

– NSW Health SAS informant



Some First Nations interview participants similarly reflected that attending court could be a further source of shame in the community.



“It was shame and feeling dirty. It’s not like you don’t want to talk about your experience but...if there was a space that was nicer and more supportive that you could go at the end of each day. Like to get a feed and have a lay down...and you could get linked with supports”.

- Participant 34

People with disability can also struggle with language barriers during the trial. Disability advocates noted that, although some witness intermediaries are available for people with disability who are hearing impaired or blind, there are lack of these roles available for people with cognitive impairment. These informants raised the issues stemming from this, noting that the trial process relies on the ability for the complainant to recount events and be believed.

“[The legal system says if you can’t remember details, then you’re not a reliable witness – that’s a principle in the court, and police have taken that principle and applied it in terms of the interview.”

- Disability advocate



Cross-examination

Despite the relatively small proportion of interview participants whose matter had reached the stage at which cross-examination was relevant, despite attempts at improvement over recent years, the research clearly indicated that this process remains distressing. Informants and complainants agreed that cross-examination is the most difficult aspect of the criminal justice system for complainants; a judicial officer described it as a “torture chamber” for victim-survivors. Ultimately, victim-survivors fear not being believed and the line of questioning that takes place during cross-examination contributes to this. Judicial officers also reflected on the nature of questioning by the defence, which can be “...overly aggressive and [can have] a judgemental tone.”



“[The system is devised for victims to stay traumatised, because only victims’ choices after the offence are left to be scrutinised – drinking, sex, counselling records”.

- Advocacy organisation informant

Multiple interview participants who reached trial spoke at length about the confronting and humiliating nature of questions from the defence during cross-examination. Overall, interview participants suggested that the cross-examination process was designed to humiliate and discredit them and also undermine their feeling of agency in finally being able to tell their story.

“...they showed screenshots in court and...I'd already gone through the DPP for the evidence in chief, and so the defence showed them and tried to make me out to be a really terrible person and it was the first time in the whole thing where I started crying.... And it was designed just to humiliate me. It doesn't make me more or less credible rape victim at all...it's completely irrelevant, but it was designed to humiliate me, and it was punishment from the defence lawyers.”

- Participant 3



“Everything to do with, like, telling your story is embarrassing, right?... And I started to cry and that worked so f--king well for them.”

- Participant 20

“He kept repeating the question even though I'd answered it. Yeah, just trying to get me to change my statement...trying to make me a liar, basically.”

- Participant 22





“I was on the stand for five and a half days being cross-examined. Going through court and going through all this horrific s--t, you might not properly remember everything and they use that against people. I asked [the barrister] ‘would you like your daughter to go through this?’”

- Participant 34

This view was supported in informant consultations. Indeed, a NSW Police Force officer reflected on a recent trial where the complainant, an older adult male, withdrew from the trial process following cross-examination because of the toll it took on his mental health:

“He felt that the defence could just belittle him whereas the offender was sitting there smiling.”

- Police informant



The need for trauma-informed approaches

A specific theme arising throughout the research was that, during trial, there is a lack of understanding of the impacts of trauma on victim-survivors of sexual assault. This includes the different responses that victim-survivors may have, including freezing or fawning response to trauma. Informants from support services and legal services advised that the onus is placed on complainants to justify certain actions, such as why they stayed in contact with the perpetrator after the sexual offence.



“The system is not trauma informed at all. ‘Why did it take you so long to tell someone?’ is still a question being asked... Someone needs to articulate to the jury and [judicial officer] trauma memory to help them understand [the victim-survivor’s actions]. If they are going to be putting forward a balanced case, they need to [understand] trauma memory.”

- NSW Health SAS informant

“One of the questions the defence asked me was like, ‘why didn’t I run away?’ And I felt like being like ‘hello’, like ‘flight, flight or freeze’? Like, duh. But then again, it’s like, why does that fall on me to have to explain that...the defence lawyers, she knows, they know, they’re smart.”

- Participant 8



NSW Health SAS informants also suggested that judicial officers do not always engage in trauma-informed conduct. This was noted as particularly harmful for complainants with pre-existing mental health conditions. Judges and legal informants acknowledged this gap, noting a need for education and a contemporary understanding of the impacts of trauma on memory. Interview participants had specific reflections of the impacts of trauma on their own recollections of specific details being challenged during cross-examination.

”

“Like there’s no reason why I would need to look at the places where I was raped except to make me shut up. It feels like a threat, actually. It felt like a threat.”

- Participant 3

“I had no memory of being taken to the shower. But that didn’t change what happened on the bed.”

- Participant 9

”

”

“You do all this work in counselling and therapy to try and de-escalate the long-term memory triggers and re-establish different connections... That doesn’t help when you’re then supposed to be fully in your trauma and remembering things on the stand... And you’re not allowed to bring your statement on the stand. I think that’s bulls--t. I trust what I wrote [when I gave my statement], I don’t trust my memory after all this time and all my hard work to heal.”

- Participant 34

Informants from support services, advocacy groups, legal services, police, and the judiciary reflected on trials where complainants have been questioned at length, preventing the trial process from being both trauma-informed and supportive. The nature of these questions can focus on certain discrepancies in the retelling of events to make the complainants appear untruthful. This was echoed by interview participants who described experiences of being questioned at length about unrelated issues as a way of discrediting them, or being presented with new evidence during cross-examination, with their confused responses then used against them.

“First, I was questioned for an hour and a half about what happened. ...Then I was questioned for three hours about what didn’t happen...”

- Participant 20

”

”

“... [the defence lawyer] was painting the story like I was lying and trying to trip me up...and it was probably about 45 minutes on this one. She’s talking about the couch where it happened...then afterwards, the Crown gets the opportunity to have a few questions...it was all clarified. It was like ‘there you go, how easy was that?’ ... instead it was like I had to endure, like, 45 minutes of...someone doubting my story...”

- Participant 8

NSW Health SAS and legal services informants stressed that an understanding of the impacts of trauma is vital for both prosecution and for judicial officers. These informants stated that an understanding of trauma would support more trauma informed approaches to questioning as well as some of the core responses that a complainant may exhibit. NSW Health SAS informants in particular called out the need for expert witnesses who can speak to trauma memory.

“If they are going to be putting forward a balanced case, they need to get trauma memory.”

- NSW Health SAS informant



Judges reflected in consultations that it is their role to observe how the complainant is feeling, offer breaks, and step in to interrupt inappropriate questioning, where required. Interview participants similarly offered examples of the benefits when judges had intervened in the cross-examination process.



“I still had a good feeling about the trial because the judges summing up was really good.”

- Participant 6

“I just really loved the judge, and I just felt like she was really fair and when I was upset and would tell me to have breaks and she was clearly invested in my wellbeing.”

- Participant 3



“...the judge sort of stepped in and was like, you’ve already asked that question and that kind of thing.”

- Participant 8

Repeated delays and length of the trial processes

Multiple informant groups advised that the length of time until a trial commences impedes complainants’ recovery, with many complainants waiting years before their trial takes place. NSW Health SAS informants and police representatives in particular noted the impacts that long timeframes have on complainants, stating that the process of re-engaging with their assault can be re-traumatising, with NSW Health SAS informants noting that this can work against their long-term healing.

“Like, I’ve been waiting for this...four or five years since the assault and I’ve reported straight away, so four or five years of my life [and] chronic stress every day.”

- Participant 6



This interview participant also suggested that, where the delay in a trial is the result of procedural failures on the part of the respective legal teams, complainants should receive a financial payment or that legal professionals should receive some sort of disciplinary or regulatory consequence.



“[The defence] are obviously playing on the fact that if they delayed another time. I might drop out...and I actually think that judges are way too tolerant with it and you actually should lose professional standing if you actually haven't prepared for your matter.”

- Participant 6

3.6. Experiences post-trial

- There is a lack of post-trial support for complainants. This is compounded by many appropriate services not having capacity to maintain support over a prolonged period of time.
- In addition to the above, complainants can be devastated by a not guilty verdict, seeing this as evidence that they were not believed. Complainants called for post-trial support that includes explanations about the legal outcome as well as trauma-informed support.
- Rather than wanting the defendant to be punished, complainants spoke of pursuing their matter to prove that their experience had occurred and to protect future potential victims.
- Some complainants explicitly stated that they would not report a future offence and would discourage others from doing so.
- Many complainants report and pursue the legal process in the hope that defendants will recognise that their actions were wrong and to protect others from similar offences in the future.
- The experiences of complainants are compounded - both negatively and positively - by other, parallel proceedings relating to their assault.
- In relation to parallel proceedings, victim compensation stemming from the assault was identified as a positive experience. Rather than financial support, complainants reflected that the formal recognition by the state that their experience was believed was the most meaningful aspect.

3.6.1. Overall impact of proceeding to trial

Informants emphasised that the risk of re-traumatisation is very high when a complainant participates in the trial process. Even when there is a guilty verdict, representatives from NSW justice agencies and support services questioned the value of the trial process given its impacts on a complainant's welfare and recovery. Furthermore, interview participants had differing views about their involvement in the trial process. Despite the distinct and new experiences of trauma created by the trial, some interview participants gained an element of what they had been seeking from the process. However, a majority, felt that it had done more harm than good.

"That process was probably as bad as the abuse that I copped, to be honest."

- Participant 5



"It took me a very long time and a lot of talking to [counsellor] to be able to...come to terms with the fact that you don't always get justice."

- Participant 7

"I've got my closure on my historical abuse. I haven't got my...justice system closure, and I don't know that I will."

- Participant 2



Some interview participants were explicit that they would never report a future offence and have actively discouraged other people from doing so.

”

“I’ve actually advocated for people not to come forward because there’s no justice in any of this at all. Like, what’s the point? Like, statistically, nothing happens...I would advise victims not to go ahead with the trial... like there’s other ways to get the truth out of people without making them feel as though that there’s something’s wrong with them.”

- Participant 17

“...it didn’t even re-traumatise me, it gave me new trauma. Like, it wasn’t like a rehashing of like whatever it was, just like this whole new set of like, trust issues. And I’m so well supported as well, like informal support networks. What is it like for someone who doesn’t have any of that?”

- Participant 9

”

”

“I honestly believe not reporting probably would have made everything so much easier for me.”

- Participant 21

Despite this, some participants emphasised that it was ultimately important to them for different reasons that they had reported, even where a conviction was not secured.

“... if you told me now [that I was not going to get a guilty verdict] I would have still gone through with it. I think it was important that I did it for the other girls. But at that time, all I was thinking about was the pain that I was experiencing. You know, had somebody told me, I probably would not have done it.”

- Participant 3

”

”

“I’m glad I did it. I would have hated myself if I didn’t. Yeah, just wish it was a different outcome. But I had to try.”

- Participant 22

“I knew what needed to be done and I knew that I needed to be careful. I had a responsibility to tell the truth and fix the problem.”

- Participant 34

”

3.6.2. Post-trial support

Informants and complainants indicated that there is a lack of post-trial support for complainants. Informants discussed the importance of this type of support as complainants are dealing with the outcomes of trial and trying to understand what happened, as well as with working through their own experiences of re-traumatisation. There is limited targeted or specialised support for complainants following trial, with SASs and support services advising that, due to capacity limitations and high demand, they generally focus on responding to crisis rather than facilitating victim-survivors' long-term recovery. A judicial officer also acknowledged the need for support post-trial.



“[Victim-survivors] have a couple of bad weeks after the trial, and there’s not that support any more... [I] think people drop the ball after the victim finishes participating in the [legal] system.”

- Judicial officer

Interview participants spoke of experiences where the support from a SAS or other specialist support service had dropped away at the point of trial, or where they had experienced trouble accessing support in the first place if they did not report a sexual offence in the immediate aftermath.

3.6.3. Reactions to the verdict

Multiple informants reflected that low conviction rates in sexual offence matters led to the majority of complainants feeling disappointed by the outcomes of their trials. Multiple informant groups also noted that, even when a trial results in a guilty verdict, complainants often viewed sentences as too lenient in comparison to the seriousness of the impact on the victim-survivor.

“For the people around them, there’s a pervasive idea in our culture that there’s a belief: if you get off, then you’re innocent.”

- NSW Health SAS informant



Nonetheless, the experiences of interview participants reflected a greater level of complexity than this. Rather than being concerned about the leniency of a sentence, most interview participants whose matter involved a guilty verdict were very clear about rejecting any notion that they had persisted with the prosecution for the purposes of punishment.



“...a lot of people said “oh, it’s not long enough”. I think people just arbitrarily say that...it’s based on, like, no thought behind it, because it was three to five years. That’s pretty f--king long, you know...that’s a lifetime. And I don’t know if this happens to everybody, but a lot of times people have told me things that they think will help me feel better, that do not help me feel better. Like the DPP and the police said, ‘he’s not going to have a great time in prison’. Like, why would I want to hear that?”

- Participant 20

“Some of the witness support people were very like...‘he needs to be held accountable’ and...‘he needs to pay for what he did’...he wasn’t showing up for the mentions in court, and they eventually found him...at a, homelessness shelter... that’s when she...made a comment like, ‘well, it’s always good to see, not karma, but you know, consequences’, and I was just, I did not need to know that.”

- Participant 8



Rather, as noted earlier in this report, interview participants described a desire to protect potential victims in the future, to see the offender held accountable and told that their behaviour was wrong, and – most of all – to be believed. As such, in many cases, a guilty verdict alone was the priority. Alternatively, an indication from the judge that their story was credible and that they had been believed was the key piece of information that the participant needed.



“It felt huge to be believed.”

- Participant 20

“... what felt like the closest thing to justice to me was when the jury said ‘guilty’. I was like, I don’t care about the sentencing, that was all I needed. And I don’t think I needed that before I went to court, but as soon as I told my story in court, all of a sudden it became really important ... when the judge said at the sentencing that my version of events was the correct account of what happened and nothing that the defence had suggested or asked me about was true.”

- Participant 8



“They think you wanna hurt them back, but that’s not true. Especially if you’ve been in a relationship.”

- Participant 34

Conversely, the sense that they had not necessarily been believed was a more devastating component of the experience for some interview participants. Some spoke of the impact of receiving a not guilty verdict, whether in court or elsewhere, with some requiring acute psychiatric care and experiencing suicidal ideation or attempts.



“I was at home when they told me. The police officer texted me and I said ‘I’m coming to the city, where are you’ and she said, ‘I’ll meet you at the DPP offices’, and I walked into the building, and we basically ran up to each other and she just grabbed me and held me, and I just, like, sobbed.”

- Participant 3

"I took a lot of tablets. And my friend called the ambulance...I didn't even want an apology. I just wanted him to know what he did was wrong...I didn't want him to go to jail, I just wanted him to admit that what he did was wrong."

- Participant 22



Linking to a lack of post-trial support, other interview participants spoke of being at court when a verdict was announced or sentence delivered and then feeling that they disappeared into a 'black hole' when there was no follow up or engagement with the prosecution. This included one interview participant who had never had an explanation of what the offender's sentence actually meant.



"I still to this day don't understand what happened...like no one explained it to me...."

- Participant 29

"...there was no like, you know, 'this is what could happen'. They kind of just said bye forever."

- Participant 20



"...within one minute of saying the verdict, it's like all gone. Yeah, and I think there wasn't really much like future planning that gets done in terms of like, what you have to fill that big hole. ...It's something that doesn't seem to be on people's like radar."

- Participant 6

3.6.4. Expectations of ‘justice’

As noted above, multiple interview participants indicated that they would be unlikely to report to police if they experienced another sexual offence. This sentiment was echoed by a number of informant stakeholders, including judicial officers, one of whom was very experienced in sexual assault trials and who said that they would advise a family member not to report if they experienced a sexual offence.

Nonetheless, it was a testament to the grace, resilience, and strength of interview participants that they had identified aspects of the experience that they valued and that they were pleased, in different ways and for different reasons, that they had tried to hold the perpetrator to account. Interview participants found comfort in the fact that different aspects of the legal process would at least be having some kind of impact on the perpetrator of the offence. For example, one interview participant found comfort in the multiple adjournments she endured in relation to an AVO process, knowing that the perpetrator of domestic and sexual violence was at least experiencing some form of accountability by being inconvenienced and being required to resource legal representation.

“I was just glad that he had something to worry about...and having time to think about what he’d done’.”

- Participant 18



By contrast, one interview participant who received a guilty verdict and whose perpetrator had spent a short time in custody referred to their desire for the offender to understand that their behaviour was wrong as the main objective, which was ultimately not realised. This is an underlying irony, or inadvertent consequence, of a process in which denial and minimisation are set in train by the nature of the adversarial process.



“...the only thing I wanted from this was to show that this was wrong and it was kind of the only thing I didn’t get. You know, like I had my day in court and that’s what some people want. This person went to prison and that’s what some people want. You know, we did all this stuff, and the only thing that didn’t happen was that someone was [acknowledging] that was bad.”

- Participant 20

“I’m not seeking justice in a system that is so unjust and so against victim-survivors, I’m literally just seeking accountability.”

- Participant 9



3.6.5. Alternative pathways to justice

A small number of interview participants described processes separate to the criminal justice system through which they had sought for their experience to be recognised and believed. This included negative and positive experiences of regulatory processes, civil legal proceedings, and other reporting mechanisms. One example was an interview participant working in the sex industry who would have appreciated greater awareness and more timely information about WorkCover payments.



“I was sexually assaulted in the course of my job, but because it was sex work, I didn’t know about my working rights...the business sort of, you know, told me like, ‘oh, you can’t get WorkCover’, you know, ‘you’re a sole trader.’ Yeah, and it was only like years later I found out that actually sex workers working in a brothel or massage parlour are eligible for WorkCover, but then it was way too late”

- Participant 6

Another interview participant made a complaint to a health regulatory body. This participant found little recourse in that process but realised that, potentially, a professional disciplinary matter would be viewed more seriously than the assault she had experienced.

“So...when they when you go into a [regulatory] investigation, they suspend the practitioner while the [investigation] is happening. If he practices in that time, it’s actually illegal. So, he can actually be criminally charged for working under a suspension... But it felt weird that if he was caught, that was almost like the higher prosecution than probably my [sexual offence] case.”

- Participant 14



For one interview participant, an initial approach to the tertiary institution at which she and the accused both studied had snowballed into a highly damaging process. She had made this approach only to access counselling and to keep the perpetrator at a distance. With the criminal investigation ultimately not proceeding to trial, despite strong evidence, the tertiary institution then instituted its own investigation into the alleged offences, as these had occurred on campus. What ensued was a highly stressful and traumatising process for this interview participant.



“...I went to that [investigation] meeting and lawyers were cross-examining me at the same time, which was terrifying, and I didn’t understand what was happening at all...[one of the lawyers] told me that the perpetrator accused me of being vexatious and that I should be punished. ...So I went down this spiral thinking that I was going to sue me for defamation. I’ve ended up in that meeting feeling extremely disbelieved. And I was just saying, ‘OK, OK’, just so she would stop questioning me. Because we just got to a point where anything I said she was just like, ‘well, we don’t believe you’...when the investigators started showing me CCTV...I felt like I was always like, being forced to re-live it. And I’m like, ‘but I don’t want to see this’. And ‘oh, we have to show you for procedural fairness’...but I wasn’t afforded procedural fairness... victims need to be able to come forward without having to feel like something bad would happen to them as a result of complaining... I would never (have) said anything to anyone had I known that that was like a real possibility or threat.”

- Participant 17

Of the interview participants who had pursued another legal avenue, only one had received an outcome with which they were satisfied. This interview participant had experienced a sexual offence at a work-related event, perpetrated by a colleague, and had pursued the perpetrator and employer in a civil claim, as well as seeking Workcover payments.

“I thought at least he’d be sacked, but if not, at least he’d be demoted...then the penny finally dropped. He stayed at work, I was removed. I... They fought the worker’s compensation claim. I then lost my job. And it took me all that to realise, ‘I’m not safe here’. ...Every time I asserted my right, every time I spoke up ... they took a really punishing approach ...so I ended up getting legal advice.... I was thinking...‘that’s not how my story is going to end’...[I was] very, very clear on what justice looks like for me... While I’m satisfied overall...it came at significant personal risk and financial cost. And...that’s something that is unachievable and unrealistic for most victim-survivors...”

- Participant 13



The importance of being acknowledged and believed – as well as of having their own particular interpretation of justice recognised – was reflected by the endeavours of one interview participant, who had specifically looked into the benefits of restorative justice processes.



“I want to be able to look at him and speak to him about the impact it’s had on me and see what reaction he has, because...I know not everyone wants it, but I feel like to me, that will be able to give me... some sort of closure...I just want something out of it for me... Because I want an answer. I want to try and do something. It’s just, there’s nothing apart from restorative justice that gives you that unless you go out on your own and try and seek it...”

- Participant 10

Another participant explained that she was well aware that incarceration is not rehabilitative and that the offender, who had experienced his own childhood trauma, needed greater support to understand the impacts of his behaviour.

“Everyone needs to sit down and tell him what needs to be done and what rehab he needs for his own issues. The whole point is that you don’t want him to reoffend, and no one cared that I was trying to give them helpful advice for his rehabilitation.”

- Participant 34



One First Nations participant nominated the value of Circles of Support and Accountability¹⁸, a response to sexual offending used in some jurisdictions to hold perpetrators of sexual offences accountable while acknowledging their own experiences of trauma.

An understated aspect of the victim support response in NSW (as in other Australian jurisdictions) was the victim's compensation process, through which victim-survivors can apply for reimbursement of medical expenses and other costs, funding for counselling, as well as a modest recognition payment.¹⁹ Interview participants appreciated this small payment and found it useful in a variety of ways.

”

“one of my counsellors told me go for it, and you can get the financial payment, so I got a recognition payment and applied for financial services help and then I got my counsellor through there who has been great...I know the payment is quite modest...I think it's still good.”

- Participant 19

“I think the total payout was about \$10,000...and I bought my companion animal and I actually bought her...because I wanted to train her...to be a court support animal.”

- Participant 2

”

The recognition from the administrative process was described by some interview participants as the only positive aspect of their wider experience and was consistently characterised by interview participants who had accessed it as being much more significant than the associated financial support.

”

“It was actually just...the assessor making note that, you know, he wasn't criminally charged, but that didn't negate the probabilities of what happened to me.”

- Participant 13

“And there was a personal statement of the person who had read through my application...that was actually the best part...to hear, like an opinion from somebody who wasn't involved and that was way better than like receiving the money.”

- Participant 15

”

”

“...it was less about the money and more about the fact that someone like believed me and that it's recognised.”

- Participant 7

¹⁸ For more information, see Richards, K., & Australia's National Research Organisation for Women's Safety. (2020). Circles of support and accountability: An overview [Factsheet]. ANROWS.

¹⁹ Victims Support Scheme provides counselling, financial support and a recognition payment to victims of a violent crime in NSW.

"It felt a bit dirty getting that money, but the recognition was good".

- Participant 26



The few concerns about this scheme expressed by interview participants stemmed from an apparent misunderstanding or misinformation about limited timeframes in which to submit an application, as well as concerns around the quality and choice of counselling or other therapeutic options available under the Victims Support Scheme. This was because access to counselling services was only available through a prescribed list of providers.



"I'm grateful that the scheme is there, I'm grateful that the government funds it but, yeah, the quality of service did more damage than good".

- Participant 13

"...Victim Services actually doesn't pay for any, like, holistic support. So like, even if you were eligible. They don't pay for, you know, say if you want to do [different types of] therapy, they only pay for the counsellors that are on their list. And because the rate is so low, therapists who have specialist skills, like, don't sign up for Victim Services."

- Participant 6



"Holistic and therapeutic support is really important. I need someone who understands trauma and who is open-minded about what I need to try in order to heal.... And if you don't have much of your culture [as a First Nations person], you need people around you who can help you normalise things and support you"

- Participant 34

3.7. Challenges faced by informants providing support to complainants

- Multiple informants described the criminal justice system as "broken" and reflected that they would not encourage friends/families to pursue an alleged sexual offence conviction through the justice system.
- Due to the nature of the criminal justice system, informants feel restricted in the support they can provide to complainants. This is based on high service demand, gaps in service access, the fragmented nature of the criminal justice system, and the distress the legal process causes complainants.

While not an explicit line of questioning in consultations, multiple informants reported feeling restricted in the support that they can provide to complainants through the NSW criminal justice system. Multiple informants described the criminal justice system as "broken" for victim-survivors of sexual offences and reflected that they would not encourage friends/families to pursue an alleged sexual offence conviction through the criminal justice system. Many informants considered the current system so fundamentally flawed that it was incapable of delivering an outcome in the best interests of victim-survivors.

Regional Women's Health Centre representatives commented on the number of workers with whom a victim survivor may interact. Given the high service demand and gaps between service access, victim survivors often, "*end-up re-telling the same story over and over.*" NSW Health SAS informants noted the importance of a collaborative and consistent approach; where the system worked well, the enablers were that "*each of the agencies involved appreciated what the agency could bring to the process,*" and that key staff members such as police and DPP stayed consistent throughout the trial process.

Overwhelmingly, informants spoke to the importance of victim-survivors needing to feel believed. Yet, once a victim-survivor engages with the criminal justice system, informants spoke to not only the inability of the system to provide justice (evident through high attrition rates and low prosecution rates), but also the system's often detrimental impact on a victim-survivor's wellbeing and recovery. While capable and committed services exist to support victim-survivors through the system, informants from these services advised that they are not well-connected to the criminal justice system and do not have the capacity to support end-to-end case management.

Informants also spoke to the fragmented nature of the criminal justice system and how this impacts the welfare of victim-survivors, especially as they have various handover points to the health system (e.g. police referring to NSW for an integrated psychosocial, medical and forensic response), support services (e.g. counselling, crisis support), and the legal system (involving police, the ODPP, WAS officers, and judicial officers). These different elements of the system require victim-survivors to constantly re-tell their experience, exposing them to re-traumatisation.

More detailed reasoning is explored in the table below.

Table 3: Challenges Key Stakeholders Face when Supporting Complainants

Stakeholders	Restrictions in support they can provide
Support services	<p>Support services emphasised a lack of capacity, resulting from significant strain and demand in the support service system.</p> <p>Representatives from these services often expressed that they feel ill-equipped to meet the end-to-end needs of victim-survivors. A representative from a counselling support service noted <i>“They need support at every level – wherever they go, they need to be able to access support from someone who really understands trauma”</i>.</p> <p>When support services and advocacy groups are supporting victim-survivors through the trial process, this is further compounded by an inability for these groups to provide clarity to victim-survivors about the progress of their report or trial due to fractured communication with various NSW justice agencies.</p>
Police	<p>Police expressed frustration with the lengthy nature of the trial process for victim-survivors.</p> <p>Backlogs in the courts and delays to trials commencing prevent police from being able to provide certainty and clarity about the process to victim-survivors.</p> <p>A member of the Child Abuse and Sex Crimes Squad described their role as heavily involving liaising with the victim and the different stakeholder groups, including the victim support services, lawyers at the ODPP, witness intermediaries (if required) and the Crown prosecutor. This is due to their continued involvement in specific matters with victim-survivors for a significant length of time, through the investigation process up to the trial.</p> <p>They noted that as the matter goes to trial, their role becomes <i>“a project manager.”</i></p>
Lawyers	<p>Lawyers feel they require further training around interacting with victim-survivors who have experienced trauma, specifically from sexual offences.</p> <p>While lawyers acknowledged that they cannot replace the role of a support service, several lawyers expressed that they feel ill-equipped to support the welfare needs of victim-survivors during preparation for a trial which impacts on the victim-survivors’ ability to give evidence.</p> <p>A Crown prosecutor noted <i>“There’s a generalised idea [among lawyers] that [victim support] is the job of a social worker [but] if you are able to understand and respond to the victim in appropriate ways, you will be able to get the complainant to court [to] give their best evidence.”</i></p>
Judicial officers	<p>Judicial officers spoke to challenges with court listing of sexual offence matters. It was noted that these matters are often listed for shorter periods than required without careful consideration of the complexity of these matters and the time required in court.</p> <p>Therefore, it is not uncommon for victim-survivors’ matters to not proceed on their allocated day. A judicial officer noted <i>“No sexual assault trial should ever not be reached [on its allocated day] – it should always have priority.”</i></p> <p>These challenges are further compounded by court delays attributed to the volume of matters going through the local and district courts and COVID, putting further strain on the system.</p>

Source: Project team

3.8. Longer term impacts of the legal process on complainants

The experience of the assault, coupled with the reporting and legal process, can impact on complainants in a range of ways, including:

- Challenges in their personal relationships
- Avoiding locations and communities where the assault occurred
- Acute impacts on mental and physical health
- Feeling that their lives were 'on hold' while the trial was ongoing
- Associated impacts on employment and education.

Complainants reported a range of ways in which they proactively supported their own recovery, as well as the recovery of others. Many complainants who participated in this research were using their experience to improve the legal system or support fellow victim-survivors.

Interviews with complainants for this research demonstrated that the impacts of a sexual offence – as well as the associated and often just as devastating impacts of the legal process – need to be better acknowledged and accounted for by the legal and wider support service systems. Interview participants described a wide range of impacts, with the offence and subsequent interaction with the legal process interacting to compound these harms and prolong their recovery.

3.8.1. Impact on personal relationships

Impacts that are not accounted for in the criminal justice process include impacts on relationships with family and friends. As indicated in the various accounts of interview participants, these impacts included the feelings of shame that either prevented them from disclosing to family or burdened by their family's reaction to what happened to them.

"I feel like I had to be the better person in that situation and think that they're processing the trauma as well, but that shouldn't be on a 17-year-old girl trying to process it herself."

- Participant 29



"I have brothers; they didn't know how to talk to me and it was just awkward. And that was something that frustrated me as well; I was so inadvertently angry with my brothers after I disclosed because I was like, 'you will never have to worry about it'"

- Participant 9

"I can't imagine I'll ever have a relationship again. Yeah, my trust issues are zero."

- Participant 18



Interview participants similarly described the impact of having family members who had initially encouraged them to report the offence, then becoming worried about them proceeding further into the process.



“I felt like a lot of people backed down, like my family, and everyone was kind of always asking me, like, ‘Are you sure? Are you sure?’ ...It was kind of like ‘you all wanted me so bad to do this and now you’re like, I don’t know.’”

- Participant 9

“And the number of times you’re asked, ‘are you sure? Are you sure you want to do this?’ Do you ask that if somebody rings up to report a stolen wallet? You know it’s like there’s a kind of deterrence to start with. It’s a cop out”.

- Participant 27



This highlighted the need for the partners and family members of victim-survivors to have access to their own support, the benefits of which were highlighted by one participant.



“[Victim services] also supported my partner because...someone who’s supporting someone else needs support too.”

- Participant 14

3.8.2. Impacts on complainants’ ability to heal and move forward

The significant impacts of the sexual offence, as well as any associated trauma of the legal process, continued to play out in a variety of ways for interview participants. This included impacts on living arrangements, both in terms of their immediate housing, as well as their comfort levels in remaining living in a particular community. Some participants felt especially triggered by the thought of contact with the specific community in which the offence had taken place, often moving away and being reluctant to return or avoiding certain places when they were there.

“I haven’t been back for Christmas. I didn’t go back for my grandfather’s funeral... it hasn’t sort of intruded on my safe little [new] town. So, I just have here as a safe space.”

- Participant 11




“I don’t like to go home, I don’t like driving past the pub and the house where it happened”

- Participant 25

"I wish that whole community would just get swallowed up and disappear, I get really upset if I hear or see anything about that place."

- Participant 24



Participants also experienced acute impacts on their mental health. Periods in acute psychiatric care were associated with the investigation process and with learning of a not guilty verdict, including being involuntarily admitted when they were simply advocating for their matter to be investigated.



"I had to go into an inpatient psychiatric hospital... Which was also s--t, survivor wise – they're so not trauma informed. ...they just loaded me up with medication and I was like a full-on zombie."

- Participant 9

In addition to these more acute examples, interview participants described their life as having been put on hold during the investigation and prosecution process. Complainants spoke of the constant need to follow up with police, prosecution or attend counselling, crowding other aspects of their lives. This included needing to apply for special consideration in relation to completing school or early admission when applying for university; deferring university studies altogether; taking extended periods away from work; and having experienced serious physical and mental health impacts.

"I took a month off work because I just couldn't be around males. Like, it's a constant battle that I have to live with, and I'll probably have it for the rest of my life. And he just gets to walk free."

- Participant 16



"I dropped out of Uni several times. Like, when the assault first happened and then didn't resume because of the initial trials ...And that was really expensive..."

- Participant 6

"I question myself if what happened even happened every single day. I pretty much don't want to go anywhere unless my best friends are with me, because I think 'what if something happens then?'. Well, if these other things could happen to me then and the police can't do anything, then if anything else happens, nothing's going to happen. I can't shower by myself. Can't cook, clean and don't drive anymore. I haven't been to uni in over a year. Yeah, I pretty much can't do anything."

- Participant 28



Interview participants also described the impact of the lack of effective or meaningful support that they had received, leading to a general mistrust of services. To note, one participant quoted below had developed a much greater fear of police as a result of their matter.



“Nobody ever calls when they say they’ll call or does what they say they will do.”

- Participant 24

“...when like, I and my friends go somewhere where there is police, just like guarding or standing around, I always tell them ‘can we please just go somewhere else?’ I don’t want to look at them. Don’t want to talk to them... I don’t have that when it comes to men, it’s just like police in general.”

- Participant 15




“...it’s going to be a lifelong process because it’s still affects me to this day.”

- Participant 26

3.8.3. Complainants supporting their own, and each other’s, wellbeing

Steps that interview participants had taken to support their recovery or to look after their wellbeing were wide-ranging and often involved different pathways to sharing their story. Multiple interview participants had commenced producing a podcast.

“One thing I’ve been working on this year is a podcast....”

- Participant 13




“I don’t know why, but if I can help just one person by them, hearing my story, then you know I set out to do what I achieved. And so, as a result, I’ve launched a podcast.”

- Participant 1

“[The podcast] was the best thing that could have happened because afterwards I felt like I really had my closure and now I can talk about...everything that



happened without like being really devastated afterwards...now that I could, like, help other people potentially, it makes me feel a lot better.”

- Participant 15

This included acknowledging the endemic nature of sexual offences in the community and the fact that so many people did not go through the legal process or see this process result in a conviction. For example, one interview participant pointed out that, while she knew that sexual offences were widespread, she was the only person she knew who had gone through a court process.

”

“I don't know anyone...that's gone through the court process. But...I can name so many people who have been raped or sexually assaulted or anything like that, easily.”

- Participant 29

This particular interview participant indicated that her experience of the trial would have benefited from being able to share her experience with others with a similar lived experience.

Some interview participants had found forms of peer support. This included being supported at court and as having access to peer forums and discussions.²⁰ These forums provided comfort and support in terms of interview participants realising that they were not the only one to have had such a negative experience and that the sexual offence or court process should not define them.

“[other victim-survivors] said that they didn't need 12 other people to tell them that they have been raped. Which is quite sad really, but I think I just sort of got better.”

- Participant 19

”

”

“I was in contact with the Survivor Hub²¹. And that's when they said, 'OK, well, if you've got no one to go', then [individual from the Hub] was like, 'I'll come with you.' And so she was there when I was giving evidence. Which was really helpful.”

- Participant 6

Nonetheless, other interview participants who had encountered different modes of peer support or voluntary support networks reported mixed experiences, with some facilitators being insufficiently aware of the types of discussions that people could find triggering. This indicated a need for a clear and considered approach to the establishment of peer networks and their associated resourcing and capacity building.

²⁰ One of which, The Survivor Hub, was a source of referrals to the research, with debriefing arranged by the research team and offered by Full Stop counsellors.

²¹ The Survivor Hub is a survivor-led, not-for-profit organisation that supports people who have been impacted by sexual assault.

More broadly, multiple interview participants nominated a very clear need for people with lived experience to inform and be part of training for police, lawyers, court staff and judicial officers. This would need to be appropriately resourced and for people with lived experience to be adequately supported with capacity and capability building so that they were not carrying the cultural load of trauma-informed practice or experiencing isolation from other staff in the service.

3.8.4. Victim-survivors ‘giving back’

A strong theme from the research was the overwhelming objective for most interview participants to support others who had experienced sexual assault. Interview participants indicated that, as part of their recovery, they were finding professional avenues to prevent sexual offences from happening in the future to or support people who experienced it, if and when it did occur. Almost all interview participants were training, retraining for, or otherwise committing time to, roles that involved increasing awareness of sexual assault, improving the system, or supporting other victim-survivors. Some of these roles involved the development of information resources.

“I don’t want to discourage people from reporting. Because for some people, reporting is what they want to do or need to do, or you know, whatever. And that’s what justice looks like for some people. So, I don’t want to discourage people, but I want them to go into the process fully informed and they’re not at the moment. They’re not fully informed, not at all.”

- Participant 3



Importantly, victim-survivors also expressed an ongoing need to feel heard and validated in their experiences. This included coming to terms with the idea that a conventional notion of ‘justice’ may never be attained in their case and that sharing their experience through participation in research and advocacy was a way of making a genuine difference to themselves and others.



“Because some people are just so destroyed by the actual process, I imagine they just want to move on and forget about it. But then there’s people like me and others who kind of have that voice and want to voice, you know that the system needs to change.”

- Participant 14

“I’ve been seeking to have a voice for years and this is the first time that someone has listened.”

- Participant 24



Informants and participants alike described the system itself at multiple points across the project as “inherently broken”. For complainants, the combined response of those contributing to the research can be summed up by one more provocative suggestion:



“Burn it down”.

- Participant 20

Interview participants nonetheless had the generosity to make a range of suggestions for reform – many of which are incorporated in the recommendations which follow – primarily centred around bringing a human element into the system and remembering that “people are attached to this process.” Many interview participants expressed extraordinary optimism and resilience in the circumstances, despite their experiences.

“...hopefully there is a change...I think too, now that kids are more empowered as well, that'll start changing things.”

- Participant 27



First Nations interview participants were taking the lead on pushing for change in the community. This included Elders and other respected women teaching children in their community how to be safe, how to be respectful and, how to speak up.



“Trauma has taken our families, our people’s lives. ...using drugs and alcohol to push it all down, seeing suicide as the only way out. ...We can’t rely on the authorities. We are the protecting adults, the guidance.”

- Participant 32

“We got to educate our community, our men and our women, that if something happens to you, or you do something, they’ve gotta be held accountable ...Use your voice. Because while you’re on this earth, you’re speaking up for our women”.

- Participant 31





4

Recommendations for reform

4. Recommendations for reform

This interview study is one component of a broader research project into the experiences of complainants of sexual offences in the NSW criminal justice system. Other components include analysis of District Court trial transcripts (led by Professor Julia Quilter and Professor Luke McNamara) and analysis of administrative data systems (led by BOCSAR). We also note that this interview study has not been supplemented with a literature review into wider complainant experiences of the legal process nor assessment against the current and planned service system, although it did involve a scan of recent reforms in NSW and comparable jurisdictions.

Nevertheless, we heard directly from informants and complainants – with a high degree of consistency – about the gaps in the system and opportunities for reform. Their suggestions have informed and shaped the following recommendations. Opportunities include direct changes at various points of the legal process, as well as the introduction of new supports and the strengthening of existing ones. The objective of these is that complainants are better supported and informed about their choices and able to navigate the legal process if they choose to participate.

We understand that there may be reforms in the planning phase that will address the findings of this study; these recommendations are intended to build on these plans and/or provide an informed starting point for agencies where work has not yet commenced.

Recommendation 1. Deliver public awareness campaigns and associated resources for the community, and GPs and other frontline health professionals

While we acknowledge that there are a range of community education initiatives in place, funded through both the Australian and NSW Governments, our research found that a lack of understanding of sexual violence underpinned a number of barriers to victim-survivors reporting and receiving a positive response. Victim-survivors may not see their experience as assault, may feel responsible for the assault, or may downplay its severity, or may fear community backlash from reporting. Furthermore, we found that some common disclosure points – such as family, friends, and frontline health professionals – lack a nuanced understanding of the reporting process and of the integrated medical, psychosocial, and forensic response provided by NSW Health.

As such, we recommend that **the NSW Government tailor delivery of public awareness campaigns and associated resources**. These would benefit from being tailored to different community groups (such as victim-survivors, family and friends, and the broader community) and different professions (such as GPs and other frontline health professionals, counsellors, and other key points of disclosure).

The intention of these campaigns would be to:

- Improve understanding around issues of consent
- Dispel ‘rape myths’ so that victim-survivors can more readily recognise their experiences of sexual assault
- Promote available support services, including SASs and peer networks
- Build awareness that pursuing a health response does not automatically involve a report to police
- Equip family, friends, and health and other service providers to respond constructively to disclosures.

Resources may include details of the process from reporting a sexual offence through to trial, with examples and/or anecdotes of 'success stories' in order to support victim-survivors' understanding.

Recommendation 2. Consider establishing a model of care which connects victim-survivors with a consistent source of support

Findings from this research clearly indicated that victim-survivors of sexual assault fear reporting their experience, often have a negative experience when doing so, struggle to obtain information about their matter and often go through a trial process without consistent support.

Recognising the clear need identified by victim-survivors for end-to-end support, we recommend **the NSW Government consider the establishment of a model which connects victim-survivors with a consistent source of support from the point of disclosure throughout the reporting and trial process.**

This support would be distinct from other specialised roles already in existence and should be focused on information and advocacy, as well as coordination of care. The model would ensure that victim-survivors are provided with:

- Information about their options – both therapeutic and legal – at the earliest opportunity, including information about medical and forensic examinations, reporting options, access to reimbursement, counselling and recognition payments, and referrals to specialist therapeutic counselling
- In-person support at the point of initial reporting (whether through SARO or via police), case management support to follow up communicating with police and prosecutions, and liaison with other relevant specialist roles
- In-person support for the complainant at court, either alleviating the need that complainants identified for a WAS officer to attend in person or coordinating this with the WAS officer
- Support for the complainant for a nominated period following the court outcome.

Recommendation 3: Explore options which facilitate access for complainants to timely and accurate legal information regarding the legal process

Findings from this research clearly indicate that victim-survivors do not know what to expect from the legal process and find the investigation and prosecution process confusing and distressing, providing them with little agency. Acknowledging the fundamental tenets of a prosecution being brought by the state on behalf of the community, the prosecution process is nonetheless more likely to function well when complainants feel informed and remembered. **The NSW Government should therefore explore options which facilitate access for complainants to timely and accurate legal information regarding the legal process.**

Complainant needs, which can be met through facilitation of greater access to legal expertise, include:

- Information about a complainant's legal status and the role of the state in a prosecution
- Issues in spotting and discrete task assistance for wider legal needs that may arise as a result of the complainant's experience of crime
- Information and discrete task assistance, where applicable, regarding procedural matters that may arise in the trial process
- Referrals to the NSW Legal Aid Sexual Assault Communications Privilege Service for confidential communications
- Referrals to a panel of providers that can provide support with civil or administrative redress options

- Information and advice about access to reimbursements, expenses and recognition payments
- Information and advice to explain the outcomes of a prosecution.

Overall, the research found that complainants can experience distress from feeling confused by, and peripheral to, the legal process. Provision of access to legal information and expertise can help to mitigate this negative experience and improve complainant confidence in the legal process – a factor which is crucial in encouraging wider community confidence to report sexual offences.

Recommendation 4: Introduce a multiagency protocol that outlines the roles and responsibilities of all stakeholders in the criminal justice process in the context of sexual offences

Our research found that the trial process is unclear for complainants, which is compounded by the variable communication given to them at key decision points across relevant agencies. It is recommended the **NSW Government introduce a multi agency protocol that outlines the roles and responsibilities of all stakeholders in the criminal justice process in the context of sexual offences**. The agencies involved in this protocol could include NSW Police Force, ODPP, NSW Health, and Victims Support.

The intention of this protocol would be to inform improvement and support across the reporting and prosecution process and could include:

- The role and responsibilities of each agency involved
- A commitment to working collaboratively based on overarching principles
- Processes that identify responsibilities during key interactions and how people should interact with each other
- Timeframes for key interactions, both between agencies and between agencies and victim survivors
- Processes that clarify who is responsible for communicating with the person who has experienced sexual violence and at which stage
- Guidance on flexible arrangements for reporting sexual violence and taking statements
- Processes that clarify when, how and to whom referrals are to be made, and how and when people should be supported to apply for apprehended violence orders
- Processes for ensuring feedback between partners and for continual improvement, including the need to identify and address causes of delay
- Processes for resolving disputes between partners and ensuring regular review of the protocol and compliance with the protocol.

Recommendation 5: Introduce a NSW Police Code of Practice for Sexual Violence to standardise a trauma informed approach to working with complainants and investigating sexual offences

We recommend the **NSW Government introduce a NSW Police Force Code of Practice for Sexual Violence** as a companion to the Code of Practice for Domestic and Family Violence. This Code of Practice would help standardise a trauma-informed approach to working with complainants of, and to investigating, sexual offences. This Code of Practice should capture and build on NSW Police Force's existing initiatives to build capability and could cover the:

- Provision of trauma-informed and specialist responses when receiving initial reports or taking witness statements from victim-survivors of sexual offences

- Proactive and comprehensive investigation of sexual offences, including timely completion of witness statements, with a mechanism developed for reporting reasons for discontinuing an investigation or decisions to not to proceed with charges
- Efficient and trauma-informed provision of information to victim-survivors of sexual offences in accordance with the Charter of Victims Rights, including standard procedures for ensuring that victim-survivors are supported when receiving distressing news about their matter
- Prioritisation of victim-survivors being linked with a support service to assist during the interview and statement process, if this has not already occurred.

Recommendation 6: Roll out training for NSW Police across all commands on trauma, sexual offence myths, and impacts of sexual violence

Our findings indicate some fundamental challenges in current police practice regarding sexual offences. This includes a lack of trauma-informed approaches from officers and detectives, as well as variability in the collection of evidence. While we identified pockets of good practice, these were not consistent across regions or the state.

In order to meet the proposed Code of Practice for Sexual Violence, we recommend **specific training for NSW Police Force personnel across all commands**, with subjects to cover:

- The Charter of Victims Rights and how to comply with this document
- How trauma impacts victim-survivors' responses and memories
- Information which addresses and deconstructs common myths and misconceptions around sexual offences
- Information around the impacts of sexual offences as these relate to specific cohorts in the community
- Information around the ongoing impacts of sexual offences and the criminal justice process.

Ideally, this training would include co-design and delivery by victim-survivors with lived experience of sexual offences and the criminal justice process, supported by frontline practitioners. A careful process would be established for support and capacity building for these lived experienced trainers, including on an ongoing basis.

Consideration will need to be given to how this aligns with current training being rolled out in the NSW Police Force and the capacity of frontline officers to ensure that this training is appropriately scheduled and prioritised by Commands.

Recommendation 7: Pursue initiatives to improve access to, and the quality of, medical and forensic examinations

Our research indicated variable understanding amongst police on the importance, and requirements, of medical and forensic examinations for the investigation of sexual offences. Further, we found that access to these examinations varies across the state, with particular challenges in regional and remote areas of NSW.

We recommend **the NSW Government pursue initiatives to improve access to, and the quality of, medical and forensic examinations** including:

- Conducting a statewide review of the process of evidence collection and recording to determine where gaps are occurring within the system and within the state.

- Developing guidelines and associated training for NSW Police Force officers and mainstream frontline health professionals (such as GPs) on the medical and forensic examination process. This training would include information on the importance of medical and forensic examinations, including clarifying that this does not automatically involve a report to police; requirements for the victim-survivor when preparing for a medical and forensic examination; and information on local availability of practitioners that can conduct a medical and forensic examination.

Recommendation 8: Adopt a Sexual Offence Model Litigant approach in all sexual offence trials

Recognising the significant recent reforms in NSW in relation to sexual offence laws, including the introduction of relevant new jury directions, we recommend that **the NSW Government adopt a Sexual Offence Model Litigant approach in all sexual offence trials.**

This Sexual Offence Model Litigant approach would enable minimum standards of behaviour for sexual offence matters and could:

- Set out expectations for the admission of new evidence in cross-examination.
- Provide for a form of ‘sexual offence ground rules’ hearing between the parties’ representatives and the presiding judge to ensure that expectations around appropriate lines of questioning and trauma-informed approaches are shared and understood. This in turn can support efficient and effective transparency and accountability between the parties during the conduct of the trial, as well as provision of better quality evidence from the complainant when aggressive questioning tactics have been limited by the ‘ground rules’.
- Allow for greater use of witness intermediaries to support the provision of best evidence from vulnerable witnesses, prioritising those with cognitive impairment and intellectual disability or witnesses who are acutely impacted by trauma. The increased use of intermediaries would likely require strengthened resourcing from the NSW Government.

Associated with this, we also recommend that the NSW Government work with NSW legal professional bodies to develop minimum standards and specialist accreditation for legal practitioners appearing in sexual offence matters, with specific focus on the Sexual Offence Model Litigant approach.

Recommendation 9: Develop and deliver consistent specialist training regarding the impacts of trauma and the provision of trauma-informed approaches for judicial officers and court personnel

Recognising the finding of the research that sexual offence complainants experienced the trial process as being “a new trauma”, we recommend that **NSW Government consider consistent specialist training regarding the impacts of trauma and the provision of trauma-informed approaches.**

This training would target judicial officers and court personnel, as well as legal practitioners who work in the jurisdiction, recognising that all interactions that a complainant has, at all points of the process, can contribute to this new trauma and potentially deter them from continuing with the process.

Associated with this training, NSW Government should consider:

- Administrative hours allocated to judicial officers for observing and providing feedback to their peers around trauma-informed court craft and court administration
- Specialist training for registry staff, bench clerks and other court staff working in these lists
- Developing a Specialist Sexual Offence Lists (SSOL) Benchbook which is continually updated to contain the latest evidence regarding the impacts of trauma, including on behaviour and memory

- Establishing panels of expert witnesses in trauma that can be called upon to provide expert witness to the court where required.

Recommendation 10: Commission research into areas identified by this study as warranting closer examination

This study has highlighted a number of areas that would warrant further research to understand drivers and identify recommendations for improvement:

- This study was limited to the experiences of complainants and therefore was not able to capture experiences of people who have experienced sexual violence but have not made a report. This would benefit from examination in order to better address barriers to reporting that exist for victim-survivors.
- We understand that judicial case management approaches are being established in the District Court. However, this study found that complainants are still experiencing adjournments and associated delays in their sexual offence matters, which case management is meant to help address. This finding would benefit from greater exploration to where differences exist between procedures and conduct, and the reasons for these.
- As noted in Section 1.3.3, ethical approval process – while required to ensure Indigenous data sovereignty – restricted the participation of First Nations complainants for this study. As such, a dedicated study into the experiences of Aboriginal and Torres Strait Islander communities in relation to sexual offending and engagement with the legal process would be beneficial to understand the barriers, and make recommendations, for these communities.

Recommendation 11: Conduct a demand, funding, and service model assessment of the WAS to determine what level of investment would ensure consistent provision of the service across the state

The research found that complainants experienced the WAS role as more limited than they expected and that they would have preferred access to greater consistency and support. Similarly, informants spoke of variable access to WAS officers due to capacity within the service.

Noting the recommended approaches above that would facilitate in-person support for complainants at court as part of the end-to-end role, we recommend that the **NSW Government conduct a demand, funding, and service model assessment of the WAS to determine what level of investment would ensure consistent provision of the service across the state**. This exercise could also determine whether funding is appropriate to support attendance at court by WAS officers where this is the complainant's preference or other forms are not available.

Recommendation 12: Conduct a demand and funding assessment for the statewide NSW Health SAS network to determine the level of investment required to ensure consistent provision of the full spectrum of specialist, therapeutic supports across the state

A clear finding of the research was that the supports available through specialist NSW Health SASs were highly valued but were also significantly stretched. NSW Health SAS-based counsellors provided much needed specialist, therapeutic support but were often going 'above and beyond' the remit of their role to provide complainants with support, particularly when this support needed to extend through the trial process.

We recommend that the **NSW Government conduct a demand and funding assessment for the statewide NSW Health SAS network to determine what level of investment would ensure consistent provision of the full spectrum of specialist, therapeutic supports across the state.** A thorough assessment is required to determine the demand, and what funding is required, for the SAS network to deliver:

- Specialist support at both the point of crisis and for matters disclosed well after the incident
- Specialist support for non-offending family members, significant others, and carers
- Counselling over the longer term, including during and after the trial process
- Clinical supervision, advice, and training to other agencies, both internal and external to NSW Health.

Recommendation 13: Explore the development of a sexual violence Restorative Justice Service to deliver restorative approaches in sexual offence matters

The research found that complainants often report their offence to Police to ensure the perpetrator understands that their actions were wrong. It also found that many complainants regret their experience of reporting because of the 'new trauma' they experienced from the trial process and would prefer an alternative approach to justice.

We recommend that **the NSW Government explore the development of a victim-survivor-led Restorative Justice Service to deliver restorative approaches in sexual offence matters.** This model could sit alongside the traditional legal process to enable victim-survivors to pursue a justice response that suits their recovery and which better meets their wider justice needs, such as having voice, experiencing recognition, receiving information, receiving an apology and identifying reparations.

Development of the model could draw upon approaches based in other jurisdictions, both government and non-government, and would work with victim-survivors and other parties, including perpetrators where appropriate, to identify and explore alternative pathways to meeting victim-survivors' expressed support needs.

Restorative justice processes within this service may include but not be limited to:

- Conferences or other forms of dialogue between the victim-survivor and perpetrator, supported by specialist practitioners for each party, a convenor, and substantial periods of phased preparation
- Conferences or other forms of dialogue between the victim-survivor and their family members or community to seek greater support and articulate the individual and collective impacts of the offence
- Conferences or other forms of dialogue between the victim-survivor and an organisation or institution with which the sexual offending was related to explore and acknowledge any damaging impacts of the organisational response and identify measures to improve organisational responses in the future.

Recommendation 14: Develop public reporting on the timeliness of sexual offences, the number of sexual offence matters that are withdrawn and the reasons behind the withdrawal.

Interviews with complainants indicated that attrition of sexual offence matters occurred as a result of police or prosecution decisions, rather than any decision by the complainant. Furthermore, judicial officers and complainants raised that the quality of investigation was not always upheld in all sexual offence matters.

As such, we recommend **the NSW Government develop public reporting on the timeliness of sexual offences (from reporting to police decision), the number of sexual offence matters that are withdrawn, and reasons for the withdrawal outcomes of sexual offence matters.**

This will provide greater transparency and understanding of attrition patterns, and will improve accountability of police and prosecution agencies for their actions and decisions at different stages of the investigation and prosecution process. It will also enable monitoring of the impact of implementing the recommendations outlined above to determine if more needs to be done.



5

Appendices

Appendix A: Informant consultations

Table 4: Informant Consultations Summary

Informant group	Organisations	# Consultation participants	#Group consultations per informant group
NSW Police Force	Child Abuse and Sex Crimes Squad	3	1
	Detectives from the following PACs and PDs: <ul style="list-style-type: none"> • North Shore PAC • New England PD • Port Stephens-Hunter PD • Cumberland PAC 	5	3
	General Duties Officers from the following PACs and PDs: <ul style="list-style-type: none"> • Liverpool PAC • Port Stephens-Hunter PD • Sydney PAC • Parramatta PAC • Fairfield PAC 	8	2
NSW Sexual Assault Services	Central Coast	2	4
	Hunter New England	4	
	Illawarra Shoalhaven	1	
	Mid-North Coast	3	
	Nepean Blue Mountains	1	
	Northern Sydney	2	
	Northern NSW	1	
	South Eastern Sydney	2	
	South Western	1	
	Southern NSW	3	
	Sydney	2	
Western Sydney	2		
Legal services	Community Legal Centres NSW, including: <ul style="list-style-type: none"> • Ability Rights Centre, within the Intellectual Disability Rights Service • Central Tablelands and Blue Mountains Community Legal Centre • Inner City Legal Centre • Knowmore • Shoalcoast Community legal Centre 	9	3
	Domestic Violence NSW	1	

Informant group	Organisations	# Consultation participants	#Group consultations per informant group
Legal services	Legal Aid NSW	2	
Legal services	NSW Bar Association	2	
Legal services	Office of the Director of Public Prosecution NSW	5	
Legal services	Women's Legal Service NSW	2	
Judicial officers (interviews)	District court judges	3	3
Judicial officers (interviews)	Local court magistrates	3	3
Judicial officers (interviews)	Central West Women's Health Centre	1	3
Judicial officers (interviews)	Illawarra Women's Health Centre	1	
Judicial officers (interviews)	Lismore Women's Health and Resource Centre	1	
Judicial officers (interviews)	Liverpool Women's Health Centre	1	
Judicial officers (interviews)	Northern Rivers Women & Children's Services	1	
Judicial officers (interviews)	Shoalhaven Women's Health Centre	1	
Judicial officers (interviews)	Sydney Women's Counselling Centre	1	
CALD people	Bonnie's Legal Outreach Service	3	1
CALD people	Ethnic Communities' Council of NSW	1	
Asylum seekers and refugees	Legal Aid NSW – Refugee Service	2	1
Asylum seekers and refugees	Jesuit Refugee Service	2	
Asylum seekers and refugees	Settlement Services International	1	
Sex workers	Scarlet Alliance	2	1
Sex workers	Sex Workers Outreach Project	3	
Aboriginal and Torres Strait Islander services	Aboriginal Legal Service	1	4
Aboriginal and Torres Strait Islander services	Breaking Silent Codes	2	
Aboriginal and Torres Strait Islander services	First Nations Women's Legal Program, within Women's Legal Service NSW	1	
Aboriginal and Torres Strait Islander services	Waminda – South Coast Women's Health & Welfare Aboriginal Corporation	3	
Aboriginal and Torres Strait Islander services	Weave Women and Children	1	

Aboriginal and Torres Strait Islander services	Wirringa Baiya Aboriginal Women's Legal Centre	2	
Informant group	Organisations	# Consultation participants	#Group consultations per informant group
Victim support and advocacy	Rape & Sexual Assault Research & Advocacy Initiative (RASRA) Initiative	2	1
Victim support and advocacy	Full Stop Australia	7	1
People with disability	Action for People with Disability	1	3
People with disability	Australian Federation of Disability Organisations	1	
People with disability	Council of Intellectual Disability	1	
People with disability	Emeritus Professor and consultant specialising in disability	1	
People with disability	Justice Advocacy Service, within the Intellectual Disability Rights Service	1	
People with disability	Multicultural Disability Advocacy Group	1	
People with disability	Side by Side Advocacy	1	
LGBTIQ+ people	ACON	2	1
LGBTIQ+ people	Twenty10	1	
Total		118	35

Source: Project team

Appendix B: Topics of discussion with informant groups

Table 5: Topics of Discussion with Informant Groups

Informant group	Topics of discussion
NSW Police Force	<ul style="list-style-type: none"> • Victim-survivors' interactions with NSW police and other justice agencies • Main barriers for victims in reporting sexual offences • Victim-survivors' experience reporting and prosecuting sexual offences.
NSW Sexual Assault Services	<ul style="list-style-type: none"> • Quality of victim-survivors' interactions with NSW justice agencies • The major points of attrition for reported sexual offences • Victim-survivors' participation in court processes in NSW • Quality of support services available to victims • Victim-survivors' experiences in the conduct of trials.
Legal services	<ul style="list-style-type: none"> • Cultural and social barriers to reporting and prosecuting sexual offences • Quality of victim-survivors' interactions with NSW justice agencies • The major points of attrition for reported sexual offences • Victim-survivors' participation in court processes in NSW • Victim-survivors' experiences in the conduct of trials.
Judicial officers	<ul style="list-style-type: none"> • Judicial officers' experience with victim-survivors of sexual offences progressing through the justice system • Victim-survivors' participation in court processes in NSW • Support services available to victims.
Women's Health Services	<ul style="list-style-type: none"> • Quality of victim-survivors' interactions with NSW justice agencies • Victim-survivors' participation in court processes in NSW • Support services available to victim-survivors.
CALD people Asylum seekers and refugees Sex workers People with disability LGBTIQ+ people	<ul style="list-style-type: none"> • Quality of victim-survivors' interactions with NSW justice agencies • Victim-survivors' participation in court processes in NSW • Quality of support services available to victim-survivors.
Aboriginal and Torres Strait Islander services	<ul style="list-style-type: none"> • Quality of Aboriginal victim-survivors' interactions with NSW justice agencies • Cultural barriers to reporting sexual offences in Aboriginal communities • Quality of legal services available to Aboriginal people who have experienced sexual offences • The experience of Aboriginal people who have experienced sexual offences in the conduct of trials • Quality, availability and accessibility of support services available to Aboriginal people who have experienced sexual offences.
Victim support and advocacy	<ul style="list-style-type: none"> • Quality of victim-survivors' interactions with NSW justice agencies • Social and cultural barriers to reporting sexual offences • The major points of attrition for reported sexual offences • Quality of support services available to victim-survivors.
Office of the Commissioner of Victims' Rights	<ul style="list-style-type: none"> • Services and supports provided by Victim Services NSW for victims of sexual assault • Victim-survivors' access to counselling services • Victim-survivors' participation in court processes in NSW.

Source: Project team

Appendix C: Participant Information and Consent Form (PICF)

Participant Information Statement

Title	Interview study: Justice system experiences of sexual offence complainants
Principal Researcher	Elena Campbell
Research Team	Riley Ellard, Catherine Caruana, Helen Forster, Eliza Hew, Samara Young, Katherine Ogilvie, Caitlin Stone and Jack Jones

Introduction

You are invited to be interviewed about your experience accessing the justice system after a sexual offence. This could include your experience of reporting the offence to police, any investigation and/or charges being laid, as well as any trial process you went through. Participation is completely voluntary - that means if you do not want to participate, you don't have to. Choosing not to participate will not have any impact on your ability to access services.

The focus of our research is the legal process itself - you do not have to tell us anything about the harm you experienced unless you want to, and we won't ask you about it.

This research is being conducted by RMIT University, in partnership with KPMG. We are conducting this research on behalf of the NSW Bureau of Crime Statistics and Research (BOCSAR), which is part of the NSW Government. BOCSAR have asked us to conduct this research so that they can gain better understanding of how the justice system is experienced by complainants, including how it could be improved.

Do I have to participate?

As indicated above, this research is completely voluntary – meaning that it is your choice whether or not to participate. You do not have to take part in any research project, including this one. Whatever decision you make will not change your ability to get support from any services, now or in the future.

This Information Statement tells you about the research and will help you decide if you want to be involved. Please read this document carefully and think about whether you would like to participate. You can talk about your decision with a friend, family member or support worker. You can take all the time you need and can also ask questions about anything that you don't understand before you decide if you want to be interviewed.

If you do decide to take part, you can sign the consent form at the end or give your consent using the online consent form. By signing the consent form or choosing the 'I consent' option on the online form, you are telling us that you:

- Understand what you have read, and
- Agree to take part in the research project.

Even if you sign this form, you can change your mind at any time prior to the interview. You can also change your mind during the interview and withdraw from the study.

Why do we want to talk to people who have been the complainant in a sexual offence matter?

We are doing this research to understand your experience engaging with the justice system, including how your matter progressed, what support you received, and whether the process met your needs.

By understanding these experiences, we can make recommendations about ways to improve the system in the future.

What does participation in this research involve?

If you agree to be interviewed, the interview will take about one hour. It will just be between you and a member of the research team, although you can bring a support person if you would like to. You might also be able to do your interview over the phone if you choose – the worker who invites you to participate will talk about this option with you.

During the interview, the researcher will ask you about your experiences of the legal process, including reporting to police or any contact you had with a court.

If you feel upset at any point during the interview, support will be available for you. You can also change your mind about participating at any time or tell the researcher if there are questions that you don't want to answer or things that you don't want to talk about.

Will what I say be kept private?

Whatever you say will be kept private and will not be shared with any services, including the one currently supporting you. We will only need to tell someone something you have told us:

- To protect you or other people from harm
- If the law specifically tells us to do so, or
- If you give us specific permission in writing.

The interview will be audio-recorded (voice not video). Afterwards we will listen to the recording and type it up. Only our research team will be able to listen to the recording and read the typed version. You can have a copy of this typed version after the interview if you would like.

When we write our report, we will not use your name and we will do our best to leave out any information that might allow other people to work out that it was you speaking.

What happens at the end of the research?

We will write a report about the justice system experiences of people who have been the complainant in a sexual offence matter, including people who made a report to police or participated in a court process. The report will also make recommendations about how the system could be improved.

The report will be published on the website of the Centre for Innovative Justice and the NSW Bureau of Crime Statistics and Research. You can also ask for a copy to be sent to you directly. Please tick the box below if you would like this to occur.

What will happen to information about me?

We will not use your interview for any reason other than this research.

All the information we collect will be stored carefully so no-one else can look at it. We will store the information for up to seven years after the project ends. After this, any electronic (computer) files and hardcopy (paper) files will be destroyed securely in line with RMIT University policy.

You can ask to access any information about you that we collect and keep. For example, you can ask for the audio recording or typed up version of your interview. You can contact the Chief Principal Investigator if you would like a copy of your information. The Chief Principal Investigator's details are outlined below.

Who can I contact for help and support?

After the interview, a member of the research team will ask if you would like to talk to your support worker about any feelings or issues that have come up for you because of the things we talked about. You can also contact the following services for confidential support.

- [Lifeline Australia – 13 11 14](#) – Lifeline is a national charity providing all Australians experiencing a personal crisis with access to 24-hour crisis support services.
- [1800RESPECT – 1800 737 732](#) – A confidential 24-hour information, counselling and support service for people impacted by sexual assault, domestic or family violence and abuse.
- [Full Stop Australia – 1800 385 578](#) – A counselling support for people affected by sexual, domestic or family violence, available 24-hours a day, seven days a week.

- [QLife – 1800 184 527](https://www.qlife.org.au/) – Provides free telephone and webchat support from 3pm to midnight every day, delivered by trained LGBTI community members.

Further information about the research

If you would like further information about the research you can contact Elena Campbell, the Chief Principal Investigator leading this work. You can call Elena on (03) 9925 1181 or email her at elenaeve.campbell@rmit.edu.au. You can also ask your worker to contact Elena on your behalf.

You will receive a gift voucher as a thank you for contributing your time to the research.

Complaints

All research in Australia involving humans is reviewed by an independent group of people called a Human Research Ethics Committee (HREC). This research has been reviewed by the Hunter New England Local Health District HREC. The reference number for the project is 2022/ETH01027.

If you have any concerns or questions about this research project that you do not wish to discuss with the researchers, please contact the Hunter New England Human Research Committee on HNELHD-ResearchOffice@health.nsw.gov.au.

Consent Form for participants

Title	Interview study: Justice system experiences of sexual offence complainants
Principal Researcher	Elena Campbell
Research Team	Riley Ellard, Catherine Caruana, Helen Forster, Eliza Hew, Samara Young, Katherine Ogilvie, Caitlin Stone and Jack Jones

Your name	
------------------	--

I do / do not (please circle) voluntarily consent (agree) to participate in the Justice system experiences of sexual offence complainants research.

I understand that participation involves an interview with a researcher for about one hour. I understand that I will be asked to talk about my experience accessing the justice system, including any challenges that I faced.

If I decide not to consent to participation in the research, I understand that this will not have any impact on my relationship with RMIT University or on my access to any services.

This research has been explained to me and a written copy of the information has been given to me to keep. I acknowledge that:

- I have been informed that I am free to stop participating in the research at any time during the project and can ask the researchers to withdraw any unprocessed data (that is, data which the research team can tell is mine).
- I understand that the confidentiality of the information I provide will be protected unless my safety (or someone else's safety) is considered to be in danger, or the research team is required by law to share the information.
- My identity will be protected in any publications arising from this research.
- I understand that I will receive a voucher to thank me for my time.

Signature		Date:	
------------------	--	--------------	--

<input type="checkbox"/> I would like a copy of any published research report emailed to me at	
---	--

HNELHD HREC Approval Number 2022/ETH01027

Information and Consent Form for collection of demographic information

Title	Interview study: Justice system experiences of sexual offence complainants
Principal Researcher	Elena Campbell
Research Team	Riley Ellard, Catherine Caruana, Helen Forster, Eliza Hew, Samara Young, Katherine Ogilvie, Caitlin Stone and Jack Jones

As part of this research, you have the option of providing us with some additional information about yourself.

We collect this optional information so that, when we write-up our report, we can describe some features of the people we spoke to overall. This may include basic information such as age range, cultural identity or gender, for example. We provide this information in a combined description of everyone we spoke to, and don't share your information specifically.

Even if you don't want to provide us with this extra information, you can still participate in an interview. Choosing not to provide this information won't have any impact on your participation in this research, your relationship with RMIT University, or your receipt of any services.

If you do choose to provide us with this extra information, we will store it safely and securely and will not use it for any purpose other than this research. We will store this information separately from other information about you, including the audio recording and write-up of your interview.

If you are comfortable providing this information, you can consent for us to request this information from your worker/practitioner instead, or you can provide it yourself (self-report).

You can also choose to share only some of the information below, and choose not to share other information. If you do not want to share your information, you can just leave part or all of this section blank.

The information we are asking for is on the next page. If you are happy to provide some or all of this information, please write your name and sign below before filling out the next page.

Your name	
------------------	--

Signature	Date:
------------------	--------------

HNELHD HREC Approval Number 2022/ETH01027

Information	Consent to request	Consent to self-report
Age range – what is the participant's age range?	<input type="checkbox"/> I consent to my practitioner providing this information on my behalf	I consent to providing this information myself. My answer is below: <input type="checkbox"/> 16 – 24 years <input type="checkbox"/> 25 – 34 years <input type="checkbox"/> 35 – 44 years <input type="checkbox"/> 45 – 54 years <input type="checkbox"/> 55 – 64 years <input type="checkbox"/> 65 years and over

<p>Gender – how does the participant identify/describe their gender?</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p><input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Non-binary <input type="checkbox"/> I use a different term</p> <hr/> <p>At birth, I was recorded as: <input type="checkbox"/> Male <input type="checkbox"/> Female <input type="checkbox"/> Another term (please specify)</p>
<p>Sexual orientation – How does the participant describe their sexual orientation?</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p>I consent to providing this information myself. My answer is below: <input type="checkbox"/> Straight (heterosexual) <input type="checkbox"/> Gay or lesbian <input type="checkbox"/> Bisexual <input type="checkbox"/> I use a different term</p> <hr/> <p><input type="checkbox"/> Don't know</p>
<p>Intersex status – Was the participant born with a variation of sex characteristics (sometimes called 'intersex')</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p>I consent to providing this information myself. My answer is below: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know</p>
<p>Aboriginal or Torres Strait Islander – Does the participant identify as Aboriginal or Torres Strait Islander?</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p>I consent to providing this information myself. My answer is below: <input type="checkbox"/> Aboriginal <input type="checkbox"/> Torres Strait Islander <input type="checkbox"/> Both <input type="checkbox"/> Neither</p>
<p>Culturally and linguistically diverse (CALD) - Whether participant is from a CALD background</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p>I consent to providing this information myself. My answer is below: <input type="checkbox"/> I arrived in Australia recently (last five years) <input type="checkbox"/> I was born overseas <input type="checkbox"/> One or both of my parents were born overseas <input type="checkbox"/> Neither</p> <p>Language spoken at home</p> <hr/>
<p>Disability - Whether participant is living with a disability (diagnosed or undiagnosed)</p>	<p><input type="checkbox"/> I consent to my practitioner providing this information on my behalf</p>	<p>I consent to providing this information myself. My answer is below: <input type="checkbox"/> I identify as having a disability / disabilities. I have the following support needs:</p> <hr/> <p><input type="checkbox"/> I do not identify as having a disability</p>

Appendix D: Combined topic guides with complainants



Interview Topic Guide

Title	Interview study: Justice system experiences of sexual offence complainants
Principal Researcher	Elena Campbell
Research Team	Riley Ellard, Catherine Caruana, Helen Forster, Eliza Hew, Samara Young, Katherine Ogilvie, Caitlin Stone and Jack Jones

Before commencing interview:

- Introduce yourself and the project, including some personal information about the researcher to get a sense of who they are and share a cup of tea or other refreshment to start and settle in.
- If a signed consent form has not already been provided, obtain before proceeding with the yarn (including providing an additional copy for the participant's records if required). If consent was provided via the online consent form, seek verbal confirmation that online consent was not submitted by any person other than the participant.
- If a practitioner is present as a co-facilitator or to provide support, confirm with participant that they feel comfortable with the practitioner's involvement and understand that they are not a formal member of the research team, although this person will be listed in the report.
- Explain process for recording, transcribing, de-identification and thematic analysis of responses and the fact that no comments will be directly attributed to any individuals.
- Remind participant that participation is completely voluntary and that they can stop the yarn at anytime. If there are particular questions they don't want to answer, they can skip them. Choosing not to participate will not have any impact on access to services, including the service through which they were recruited.
- Explain to the participant that their information will be kept confidential, except in three specific circumstances, those being:
 - Where the researcher needs to share the information to protect someone else from harm;
 - Where the researcher is required by law to share the information;
 - Where the participant gives the research team specific written permission to share their information.
- Explain to the participant that you don't know about the offence which they disclosed or reported, and that they do not have to tell you any specifics about their experience of crime victimisation or other experiences of harm. The focus of the research is on understanding their experience of the legal process (and, where relevant, related supports). Confirm understanding and ask if the participant has any questions for you.
- Explain that people have different experiences of the criminal justice process and progress to different stages of the process for a range of reasons, so we will only ask questions that are relevant to your experience once we start to find out what that was.



<p>Q1</p>	<p>So now that we've settled in, would you like to start by telling me a bit about yourself and the support that [relevant service] has been giving you?</p> <p><i>Prompts: Name of service / program? How long have you been connected? How did you find out about the service? What types of support being received? Has it been culturally specific and appropriate? Did you have choice in the types of support you received.</i></p>
<p>Q2</p>	<p>I understand that you experienced a sexual offence which you disclosed or reported to police. Can you tell me what the experience of disclosing or reporting was like for you?</p> <p><i>Prompts: What factors influenced your decision to disclose / report? Where did any initial reluctance come from for you? Did you encounter any barriers initially? Was your experience culturally safe or appropriate? Dedicated police roles or personnel? Were you in contact with services at that time? Were you supported by a friend or family member? Would you have liked to be supported to report the crime(s) you experienced? When did you disclose/report the crime (i.e., relative to when the offence occurred)?</i></p>
<p>Q3</p>	<p>Is there anything about that experience of disclosure / reporting which you wish had been different? What about the process worked well for you?</p> <p><i>Prompts: Understanding of the process? Availability of support, both when reporting and following disclosure? Nature and/or quality of interactions with police? Understanding of cultural sensitivities? Response in relation to any previous contact with police. Provision of information about what happens next? What might have improved the process?</i></p>
<p>Q4</p>	<p>Can you describe what happened after you reported to police? What were the next steps in the process, if any?</p> <p><i>Prompts: What happened next? When did it happen? To what extent did you understand what was happening and/or what would happen next? To what extent did you feel informed and empowered to make decisions? To what extent were you supported to understand the rationale behind decisions made by others?</i></p>
<p>Q6A</p>	<p>Where matter did not progress beyond reporting. My understanding is that your case didnot proceed through to prosecution or trial. Can you tell me a bit about the point at which that decision was made and why that decision was made?</p> <p><i>Prompts: How far did the matter progress? Who decided not to proceed? Why was that decision made as far as you are aware? To what extent did you feel informed and empowered, i.e., to make decisions or to understand the rationale behind decisions made by others? Where you made the decision not to proceed, are there any factors or supports which, had they been in place, may have resulted in a different decision being made?</i></p>



<p>Q6B</p>	<p>Where matter progressed to prosecution but resolved early, I understand that your case was resolved early or did not continue all the way to trial. Can you tell me a bit about the point at which that decision was made and why that decision was made?</p> <p><i>Prompts: How far did the matter progress? Who decided not to proceed? Why was that decision made? Did you feel that they had a voice in the decision-making process? Did you feel supported to understand why any decisions around resolution were made? How did you feel about the outcome?</i></p>
<p>Q6C</p>	<p>Where matter was listed for trial. Can you tell us about your experience of the trial process? Do you feel that there were opportunities for you to participate and be heard?</p> <p><i>Prompts: Did you make a Victim Impact Statement? Did you testify? Did you feel that prosecutors provided you with relevant information and involved them in decision-making? How did the presence/absence of meaningful participation impact your overall experience and sense that their needs were met through the legal process? Did the extent to which you were able to participate meet your expectations of the process?</i></p>
<p>Q7A</p>	<p>Where matter did not proceed past reporting or investigation. What impact did it have on you, if any, to not to go through a prosecution or trial process? What were your needs or expectations as a result of reporting your offence and to what extent were these met (or not) through the process you experienced?</p> <p><i>Prompts: Sense that harm has been recognised? Opportunities to connect with relevant services and supports? Ability to process experience and move forward? Impacts on wider legal processes, such as access to victim entitlements and financial assistance? Willingness to report any harm experienced in the future?</i></p>
<p>Q7B</p>	<p>Where matter was listed for trial. Can you tell me about how your case resolved? How did you feel about that resolution?</p> <p><i>Prompts: What was the outcome of the matter? How did the complainant feel about the outcome? How important was the outcome to the complainant? Did the complainant feel supported throughout the process, including to understand the outcome? To what extent did the outcome and/or process align with the complainant's expectations?</i></p>
<p>Q8</p>	<p>Have you had an opportunity to talk about your experience or to have your needs met in other contexts, such as counselling or a peer support group? Are there other supports you have or things you do which help you and address some of your needs where your particular experience of the legal process did not?</p> <p><i>Prompts: What were these processes? How were you connected with these processes? What were the benefits of these processes? To what extent did they mitigate the absence of a legal process?</i></p>
<p>Q9</p>	<p>Thinking about your experience overall, are there changes which could be made to the reporting process or the wider legal process which you think would make it easier for victim survivors to access justice?</p> <p><i>Prompts: What would have made a difference for you / what do you think had been different about your experience? Had those changes been in place, how would your experience have been different?</i></p>

Source: RMIT University



Contact us

Danielle Woolley

Partner

Health, Ageing and Human Services

Tel: +61 477 384 980

dwoolley@kpmg.com.au

Elena Campbell

Principal Researcher

Centre for Innovative Justice, RMIT

elenaeve.campbell@rmit.edu.au

Frances Lockie

Project Director

Health, Ageing and Human Services

Tel: +61 2 9346 5681

flockie@kpmg.com.au

kpmg.com.au

©2023 KPMG, an Australian partnership and a member firm of the KPMG global organisation of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organisation.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

To the extent permissible by law, KPMG and its associated entities shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including for reasons of negligence, negligent misstatement or otherwise).

Liability limited by a scheme approved under Professional Standards Legislation.