AUSTRALIAN LAW REFORM COMMISSION

JUSTICE RESPONSES TO SEXUAL VIOLENCE

Prepared by Maeve Clancy, Mary Crooks AO, Nicky Fincham and Professor Michael Webber

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VICTORIAN WOMEN'S TRUST

INQUIRY RESPONSE: THE VICTORIAN WOMEN'S TRUST

The law of sexual assault spins on the wrong axis. A woman's experience of sexual assault does not fit the male-defined system of truth, so it cannot be truth, and therefore there cannot be justice... The law has been shaped by generations and generations of white, heterosexual men. (Miller, 2019: 332)

We commend the initiative to hold this inquiry. It is long overdue. We welcome the opportunity to make a submission.

We have read the terms of reference and issues paper provided. Our starting point in our submission is that our justice system fails to deliver justice to victims of sexual violence, who are mainly women. We argue that these failings should be understood as a culmination of systemic patriarchy embedded throughout the legal system, a system built by and for white, privileged men. Through this analytical lens, we believe there are two outstanding matters for law reformers when it comes to justice and sexual violence. The first is to challenge the age-old legal precept of the right to silence when it comes to criminal justice and sexual violence. The second poses the question - if our society is keen to re-make a legal system which is fairer for women (a 'green fields site'), what would be the touchstones for inclusion?

Part A: Sexual violence - current realities

The justice system is failing sexual violence victims, who feel largely unable to report their experiences, and when reports are made, have dissatisfying and often retraumatising experiences of seeking justice:

- 50% of victims surveyed in Victoria stated they were never treated like a participant in the criminal justice system when pursuing sexual assault cases, with only 2% stating they were always treated as a participant (VCC, 2023: 84).
- 45% of respondents indicated they would not participate again, citing retraumatisation through the system as a principal reason (VCC, 2023: 98).
- as of 2021, only 1.5% of sexual assaults reported in Australia resulted in a conviction (Pullar, 2021).
- The picture is worsened when considering low levels of reporting:
    - only 7.7% of women in Australia who experienced sexual assault by a male in the 10 years before 2021-22 contacted police about the most recent incident (AIHW, 2024).

In summary, three key issues face victims of sexual violence in Australia, most of whom are women. First, they do not feel confident in reporting their experiences to justice services. Second, when reporting does take place, they are not treated sensitively and fairly as participants in the justice process, often experiencing retraumatisation. Third, justice representatives are disproportionately failing to convict sexual violence assailants.

We are thus presented with a justice system which does not deliver on its duty regarding victim participation and the fair and thorough pursuit of sexual violence cases.

Part B: The justice system: patriarchal in form and substance

The major roadblock [to equality] is that our society is still imprinted with stubborn hallmarks of patriarchal social organisation. The changes demanded and fought for by women so far have been accommodated without too much disturbance to the deep, underlying beliefs and behaviours of an essentially patriarchal society. (Crooks, p.56)

Our patriarchal world of belief systems and values, initially transplanted from Europe to the colonies, deemed men as privileged and guaranteed them the superior roles in economy and society, economic production and exchange. They were the 'natural order'. Women were subordinate, 'the other', expected to be the wives, mothers, economically dependent and with no political rights.

At the time when the colonies federated, women were struggling under oppressive conditions—marriage for many was unspoken tyranny: men were able to will their property away from their wives, leaving them destitute. Women, however, were not permitted to make a will, enter a contract, or sue. They had no custody rights. Few contraception options existed, the very idea meeting with male opprobrium. The average number of live births per married women was seven. Maternal morbidity was high. Women contended with the added burdens of child deaths, poverty and disease. Barred from higher education and ineligible for public service, they were also deemed neither competent nor reliable for jury service. Our society's dark history of violence towards women and children was widespread, though with less legal recourse or material support as of now.

It should not be surprising that the social movement to enfranchise women was forcefully resisted by the ruling male order. The second Premier of colonial Victoria, John O'Shannassy, echoed the voices of many men in power as to why women should be denied the vote:

"A woman had her household duties to attend to, and when she discharged her duties faithfully as a wife and a mother, she did that which became her best; and the best they (the parliament) could do for her was to leave her to the performance of these duties. He did not want to go back into history to prove that women's interference in political matters was injurious." [2]

A woman's dependence on the male order permeated society:

I do not wish to see women unsexed. I believe in the idea, which almost all men possess, of woman being the weaker vessel and dependent on man; and I believe that she could not make laws for the country better than we can make ourselves, subject, as we are, to the influence of woman in her highest and noblest sphere of life.(male commentator quoted in Grimshaw, 2008: 191)

What followed in the twentieth century was no peaceful, rational, or civil transfer of power. It was a bitter, protracted fight. Powerful men saw it as a direct challenge to their authority. When Dr Maloney tried to introduce the first suffrage bill into the Victorian parliament in 1889, he was greeted with sneers, jeers and cat calls. Sympathetic allies like him were seen as weak-kneed. Women were pilloried relentlessly by male parliamentarians, media and in public meetings. They were depicted as strident, shrewish, as 'he-men'– outward manifestations of the same sort of misogyny we have witnessed in our own lives since.

In fighting for suffrage, suffragist women had entered a political *and* legal system not of *their* making. They did not get to choose the terms of engagement. They sought freedom in a man's world and, thankfully for us, despite the vitriolic attacks and powerful resistance, they were not to be denied.

From the turn of the twentieth century, not for want of trying, it took 4 further decades to win custody rights in law. Not for want of trying, it took 6-7 decades for women to win the right to serve as jurors; to lift the marriage bar; to recognise Indigenous women and men as citizens; to see the first national legislation on childcare (1972); to enshrine the principle of equal pay (1972); to see the first woman to become a Federal Minister (Margaret Guilfoyle); and the first woman to become Speaker of the House (Joan Childs).

Not for want of trying, it took 8 decades to see the first Sexual Discrimination Act (1983); and the criminalisation of marital rape; and 9 decades for women to make up 1/3 of the Senate.

Not for want of trying, it took more than a century to see a woman become Prime Minister only to see discomfiting deep seams of sexism and misogyny brought into broad daylight.

And certainly not for want of trying, it took 120 years for the Senate to reach gender parity; and then reach the giddy percentage of 30 in the House of Representatives (46/138)

Why so slow, so piecemeal; and still falling far short of achieving gender equality? After all, it's not as though women were waiting for things to fall into their laps. Rather, like a medieval fortress, our ensconced male, hegemonic culture has largely been in protective mode, with little appetite for relinquishing control.

To understand our entrenched, masculinised culture, *and help inform strategic law reform agendas*, it pays to understand more deeply its institutional context. As such, we need to reflect on the nature of institutions in our society, their underpinning structures and processes. Making sense of what can be dense theory about institutional culture and institutional power is not easy work; but is absolutely necessary.

Institutional power: key propositions

First. Institutions are socially constructed. They embody sets of shared beliefs, backgrounds, actions, conceived norms. They are integral to social organisation and social life, including hospitals, welfare delivery, school and university systems, religions, sports bodies and army/defence forces. The legal system is no exception.

They emerge, reproduce, and change, depending on disputes and resolutions among the various social agents.

They come to represent vast, accumulated, empirical evidence, culture, ways of doing, systems of thought, rules (formal/informal/overt or unwritten) and norms. Shared beliefs, expectations and subconscious bias go hand in hand – disguised as the norm, the standard.

Second. Institutions have formal and informal dimensions. The formal are the more overt, codified parts, the formal rules, the regulations and so on. The informal are the hidden, embedded, cultural attributes including beliefs, expectations, customs, unconscious biases and pre-dispositions. Crucially, both inform one another and provide strength and internal coherence. Unpacking and understanding the interaction here is crucial.

They become horizontally and vertically integrated as interlocking power builds through close networking between social agents across related spheres. Institutions take on the appearance of the status quo, representing stability. They become self-perpetuating and reinforcing.

Institutions are the controlling force. They set the terms, the rules of engagement. New players conform/absorbing osmotically the main practices and observance of written (and unwritten) rules.

Third. *Institutions are dynamic, not immutable*. But change tends to be incremental, rather than from major or disruptive actions/forces at work. Thus change becomes a question of the stimulus for change: whether there is sufficient potency from social agents within the institution and outside it.

Fourth. *Institutions are not 'objective' realities*. They are socially constructed. They are not gender neutral. All our lives, we have been conditioned to associate authority with maleness – men as the army generals, naval commanders, business leaders, bishops and rabbis, football coaches, school principals and prime ministers. Deep and subconscious gendered assumptions as to what constitutes strength, bravery, heroic actions and commanding leadership have been lacing their way through our social imagination for centuries.

Indeed, the masculinist nature of our society and culture has been built over decades and centuries of male dominance, with the hidden expectations and beliefs and deliberate (and subconscious) exclusion of women. It reaches deep and wide into our collective psyche.

Our legal institutions are largely man-made, dominated by Anglo white men

Reflective of this dominant, hegemonic culture, male lawyers have also occupied a privileged, stable and scarcely changing world—to date.

Subconsciously, they have become steeped in self-confidence, assuredness, positional power. Their lived experience is the prism influencing community and society. Their behaviour becomes the largely unchecked norm for tests in law. Male lawyers define the way things are, the way law is interpreted and practiced.

Like all dominant groups, male lawyers have no need for introspection, projecting onto others rather than seeing themselves in the mix. They are hostile (covertly) to outsiders or interlopers. This shows also as unconscious bias. The covert, innate hostility to 'outsiders' (such as women) is aided by *subliminal, practiced resistance* – with women commonly being talked over, sidelined, ridiculed, bullied and demeaned.

This legal culture has a 'monopoly' over the legal system: one which reproduces itself in its own image. The players (mainly male) know how it works, how to deal. Whether they are aware of this in any conscious way, they are more practiced in this system of doing law than others. It's in their DNA.

It is sustained through invisible networks of interlocking power and privilege, of *augmented power,* expressed by close connections and systems of patronage and entitlement. They close ranks at perceived threats to their dominance. It shows in elections to the Bar Councils, the invisible pipelines by which candidates emerge to occupy higher legal office.

Our legal system and the operation of the law has been practiced this way for centuries. Stronger gender representation is slowly changing the profile of courts, but men are still the dominant group by far.

In Victoria, for example, 963 members of the bar list criminal law as one of their areas of specialty. Of these, despite decades of females graduating in law, less than one third (310) are female. Of these members of the Bar, 190 state as an area of specialty, Domestic Violence; 89 are women. Of the 264 who give Sexual Assault as an area of specialty, 106 (40%) are women. In Queensland, of the 200 most senior of the 934 barristers, only 13 are women (6%). Of the 321 barristers listing Sexual Assault as their area of expertise, 77 (23%) are women.

The challenge is to refashion our justice system to better reflect gendered realities across the spectrum, from representation in the courts to the pivotal practice issues. There is no more critical practice issue than sexual violence and women's right to justice.

Part C: The right to silence?

Our starting position

The literature contains a long list of ways in which court procedures, languages and assumptions work to disparage the evidence of women as compared to that of men. Much reform effort has been devoted to mitigating these effects, though more is needed. Importantly, these efforts need to be not merely about changing the law; they must encompass detailed implementation through day-to-day procedures, implementation that must be monitored and reported on regularly. If society's presumptions about the behaviour of women are mythical, then so too must be judgements about that behaviour.

Such disparagement of women's voice reflects inequality. The language of the law, from investigation through to judgement, is one in which gender inequalities have been both expressed and perpetuated. Although much has been done to remove the most egregious of these expressions of inequality, there remains much to do.

The language permitted within a court and the questions permitted a prosecutor have tightened over the years – for example, about sexual or criminal history, about standards of resistance. But that means little if the media can effectively report material that is not permitted a prosecutor.

There is much evidence that the justice system itself is staffed by individuals, some of whom are sexual harassers or are sexually violent. The police, the court system and the legal profession are all sites of sexual misbehaviour. Overwhelmingly, the harassers are male. How can such a system presume to judge the claims of women that they have been subject to sexual violence?

A system of justice must be a place in which the victims of sexual violence feel free to report their experiences rather than a place which victims rationally feel is inappropriate to their needs – a place in which they will be victimised again rather than restored. We must seek to rectify particularly delinquent aspects of the existing system of justice. However, there are specific groups within Australia who are particularly inhibited from reporting sexual violence and who may be subject to additional prejudices.

Whatever changes occur to the law about sexual violence or to investigative and court procedures in cases of sexual violence, it is evident that these changes have to overcome pre-existing languages, myths and procedures. As such, the evidence is that legislative change alone is insufficient to force changes in behaviour within investigative or court processes.

A system of justice must also be a place in which pre-existing inequalities of power are recognised and taken into account. For example, if a couple's relationship is unequal, then by definition consent cannot be freely and voluntarily given. We have largely recognised that inequalities of power and knowledge between adults and children preclude children from given informed consent to sexual activity with adults.

The tests of consent with the legal system must come to terms with inequalities of power within relationships between adults.

The particular case of the right to silence and its application to cases of sexual violence have been matters of long debate. Much of that debate is about the ancillary right – to remain silent without adverse inferences being drawn from that silence. There is little doubt that this right imposes important restrictions on the power that a state may exercise over an individual; even in Australia in the 21st century, the politics and treatment of refugees and the periodic scaremongering over terrorism indicate that marginalised groups need as many protections against the state as they can get.

But in many cases of sexual violence, the justice system is not dealing with state accusations against a person; rather the state is providing a forum within which one person accuses another of a crime against their person.

In the vast majority of cases, the accuser is a woman or child, the accused a man. In such cases, the state (i.e., the police) does not gather evidence in order to identify a suspect; the police simply assemble the evidence that is presented them. The accused is already known.

In other words, a fundamental, equalising change is required for the system of justice to deal fairly with cases of sexual violence and domestic violence. The justice system as a whole is supposed to protect individuals against the unreasonable use of power by the state, but a forum that hears the competing claims of an accuser and an accused is not one in which the power of the state is the dominant source of inequality.

Rather, as currently constituted, the courts are a place in which the fundamental inequality is between accused and accuser. The required change is to create a forum in which to hear one person's accusations against another while protecting both against the unreasonable exercise of power by either party. Such a forum must be a place in which equality of treatment is an overriding principle. If the accuser must tolerate invasions to her privacy, dignity and security, then so must the accused.

Silence in such cases is an unreasonable exercise of power.

Revisiting the right

According to Kristen Moore, Go To Court Pty Ltd's State Civil Senior and Succession Senior for Victoria (Go To Court 2015), when persons are questioned by officials acting under the authority of the state, they have the right to silence. The common law (court-made law) recognises the need

to protect the freedom of individuals against the state. Subject to some exceptions, the right to silence may be exercised when questioned by an investigator and may also be exercised in court of law – people can remain silent in their own defence in criminal proceedings.

In Victoria, the right to silence is '*a right which attracts an immunity from adverse inference which might otherwise arise from its exercise'*. It is this immunity from adverse inferences that gives the right to remain silent its force (Greer 1990); the Evidence Act 2008 (Vic) (Section 89) codifies this right (Victorian Legislation 2008). Unlike common law, the *Evidence Act* requires a court to inform an accused of his/her right not to answer incriminating questions. [In NSW, a judge may comment on an accused's exercise of his/her silence.] The ability of courts to draw inferences from the silence of an accused has regularly been reviewed by law reform commissions in the States but, despite the objections of police who claim that the right to silence only serves to protect professional criminals (Weber 2012), there has been little enthusiasm to modify the ban on adverse inferences (Skinnider and Gordon 2001). Witnesses likewise do not have to incriminate themselves (Cotterell-Jones 2012).

This right to silence is abrogated in circumstances where an accused person chooses to give evidence. The Crimes Act 1958 (Vic) provides that, if an accused chooses to testify in court, they lose their right to claim privilege against self-incrimination (Victorian Legislation 1958). In other words, an accused person cannot claim privilege in order to avoid having to answer questions that may self-incriminate while testifying or being cross-examined by the prosecution (Go To Court 2018).

This privilege is testimonial: a person may be required to provide non-testimonial evidence, such as a fingerprint or DNA sample (see ALRC 2015). There is debate about whether the privilege extends to documents in Australia.

Origins

The origins of the privilege are debated. Some claim that it originates in common law of the 12th and 13th centuries, a combination of the Roman and canon laws. Others argue that the privilege developed in the 17th century as a response to the unpopularity of the English Star Chamber, which required suspects on trial for treason to answer questions without protection from self-incrimination. Yet others suggest that the privilege did not arise until much later, alongside the rise of the adversarial criminal justice system, in which the prosecution is charged with proving the guilt of a defendant beyond a reasonable doubt and subject to protections surrounding the manner of criminal discovery (again, see ALRC 2015).

Whatever its origins, this right – along with the others that support it, such as presumption of innocence and proof beyond reasonable doubt – are now embodied in the International Covenant on Civil and Political Rights: see Skinnider and Gordon (2001) for a review of the international acceptance of the right.

Significance of the right

According to ALRC (2015), defendants of the privilege claim that:

- The privilege is part of the common law of human rights, protecting personal freedom and human dignity. It protects the innocent as well as the guilty from the indignity and invasion

of privacy which occurs in compulsory self-incrimination; it is society's acceptance of the inviolability of the human personality;
- Self-incrimination is objectionable, because the common methods used to extract it are unacceptable and because the practice is ordinarily incompatible with the presumption of innocence;
- The privilege provides a modicum of balance between the powers of the State and the rights and interests of citizens;
- The privilege also offers pragmatic benefits: it encourages witnesses to cooperate with investigators since they do not have to answer questions that may incriminate them; it protects individuals against unlawful coercive methods used to obtain confessions; it reduces the incidence of false confessions in the stressful environment of police interviews; it may reduce the incidence of untruthful evidence, on the basis that a person who is compelled to give evidence is more likely to lie (ALRC 2015).

However, the right is not without its critics.

One of the telling criticisms of the right to silence was provided by Jeremy Bentham in 1827 (Skinnider and Gordon 2001 describe this argument). Bentham observed, first, that objectionable means of obtaining statements from the accused can be protected by other means than the right to silence. In view of this protection, the right against self-incrimination has the effect of excluding the "most reliable evidence of the truth", that which is available only from the accused person (Bentham obviously did not think about cases of sexual violence, to which there are commonly at least two witnesses).

The lack of evidence from an accused necessarily caused greater weight to be given to hearsay and other inferior sorts of evidence. The privilege confuses sport with a search for truth.

In cases of alleged sexual violence, Bentham's argument needs modification. Denike (2000) provides the basis for the correction. She points out that the dignity and worth to which defendants of the right refer is only that of the accused and is cast in the simplistic terms of individual versus the state. The liberal tradition of political theory and practice includes the presumption that the state is a source of oppression, not amelioration; and that "power" (of the police or the judge) is a prohibitive, negative force held over the accused rather than something productive that infuses and structures social relations.

Whatever justice is, it will not grant the equal dignity and worth of all persons, if, from the outset of its theoretical fashioning, it does not begin with a contexualized understanding of the various relations through which sexual inequality thrives.

It is as if the greatest threat to a woman's dignity comes from an oppressive state!

Language and the law

The fundamental basis of any approach to contests over law is to recognise the role of language (Finley 1989).

Language – and the thoughts that it expresses – are socially constructed, obviously, but they themselves then help to constitute society. As a matter of plain, historical fact, law in Australia has been largely constructed by rich, educated, white Australian, British and American men and as such, with only minor recent amendments, reflects their view of social reality.

The way a man would react became the basis for evaluating a woman's response to sexual violence. Once thus constructed, the language of law then perpetuates the social reality that it expresses: Finley points to a common inference from a failure to convict someone of rape: "I guess people think that nothing happened."

Of particular significance to women is the manner in which the law characterises the actors in a situation – individualistic and self-interested, subject to the constraints of the state and other people rather than to the impositions of class, race, gender. In this language, the state is always a (potential) oppressor (see also Denike 2000).

Warshaw (2019: 128-132) also points to the role of language in shaping the world views of sexually violent men. Many boys are taught to view women as objects from whom sex is taken; they are taught to initiate sexual activity and to expect reluctance from girls. Such boys (and their adult selves later on) view their relationships with women as adversarial challenges and learn to use both their physical and social power to overcome these smaller, less important people. Sex becomes an achievement (Beneke 1983).

Russell (2017) cites research into the experience of complainants as they give evidence during the rape trial that consistently illustrates the institutional impediments they face when attempting to represent their story to and through law. The micro-techniques of legal discourse which operate effectively to silence, discipline, and cow the rape complainant during the trial have also been extensively catalogued: procedural (who determines the questions, and their order) and linguistic (who knows the appropriate words) -- lawyers are empowered to control everything from the topic of discussion to the syntactic form of questions, to other sequential resources of parlance and utterance.

Efforts at reform over the past few decades have sought to modify these practices, though imperfectly, and actually only superficially. Russell argues that the evidence reveals a structural bias that is inherent in the courtroom process and that exacerbates and compounds the cultural consequences of sexual indifference. She contends that law is complicit in many ways in the failure of its own provisions and that this is because it relies, for its own survival and coherence, on the erasure of woman as a subject: patriarchy is inseparable from law because it is the *very mode* through which this discourse comes into being.

In turn, this erasure contributes to the fragmentation and undermining of female rape victims in the rape trial while reiterating the continuing need for critical rape scholars to peer beneath the text of the law and not simply assume its benevolence.

Of course, it is not possible to rewrite language *ab initio*. The past 60 years, particularly, has witnessed a profound change in public language to recognise that the experiences of the female half of the population must be represented in the way we speak and think. Legal language has been a lagging part of that change. Continuing education of investigators, prosecutors, defence lawyers and judges is required to push that change further.

Recommendation 1:
Continuing education of investigators, prosecutors, lawyers and judges is crucial. It must prevent the use of language in investigative and court processes to denigrate women and to violate their dignity.

Recommendation 2:
Investigators, prosecutors, lawyers and judges must be monitored and held accountable for their understanding and practice in the appropriate uses of language within investigations and court processes.

Law and the media

Robin Warshaw (2019), in her foreword to the 1994 edition of her famous study of rape by acquaintances on American campuses, tells the story of the treatment in 1991 of rich, famous and connected William Kennedy Smith and the person who accused him of raping her – poorer, working-class Patrician Bowman.

Prosecutors questioned Bowman about her illegal drug use, her mental health, even why she hadn't paid an allergist's bill nine years before. But those questions were dwarfed by the media's treatment of her. This was a Kennedy story, Warshaw says: while Smith was mostly portrayed as a medical student/playboy following in his male relatives' testosterone-fired footsteps (nudge, nudge, wink, wink), Bowman's personal history was disclosed in excruciating, judgmental detail. The *New York Times*, no less, reported the details of Bowman's parents' divorce, her "little wild streak" in high school, her "sporadic" working history and the fact that she did not marry the father of her child. The headline -- "For Woman in Florida Rape Inquiry, a Fast Jump Up the Economic Ladder" -- clearly questioned the motives of a woman with working-class roots who filed rape charges against a Kennedy.

Likewise in Canada: media cover of sexual violence is an important reason why women do not report their sexual victimization sexual violence myths persist in English Canadian newspapers (Sampert 2010). One such myth is the sexist belief that women are likely to bring false complaints of rape based on motives of revenge, fantasy, and shame (Benedet 2022).

The nature of the questions permitted a prosecutor has tightened over the years – for example, about sexual or criminal history, about standards of resistance. But that means little if the media can effectively report material that is not permitted a prosecutor.

Recommendation 3:
Public reporting of information about accused persons and witnesses must be limited to material that is permitted within a court, at least until after judgement and appeals are completed.

The legal professions

A survey by Court Services Victoria in 2023 found that 22 per cent of respondents had experienced sexual harassment while working in the Victorian Courts. One third of these respondents had experienced physical forms of sexual harassment. Men comprised 92 per cent of harassers; 59 per cent of harassments were by more senior people. Only 22 per cent of those who personally experienced sexual harassment in the workplace reported the incident.

The most common reasons for not reporting sexual harassment incidents were the understanding that 'it was easier to keep quiet', the fear that 'others would think I was over-reacting' or the feeling that it 'was a minor incident'. Others reported thinking nothing would change as a result, being concerned about negative reactions in the workplace, thinking that the complaint process would be embarrassing, difficult or complicated and lacking confidence in the system.

The comparable rate of harassment among legal professionals in Victoria was 36 per cent (VLSBC 2019); 18 per cent of legal professionals had personally experienced unwelcome physical contact, including touching, hugging, cornering or kissing or actual or attempted rape or assault. 90 per cent of harassers were male and 72 per cent were senior to the respondent.

Over 80 per cent of incidents were not reported, typically because of

- negative pre-existing attitudes towards the process or outcomes of reporting or that 'it was a minor incident'
- social barriers, including concern about negative reactions from colleagues or the harasser (67%); the belief that others would think the respondent was overreacting (67%); and not wanting others to know about the incident (52%).

VLSBC's report noted that specific training on sexual harassment is uncommon in legal workplaces.

Victoria Police (2022) also report on gender equality and workplace safety within its own organisation. 29 per cent of the police are women: 5 of 21 assistant, deputy or chief commissioners, 3 of 13 commanders, 112 or 450 superintendents and inspectors, 796 of 3780 senior sergeants and sergeants, and 3960 of 12 473 senior constables and constables.

In 2021, in the previous 12 months, 10 per cent of women, 3 per cent of men and 7 per cent of other genders reported having experienced sexual harassment; only 6 per cent of those women made a formal complaint. Only 62 per cent of women, 71 per cent of men and 55 per cent of others reported that they felt safe challenging inappropriate behaviour at work.

A reasonable inference is that persons engaging in some form of sexual harassment regard women as objects who are of lesser significance than themselves. Such persons should have no role in investigating or judging cases of sexual assault or domestic violence.

Recommendation 4:
Police and legal professionals who are found on the balance of probabilities to have committed acts of sexual harassment must be excluded from working on cases of sexual assault.

Recommendation 5:
Police and legal professionals who are found on the balance of probabilities to have committed acts of sexual assault or domestic violence must be excluded from the legal system.

Women, sexual violence and the law

Women face many problems in accessing justice through the legal system after sexual assaults or domestic violence. These problems have been detailed in a huge literature. One of the earliest such reports was written by Warshaw in 1988 (see Warshaw 2019: 68-69). Warshaw recounted the experience of "Rachel" who was raped by a co-student, a star college footballer, after a party. Rachel did not report the rape: "Who would believe me? He was a really good football player. No one would have believed me if I said anything. I wouldn't have dreamed of saying anything."

According to the Ms. Study of college students that is reported in Warshaw (2019), many women who had been raped by acquaintances followed Rachel's lead and did not report their experience to authorities.

Three chief characteristics of their experience reduced the probability that women would identify what happened to them as rape or would report it to authorities:

- the rape took place between dating partners
- prior consensual sexual intimacy had occurred between the rapist and victim
- minimal violence was involved.

Warshaw adds that women she talked to didn't want to get men they knew in trouble; were embarrassed about the details of the rape (leaving a bar with a man, taking drugs, etc.) and felt they would be blamed for what occurred; or felt the men involved had too much social status for their stories to be believed. For teenagers, family dynamics are also significant (examples: parental attitudes to sexual activity, or other behaviour; struggles over independence).

Such women who downplay their experience or fail to report rape or sexual violence – whether they are college students in America, police officers, lawyers or workers in the Victorian court system – are making rational decisions in the face of persistent stereotypes about women and in particular about men, women and sex. Thus, Warshaw reports that in America, convictions are most likely to occur in cases that fit society's stereotype of rape—an act committed by an armed stranger—and are less likely in cases in which the woman and her assailant know each other, especially if they were dating or had any prior sexual contact. Police and prosecutors are therefore often reluctant to charge perpetrators in acquaintance rape crimes, just as juries are often unwilling to convict. This bias is so strong that some rape-crisis counselors advise victims of acquaintance rape not to become involved in criminal proceedings at all.

Warshaw goes on to observe that most criminal complaints of rape are defended by arguing either:

- the identification of the suspect is wrong [the common defence in stranger-rape cases];
- the suspect had diminished responsibility due to mental incompetence;
- the victim consented to have sex with the suspect; or
- no sexual activity occurred.

The latter two are common defences in cases of acquaintance-rape. Consent, the agreement to perform an act, can be variously expressed. A defense might argue that consent was implied by the victim's behaviour, lifestyle, or lack of resistance. Prosecutors may be disinclined to take on acquaintance-rape cases, either due to their own ignorance and prejudices about rape and rape victims or due to their belief that jurors will hold the same anti-victim views. Juries are reluctant to convict rapists if there are hints of victim "misconduct". In addition, juries less likely to convict if less force was employed. They are also inclined to acquit rape defendants who have good social standing.

Warshaw's observations about the reasons why women might rationally not report sexual violence are reinforced when there are different cultural understandings and practices of law and its institutions.

While it is understood that First Nation's customary legal systems differ from Anglo-American common law, there has been little progress in developing codes of practice for investigators and courts to treat First Nations women fairly and appropriately. Likewise for migrant groups from non-Western European backgrounds. For example, Ethel Wright (2022) points to the

misalignment of formal domestic and family violence systems and Australian Muslim women's realities.

Three key factors contribute to the problem: reluctance to disclose violence due to discrimination and marginalisation (often by the very institutions to which such disclosure has to be made); a disconnect between the language that Muslim women use to describe violence and the language used by formal legal systems; and disclosures and identification of violence occurring primarily outside the terms of formal domestic violence systems.

One of the key implications is that investment is needed to increase the capacity of informal networks and non-specific formal systems to identify and respond to violence in order to react in a fairer and more informed way to Australian Muslim women's experiences.

Recommendation 6:
Investigative and court procedures must be analysed by women from First Nations and non-Western European backgrounds to identify barriers to women from those communities reporting sexual violence and to receiving fair hearings.

One of the key problems that women face during cases of sexual violence are what Randall (2010) calls credibility assessments. In Canada, such credibility assessments, which are pivotal in sexual violence trials, are deeply influenced by myths and stereotypes surrounding "ideal," "real," or "genuine" victims of sexual violence. Despite progressive reform of the laws concerning consent, the onus of proof and credibility of consent in practice remains with the victim and plays out in often harmful and discriminatory ways.

The persistence of the idea that "real" victims of sexual violence resist remains inextricably bound up with the myth that "ideal" or "real" victims can prove their victim status and establish the credibility of their rape claims by demonstrating that they resisted the assault and that their resistance took a socially expected form, preferably including vigorous physical fighting. Randall complains that there persists a kind of psychological illiteracy in law about the nature, complexities, and range of ways in which women cope with the violation and trauma of sexual violence.

Randall's recognition of the role of credibility assessments is particularly significant in the light of Warshaw's observations about the settings in which sexual assaults often occur. A woman who is raped is often voluntarily with the man who attacks her. He usually does not use a weapon and may not hit her; she usually doesn't scream—out of fear—and she often has few severe marks or bruises afterward. The presence of semen in or on her body simply shows that the two had sex, not that it was forced. There is rarely a witness to the rape. Because she often doesn't identify the assault as rape until days later, the woman may not report the incident promptly to police. It's her version of events against the presumption of innocence and the silence of the accused.

The persistence of misogynist attitudes, despite efforts at education and legal reforms, has been illuminated by Quilter (2022). She analyses the modernisation of consent law in relation to sexual violence in Australia. One specific instance included legislative amendments in NSW that defined consent as 'free and voluntary agreement'. However, this legislative redefinition of consent as free and voluntary did not cause practical, significant change to the common law requirement that lack of consent is communicated by forceful resistance. That is, the presence or absence of consent is subordinated to ideas about masculine and feminine sexual behaviour (McDonald 2022) rather than to the actual law: legislative change is only one weapon in the struggle to change foundational myths about men, women and sex.

Quilter notes that the NSW *Criminal Trial Courts Bench Book,* which provides guidance to judges on directions for juries, still observes that an absence of consent is communicated by the complainant's resistance rather than by words alone. The implementation of legislative reform must include attention to the actual processes through which the law is practised: police procedures, prosecutor decision systems, bench books and court proceedings.

Recommendation 7:
Legislation must include systems to monitor the actual processes through which the law is practised (police procedures, prosecutor decision systems, bench books and court proceedings) and to report on the implementation of those reforms.

Revising the framework

Though misogynist language and behaviour within the justice system certainly need to be identified and remedied, the fundamental issue that underpins the observations of Warshaw (2019) and Randally (2010) is: it's her version of events against the presumption of innocence and the silence of the accused.

In other words, the framing of cases of sexual violence needs to be rethought if the victims of sexual violence are to have realistic chances of remedy at law.

There are several tools that can be used to guide this reframing.

The first of these tools comes from feminist analyses of power. Equality – the distribution of power between the parties to the dispute – is also fundamental to the question of consent. If power in a relationship is unequal, then full and voluntary agreement cannot easily be read from consent. Certainly, affirmative consent is an important, if least-bad standard, available for sexual assault law, compared to force, resistance, or nonconsent standards.

But, if sexuality is relational, a power relation of gender, then consent occurs under conditions of inequality (MacKinnon 1983; see also Brown 1995) and cannot as a matter of fact be freely given. An equality framework provides us with a tool that can guide further reforms to the laws of consent. We have largely recognised that inequalities of power and knowledge between adults and children preclude children from given informed consent to sexual activity with adults.

The tests of consent with the legal system must come to terms with inequalities of power within relationships between adults.

Recommendation 8:
The laws of consent must be revised to recognise the limits to free and voluntary consent if there are inequalities of power (physical, social, psychological) within an event of sexual assault.

The second tool is the Canadian Supreme Court's 1999 striking conclusion that the accused's right to a fair trial "is to be understood in light of other principles of fundamental justice -- interests beyond those of the accused" (Denike 2000). The Court observed that the protection of accused's rights has created injustices against female complainants through the judicial toleration of invasions to her privacy, dignity and security. The Court finally began to analyse justice in terms of equality, recognising that all parties to a case have rights to privacy, dignity and security.

The particular case of the right to silence and its application to cases of sexual violence have been matters of long debate. Much of that debate is about the ancillary right – to remain silent without adverse inferences being drawn from that silence.

The third important tool in this reframing is Greer's (1990) commentary on the right to remain silent without adverse inferences. Greer (1990) observed that in England and Wales, some jurists argue that there are important differences between the circumstances in which the police accuse a person and in which another person is the accuser.

If the accused and the accuser are on equal terms – rather than being accused and witness -- it can be argued that silence should be taken as evidence that the accusations are true. Greer recoils from this argument as a general proposition, claiming that its acceptance should depend on the specific circumstances of the case – including the relationship between accused and accuser. (Such arguments in late 20th century England and Wales were, however, concerned particularly with defendants' rights in the light of evidence of police mis-behaviour during the investigations and trials of people accused of terrorism rather than with arguments about justice for victims of sexual violence).

In general, this right imposes important restrictions on the power that a state may exercise over an individual; even in Australia in the 21st century, the politics and treatment of refugees and the periodic scaremongering over terrorism indicate that marginalised groups need as many protections against the state as they can get.

Now let's use these tools to analyse cases of sexual assault and domestic violence. Greer's distinction leads to the view that in some cases, the identity of the assaulter is not known and the police have to investigate to find that person and to gather evidence that points to their guilt. Call this a 'standard criminal case'. But in other cases, the justice system is not dealing with state accusations against a person; rather the state is providing a forum within which one person accuses another of a crime against their person.

In the vast majority of cases, the accuser is a woman or child, the accused a man. In such cases, the state (i.e., the police) does not gather evidence in order to identify a suspect; the police simply assemble the evidence that is available. The accused is already known. Now, accused and accuser have equal status in the forum and the Canadian Supreme Court's conclusion can be applied: accused and accuser have equal rights to privacy, dignity and security. A fundamental, equalising change is required for the system of justice to deal fairly with such cases of sexual assault and domestic violence.

The justice system as a whole is supposed to protect individuals against the unreasonable use of power by the state, but a forum that hears the competing claims of an accuser and an accused is not one in which the power of the state is the dominant source of inequality. Rather, as currently constituted, the courts are in place in which the fundamental inequality is between accused and accuser.

The required change is to create a forum in which to hear one person's accusations against another while protecting both against the unreasonable exercise of power by either party or by the state. Such a forum must be a place in which equality of treatment is an overriding principle. If the accuser must tolerate invasions to her privacy, dignity and security, then so must the accused. Silence in such cases is an unreasonable exercise of power.

Recommendation 9:
In cases of sexual assault in which the court is essentially a forum that hears the competing claims of an accuser and an accused, both parties must be treated equally by court processes. The right to silence should no longer be invoked or apply. Accusers and accused must be required to tolerate equal invasions to their privacy, dignity and security.

Part D: Greenfield touchstone policies

*The law is an organic thing, defined by us, constructed by us, in light of all of our experiences. All of ours. And so, there are no excuses anymore, it must change. We must do better. Because the truth is that one in three women are sexually assaulted. We need to know they have a chance of being believed so that we know justice can be done. (*Miller 2019: 333)

The justice system in Australia has been built and maintained over generations largely within masculinist constructs and practices. The institutionalised nature of the system works against change.

Audre Lorde wrote a brilliant piece in 1984, widely cited because of its provocative title, *The Master's Tools will never dismantle the Master's House*. The necessary deeper cultural change to the justice system will not happen in a hurry. Efforts from outside need cranking up. The appetite for reform - and further reform still – needs nourishment and determined effort, from within the law itself, and from broader society.

We must seek to re-make the justice system if women are to achieve justice. If the justice system is to operate more fairly for women (a 'green fields site'), we must be mindful of the following touchstones for the reform effort.

Alternative forms of justice

There needs to be improved awareness and access to restorative justice as an option. The traditional adversarial legal model is not delivering 'justice' to victims of sexual violence, and we need to look further afield.

Even if an entirely fair a just criminal justice system was achieved, most sexual violence cases take place without any third-party witnesses or substantial physical evidence, making the prospect of meeting the required criminal threshold for a guilty verdict a challenge.

In these numerous instances, rather than dismissing victims with their 'not-guilty' verdict, alternative justice routes can provide a path through which victims can still have their voices and experiences heard and validated.

Many already see the restorative justice model as a fairer, more satisfying, and respectful option. Restorative justice centres on the victim-survivors needs, hinging on three powerful mechanisms for addressing harm:

- Victim's Voice: Restorative justice enables survivors to give a direct, first-hand narrative of the violence and its harmful impacts, unmediated by police statements, external parties or court processes.

- Validation: Restorative justice enables perpetrators (and others involved) to bear witness to the survivor's narrative and, in so doing, gain insight into and potential accountability for their crime.

- Future Plan: Restorative justice focuses on finding solutions to the harm caused. In most cases, it includes a pragmatic plan to address the immediate and longer-term impacts. In so doing, it provides some sense of justice to the survivor, though is not necessarily the end of their recovery journey." (Community Legal Centres NSW 2024)

The most common forms of restorative justice programs operating in Australia are victim-offender mediation, conferencing (for both adult and young offenders) and circle sentencing (AIC, 2014: vi). Building up this model would involve introducing national standards and training for practitioners of this process, building better referral pathways for suitable cases and demonstrating the efficacy and meaningful justice that this pathway can offer.

Recommendation 10:
The justice system must commit – culturally and practically – to supporting alternative paths to justice in Australia, viewing them as legitimate alternatives to criminal justice, and facilitating victim awareness of said possibilities.

Cultural training and vetting of justice system representatives

From the female perspective, the criminal justice system is a masculine cultural embodiment, not at all conducive to listening to or responding to crimes which disproportionately impact women. Deep seated cultural reform is needed in order to redefine the attitudes which dictate our opinion of sexual violence and its victims and how, as a society, we hold people accountable.

Sexual violence, largely towards women, has historically been viewed through a reductive lens, impacting the ways in which we tackle it, treat it and dignify it. If marital rape was only criminalised in Australian jurisdictions between 1976 and 1994 (Featherstone 2017), this highlights the crux of the long-held attitudes towards sexual violence and rape myths which endure to this day, and which devalue the experiences of women.

These cultural biases that women constantly confront on the road to "justice" result in victims feeling retraumatised, a diminished lack of trust in the system and an irreparable impediment to healing.

Globally, police officers are more likely to be violent with their partners than most other vocations; police are actively trained to use force as a solution to 'bad' behaviour, and this training can be observed in their personal relationships (Lonsway and Conis 2003: 132-140). Documents obtained by the ABC under Freedom of Information revealed at least 55 police officers around Australia were charged with domestic violence-related offences in 2019, with charges ranging from breaching protection orders, assault with a weapon, to strangulation, sexual assault, and making threats to kill (Gleeson 2020).

This trend is coupled with a culture in which a male-dominated police force 'closes in' on itself when allegations are made by women, with male colleagues taking unlawful steps to protect their friends against charges.

For example, a woman in NSW had an abusive husband who was a long-serving senior constable. When she reported him to police, his male colleagues quickly leaked her safety plan and pressured her not to report breaches of his intervention order (Gleeson 2024).

The Australian police force has been found to have a culture of closing ranks around accused colleagues, mishandling domestic violence investigations, and putting the welfare of abusive officers before that of victims (Gleeson 2021). This conclusion was reached after 'damning' revelations that police forces across Australia have been failing to hold domestic violence perpetrators in its ranks to account, advancing a culture of 'protecting their own' (Gleeson 2021).

This trend reflects the criminal justice system, constructed and led by heterosexual white men, protecting itself and its own dominant culture, just as it has done throughout history, with full criminalisation of marital rape not being introduced in Victoria until 1981 (AWHN 2016).

Recommendation 11:
A systematic cultural upheaval of the criminal justice system is required. In essence, this must include the dismissal of any criminal justice system representatives with a history of violence against women, mandatory education on violence against women from a women-centred perspective, a zero-tolerance policy on misogynistic comments and actions, and a more rigorous vetting process against misogynistic views and violent tendencies in hiring processes.

Representation of women and vulnerable groups

Sufficient representation of women in the justice system is critical to achieving justice for victims of sexual violence, who are overwhelmingly female with male assailants.

Given sexual violence is almost always a crime committed by men against women (90% of sexual assault offenders in 2019-2020 were male (Australian Bureau of Statistics 2022)), a prioritisation of women's considerations is integral to any effort to improve the rights and experiences of sexual violence victims.

- While equal representation is not currently achieved in any branch of the Victorian criminal justice system, the police force experiences by far the greatest rates of representative inequality:
- As of 2024, 23% of Victorian police Superintendents are women, 21% of Senior Sergeants, and 30% of Recruits (Victoria Police 2024). As of 2023, women make up 35.4% of the NSW Police Force (NSW Police Force 2023).

The police force is the first point of contact a victim has with the criminal justice system, and their role is therefore crucial to addressing low participation rates, and ensuring victims feel safe to pursue their claims through the criminal justice process.

It is crucial that all sexual violence victims have easy access to a female police officer when considering reporting their experience, as navigating a male officer in a position of power may be distressing for a victim of male violence.

This prospect is likely given the previously identified culture of male police officers banding together against female victims.

Consequently, one can assume a level of reluctance by female sexual violence victims to report their crimes to male officers, underlining the importance of equal representation in the police force when combatting low reporting levels.

Recommendation 12:
At the level of reporting there must be female officers always easily accessible for any victim wishing to report a crime.

Equal representation

Gender parity *throughout* the justice system is critical to ensuring women feel safe and that their rights are advanced throughout.

Women are more likely to speak and care about women's issues (Perez 2019: 265). This trend can be traced back through history. Early in the twentieth century, after women had become enfranchised, Vida Goldstein was able to show the raft of reforms and policies which emerged as prioritised as a direct outcome of lawmakers acknowledging their interests and concerns, including increased protection of married women whose husbands were guilty of cruelty to wife and children or who had neglected to provide maintenance, as well as improvements in the Married Women's Property Act (Goldstein 1907).

Considering sexual violence is experienced overwhelmingly by women, equal representation in the legal system will naturally work to ensure victim's rights and considerations are culturally prioritised, a necessity alongside formal legal protections and reforms. This representation must be actively achieved; given the justice system reflects a patriarchal, male-dominated system, we cannot simply wait for enough women to join and be welcomed into the system. Positive discrimination is required.

Recommendation 13:
The justice system overall must actively work to achieve equal representation for women. Indeed, it must strive for an overrepresentation of women to reflect their overrepresentation as victims of sexual assault, and to combat male cultural hegemony.

Overrepresentation of minority groups

When bringing a female-centred approach to sexual violence analysis, we must not dismiss the intersecting oppressions that minority women face as victims of sexual violence, and thus as participants in the justice system.

Minority victim groups include but are not limited to: Aboriginal and Torres Strait Islander women, members of the LGBTQ+ community, sex workers, immigrants, and ethnic minorities.

Australia is a nation diverse in cultures and ethnicities, with more than 28 per cent of the population born overseas, and more than 23 per cent speaking a language other than English at home (ABS 2022). In Australia, Aboriginal and Torres Strait Islander people are three times more likely to experience sexual assault than non-Indigenous Australians (QSAN 2024).

When bringing a case to the justice system, women from minority groups are not only facing the power dynamic of navigating a male-dominated, patriarchal system, but one built on a colonialist white hegemony, fraught with biases against minority ethnic and social groups.

Minority groups also face a range of structural barriers when seeking support, including language barriers, temporary and dependent visa status, as well as a lack of community and support networks.

Immigrants may be particularly affected by recent arrival to an unfamiliar country. Some immigrants, particularly refugees, are also at increased risk of migration-related trauma, with potential experiences of war or torture. These experiences of violence can affect a person's mental health, including their ability to cope in a new environment and developing post-traumatic stress (AIHW 2024)

With the same analytical lens in mind as outlined under 'Representation of women', we must advance an *overrepresentation* of minority women (in relation to population demographics) in the justice system, to account for their overrepresentation as victims of sexual violence, and to assist in accommodating the specific needs and concerns of vulnerable groups.

Recommendation 14:
The justice system must work to actively recruit representatives from minority groups to reflect their overrepresentation in victim demographics.

Alternative support for women and minority groups

We have previously established that sexual violence is a crime that disproportionately impacts women and girls, and minority and vulnerable groups. Subsequently, when designing a fair justice system, we must consider the specific *external* hurdles that women and minority groups face during the justice process and invest in support networks to alleviate these challenges. Without such considerations, any reforms to the workings of the justice system itself will be limited in efficacy.

External hurdles that disproportionately impact women and minority groups may include: the restrictions of reliance on casual work, the demands of childcare, lack of financial independence, lack of safe accommodation, close/dependant relationship with the accused, visa status instability/dependency on the accused.

As of June 2022, 16 per cent of families across Australia with children aged 0-14 years were single-mother families, with 3 per cent being single-father families (AIFS 2023). Childcare support is therefore integral to facilitating women's participation in the justice system, an often-time-consuming process.

Women in Australia are twice as likely as men to be working part-time and casually from age 35 – with 28 per cent of women being employed casually (WGEA 2023). Support must be in place to allow women the time away from their employment without financial repercussions. This may take the form of a reimbursement scheme, or it may be the case of operating more flexible hours in the justice system.

Of all sexual assaults recorded by police in 2022, 76 per cent were perpetrated by someone known to the victim (AIHW 2024). This reality highlights the necessity for free and safe alternative

housing if many victims are to feel safe in bringing their case to the justice system, given perpetrators will likely know and potentially have access to their current place of living.

There must be an open and accessible line of communication and referral between the justice system and these branches of support, ensuring all justice representatives are aware of the support services available to all victims, and that they actively provide this information to each victim initially and throughout the justice process.

Recommendation 15:
A network of external support systems must be developed in conjunction with the justice system, which works to alleviate any external hurdles that may prevent women and minority groups from engaging with the system.

Free legal support

Legal representation for victims is required to address many of the participatory failings outlined in the Commissioner's report, where victims who are engaging with the criminal justice system do not feel included or like they understand the process. It is imperative this support is offered free of charge, in order to achieve fairness for all victims, a particularly important point given the disproportionate lack of financial resources available to women.

Further support for the victims is needed too, including a representative who is on the legal team but is not one of the acting barristers. The representative's primary role is communicating to the victim and explaining timelines, dates, charges, processes, victim's rights etc.

Recurring problems that victims face include not receiving enough information about the justice process; not being central enough to proceedings or given enough agency and voice; and a lack of understanding of court proceedings and complex legal aspects leading to a feeling of exclusion and powerlessness.

Recommendation 16:
A free legal representative must be available to each victim who brings a case to the justice system, ensuring the victim understands and is included in each step of the process, and advocating for their legal rights on their behalf.

Recognition of violence against women in wider funding decisions

Lack of funding is an ongoing hurdle that stands in the way of justice reform and victim support. While a degree of funding limitations is inevitable, an analysis of existing funding distributions finds violence against women is not being valued equally to other forms of violence. A women-centered analysis is therefore required, followed by a just reallocation of resources.

In Australia, 39 per cent of women have experienced violence since the age of 15, with one women being killed every nine days by a current or former partner. In Australia, intimate partner violence contributes to more death, disability and illness in women aged 25 to 44 than any other preventable risk factor (Our Watch 2024).

Gender based violence costs Australia $26 billion a year (Australian Government 2023).

By any measure, violence against women presents a significant national threat to life and safety across Australia. And yet, when national funding is analysed, women's lives are given little monetary value:

- The 2022-23 Budget provides $1.3 billion over 6 years (from 2022) to address family, domestic and sexual violence under the first phase of the new National Plan to End Violence Against Women and Children 2022-32 (Parliament of Australia 2023)
- That equates to around $216 million/year
- By comparison, the Australian Government will invest $116.4 million in this month's Budget to implement reforms to counter-terrorism and anti-money laundering (Attorney-General's Department 2024)
- While domestic and sexual violence receives a larger sum, when accounting for the number of deaths caused by domestic violence per year (1 woman every 9 days), compared to the 11 fatalities sustained as a result of terrorist events between 2009-2019, there is a huge disparity in funding.
- Based on these statistics, the funding for domestic and sexual violence should be around 40 times that of terrorism, whereas it is currently at 1.3 times.

This disparity must be corrected if we are to value women's lives as highly as men's. This disparity correction will provide significant funding towards the previous recommendations made in this response.

Recommendation 17:
A national review into funding to support women victims is urgently required to reflect the scale of the issue. Funding levels must match the significance, scale and cost of the issue of men's violence against women and children.

Part E: Summary of recommendations

Recommendation 1:
Continuing education of investigators, prosecutors, lawyers and judges is crucial. It must prevent the use of language in investigative and court processes to denigrate women and to violate their dignity.

Recommendation 2:
Investigators, prosecutors, lawyers and judges must be monitored and held accountable for their understanding and practice in the appropriate uses of language within investigations and court processes.

Recommendation 3:
Public reporting of information about accused persons and witnesses must be limited to material that is permitted within a court, at least until after judgement and appeals are completed.

Recommendation 4:
Police and legal professionals who are found on the balance of probabilities to have committed acts of sexual harassment must be excluded from working on cases of sexual assault.

Recommendation 5:
Police and legal professionals who are found on the balance of probabilities to have committed acts of sexual assault or domestic violence must be excluded from the legal system.

Recommendation 6:
Investigative and court procedures must be analysed by women from First Nations and non-Western European backgrounds to identify barriers to women from those communities reporting sexual violence and to receiving fair hearings.

Recommendation 7:
Legislation must include systems to monitor the actual processes through which the law is practised (police procedures, prosecutor decision systems, bench books and court proceedings) and to report on the implementation of those reforms.

Recommendation 8:
The laws of consent must be revised to recognise the limits to free and voluntary consent if there are inequalities of power (physical, social, psychological) within an event of sexual assault.

Recommendation 9:
In cases of sexual assault in which the court is essentially a forum that hears the competing claims of an accuser and an accused, both parties must be treated equally by court processes. The right to silence should no longer be invoked or apply. Accusers and accused must be required to tolerate equal invasions to their privacy, dignity and security.

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The justice system must commit – culturally and practically – to supporting alternative paths to justice in Australia, viewing them as legitimate alternatives to criminal justice, and facilitating victim awareness of said possibilities.

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Recommendation 17:
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