



Law Council  
OF AUSTRALIA

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

**Attorney-General's Department**

**12 May 2023**

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# About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level, speaks on behalf of its Constituent Bodies on federal, national and international issues, and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2023 are:

- Mr Luke Murphy, President
- Mr Greg McIntyre SC, President-elect
- Ms Juliana Warner, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Ms Tania Wolff, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au).

## Acknowledgement

The Law Council acknowledges the assistance of its Access to Justice, National Criminal Law and Young Lawyers Committees, the Law Society of New South Wales and the Queensland Law Society in preparing this submission.

## Introduction

1. The Law Council is grateful for the opportunity to provide a submission to the Attorney-General's Department in response to the Discussion Paper, 'Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault' (**Discussion Paper**). This submission addresses questions 8 to 12 of the Discussion Paper.
2. The Law Council supports the National Plan to End Violence against Women and Children (**National Plan**) and is committed to advocating for meaningful reform to protect victims and survivors of sexual violence and uphold a fair, just and accessible legal system in Australia.
3. The Law Council has previously welcomed the recognition in the National Plan that there is a need to implement appropriate measures to improve criminal justice responses to sexual assault and to promote fair justice outcomes in these matters.<sup>1</sup> The Law Council considers that this is only achievable if much needed additional funding for the legal assistance sector is provided. It cannot be achieved with the current resourcing of the sector.
4. The Law Council welcomes consideration by the Australian Government of ways to provide victims and survivors of sexual assault with full and supported access to the justice system, including by developing specialist and trauma informed legal services for victims and survivors of sexual assault. Such a measure is a positive step towards removing barriers faced by victims and survivors when accessing the support they need.
5. Recent funding initiatives have failed to acknowledge or address the sustained reduction and inadequacy in recurrent expenditure on the core services of the justice system. Funding to conduct a pilot to develop a trauma-informed legal services model in three locations is welcomed. However, its effectiveness must be considered within the broader context of a justice system lacking the resources to meet current pressures and demands in particular the extensive strains on the legal assistance sector.
6. Essential frontline legal support services remain chronically underfunded and unable to meet the needs of the many people seeking their services, including those affected by sexual violence. The Law Council emphasises the need for significantly improved baseline funding for legal assistance sector services including Legal Aid Commissions (**LAC**), Aboriginal and Torres Strait Islander Legal Services, Community Legal Centres (**CLC**) and Family Violence Prevention Legal Services. Additional baseline funding of the legal assistance sector is necessary to ensure the provision of timely, specialised assistance and support to clients.
7. The judicial system and allied services also require significant additional and ongoing resourcing and funding in order to be appropriately equipped to support increasing demand at both the initial contact and on an ongoing basis.

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<sup>1</sup> Law Council of Australia, 'Ending violence against women and children' (Media Release, 18 October 2022) <<https://www.lawcouncil.asn.au/media/media-releases/ending-violence-against-women-and-children>>.

# Responses to the Discussion Questions

## Question 8

### How can we best ensure legal services are trauma-informed, victim- and survivor-centric, culturally safe and accessible for victims and survivors and service providers?

8. In developing a pilot model for comprehensive legal services for victims and survivors of sexual assault (**the service**), the Government should consider:
- equipping the service to provide legal advice across the various legal matters that can interplay with sexual assault matters, including sexual assault communications privilege, apprehended domestic violence orders, family law proceedings and victims of crime compensation claims;
  - ensuring that appropriate support services are available to victims and survivors at all stages after a sexual assault has occurred. This could include the availability of timely and accessible non-legal support soon after the occurrence of sexual assault, and any beneficial assistance after the conclusion of proceedings related to a sexual assault complaint. It might further include administrative assistance in obtaining victims compensation and engaging with longer-term support services as appropriate;<sup>2</sup>
  - ensuring that the delivery of legal services remains as consistent as possible for victims and survivors of sexual assault to avoid repeated re-traumatisation of the incident by having the victims and survivors retell their stories. The legal services should work with allied health workers, primary health workers, and other service providers to ensure information sharing (to the extent that this does not breach confidentiality) and long-term support are the focus at all times;
  - maintaining the legal service's independence from the police and prosecution services;
  - providing victims and survivors with non-legal, social and emotional support throughout the criminal justice process, including by involving social workers as appropriate, and/or providing access to counsellors and psychological services; and
  - ensuring that all services are available and accessible to a diversity of complainants, victims and survivors of sexual assault, including those who are also offenders and/or experiencing incarceration.
9. The Law Council also suggests that the design of the pilot program be informed by the recommendations contained in the Queensland Women's Safety and Justice Taskforce's Hear Her Voice Report.<sup>3</sup> In particular, the recommendation in relation to

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<sup>2</sup> The Law Council notes that in some jurisdictions, such as New South Wales, it is possible to apply for victim of crime compensation prior to the end of any proceedings.

<sup>3</sup> Women's Safety and Justice Taskforce, Hear Her Voice (Report 2, 2022)

<[https://www.womenstaskforce.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf](https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0008/723842/Hear-her-voice-Report-2-Volume-1.pdf)>.

the establishment of a model for the delivery of a professional victim advocate service is highly relevant.<sup>4</sup>

10. The Law Council emphasises that victim advocate services should not take the place of legal practitioners in advising victims and survivors in relation to their legal matters. However, victim advocates could provide individualised, culturally safe, trauma-informed support to victims and survivors of sexual violence to assist them in navigating through the service and criminal justice systems and beyond.
11. The functions of victim advocates could include:
  - providing impartial information to victims and survivors about the service and criminal justice systems and options available to them;
  - supporting victims and survivors to understand and exercise their rights;
  - identifying and assisting victims and survivors to address their individual needs including through referrals to services; and
  - liaising across the service and criminal justice systems on behalf of victim-survivors, and being the consistent point of contact for victims and survivors throughout their criminal justice system journey.
12. In performing these functions, the victim advocate service model would seek to:
  - empower those experiencing sexual violence;
  - enable advocates to provide holistic, individualised and specialised support, including specialised expertise and understanding of working with children and young people;
  - provide support regardless of whether a person chooses to engage with the criminal justice system; and
  - give priority to people who currently have limited access to the services they need, have complex needs or particular vulnerabilities and/or face the most complex interactions between services and systems.
13. The Law Council suggests that consideration be given to the victim advocate model in the development of specialised and trauma-informed legal services for victims and survivors of sexual assault.
14. The development of the pilot to enable greater access to specialised services for victims and survivors of sexual assault should also involve a comprehensive assessment of the necessary short- and long-term funding required to ensure the new model is able to respond nimbly and effectively.

## Question 9

### What legal service delivery approaches or models should the pilot explore as a priority?

15. An overarching theme recognised by the Law Council in developing the Final Report of the Justice Project was that multidisciplinary teams and collaborative, joined-up

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<sup>4</sup> Ibid recommendation 9.

service delivery can be effective strategies within the justice system.<sup>5</sup> In particular, these strategies can ensure that a client's multiple needs can be addressed comprehensively and seamlessly to respond to a client's complex circumstances, instead of addressing each individual need through 'siloes' responses.<sup>6</sup> On this basis the Law Council recommended that governments should support multi-disciplinary collaborations which address legal and non-legal needs.<sup>7</sup>

16. In the Law Council's view, funding should be targeted towards specialised and experienced legal services which are co-located with other support services (such as specialist sexual assault services, women's health services, hospitals, and Aboriginal and Torres Strait Islander community controlled health services) so that referrals can be made quickly and easily.
17. In particular, funding should be targeted towards training specialist legal practitioners from established legal assistance services (such as a LAC or CLC), to ensure that they have a trauma-informed skill base, and co-locating these legal practitioners with other service centres as needed. Ideally, lawyers working at the service should maintain employment with an existing 'homebase' LAC or CLC so that they can still access the support and supervision of that service.
18. Co-located services should ensure that victims have easy access to well-coordinated and complementary services which would also in turn, minimise the need for a victim to tell their story multiple times and avoid the re-traumatisation that this can cause. Sufficiently funded and appropriately resourced single service centres also offer the following advantages:
  - legal practitioners (including those seconded from other services) would be trained using a consistent, evidence based methodology;
  - improved continuity for the service in the case of fluctuating demand or if a lawyer resigns or needs leave; and
  - the service can leverage on the experience of other providers as the 'homebase' legal service can advise them on what works well elsewhere insofar as the legal work is concerned.
19. In developing models for co-located services, the Law Council notes that it is important that legal practitioners working in these services are supported and supervised by professionals who are also legally trained, who recognise the importance of legal advice being separate to organisational policy objectives and the obligations which apply to the legal practitioner.<sup>8</sup> Without this support practical difficulties can emerge for the legal practitioner including in relation to maintaining privilege and managing conflicts of interest.

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<sup>5</sup> Law Council of Australia, *Overarching Themes* (The Justice Project, Final Report, August 2018) 50-53 <[https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/JP%20Overarching\\_Themes.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/JP%20Overarching_Themes.pdf)>

<sup>6</sup> Ibid 51.

<sup>7</sup> Ibid. See also, Law Council of Australia, *Legal Services Chapter* (The Justice Project, Final Report, August 2018) 91, recommendation 2.14 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%202%29.pdf>>.

<sup>8</sup> Ibid 88.



## Question 10

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

20. There is a need to improve the criminal justice system's understanding of trauma and its impact on those who come into contact with the criminal justice system, both as offenders and victims and survivors. The Law Council notes that victims and survivors may feel disconnected from the criminal justice process, and that assistance by a dedicated social worker or other trained professional may assist them throughout.
21. The Law Council notes that there is a need to improve the provision of adequate information and referrals to support services when victims and survivors first come into contact with the criminal justice system, for example, when they report their experience to police. Further training for police and others may be required, along with sufficient resourcing, to ensure that victims and survivors can be properly assisted to access support services.
22. The following issues should be the subject of further review and improvement:
  - effective referrals for victims and survivors to appropriate support services at the time of complaint (e.g. rape crisis counselling, 1800RESPECT for safety planning, and so on). Members of the legal profession report that this is a particular problem in regional, rural and remote (RRR) communities;
  - language and cultural barriers to someone communicating their needs—in particular, a lack of access to a female interpreters or appropriately trained interpreters where English is not the victim/survivor's language;
  - training and education programs for those who come into contact with victims and survivors throughout the criminal justice system; and
  - engagement with victims and survivors throughout the complaint process to keep them informed of progress in ways that meet their particular needs.

## Question 11

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

23. The Law Council recognises the importance of data collection in order to ensure evidenced-based decision making can occur as part of meaningful reform. In the Law Council's view, it is important to collect and measure both qualitative and quantitative data to ensure that the overarching policy objectives are achieved. Such data might include the duration of time between Court referral/order and engagement with service/allied health providers, attendance rates, completion rates and 'drop off' rates (i.e. people who make initial inquiries but who stop responding or 'go quiet').
24. In particular, the Law Council notes that there is a lack of data about the nature and extent of violence against women with cognitive or intellectual disabilities. This corresponds with a lack of information and knowledge about the best ways to

respond to and prevent that violence.<sup>9</sup> A key area of concern is the over-representation of women and girls with cognitive or intellectual disabilities as victims and survivors. When measuring the success and impact of the legal service pilot, particular regard should be had to ensure this data is collected.

## Question 12

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

25. The Law Council identified in the Final Report of the Justice Project that while critical support services underpin justice responses, by aligning with justice-related services to deliver therapeutic, problem-solving and diversionary strategies, these services are often not equally available in RRR areas.<sup>10</sup> This is despite there being evidence that there can be particularly strong demand for these services in certain RRR areas.<sup>11</sup> Consideration could be given to how a pilot service might be implemented in a RRR location.
26. The Law Council also suggests that the establishment of the pilot services be supported by the provision of clear ethical guidelines to legal practitioners working in the service to ensure that:
  - there is proper independence from police and prosecution;
  - the legal practitioners do not become involved in the investigation of allegations or the gathering of evidence; and
  - any legal advice or related support does not extend to conduct which could amount to 'coaching' a victim witness, including indirectly or unintentionally, about the content of evidence to be given.

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<sup>9</sup> The Law Council notes Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability remains ongoing that there may be emerging research reports, evidence and recommendations arising from that Royal Commission regarding violence against women with cognitive or intellectual disabilities and how services providers, such as those anticipated by this pilot, should assist in responding to and preventing it.

<sup>10</sup> See also, Law Council of Australia, *Critical Support Services Chapter* (The Justice Project, Final Report, August 2018) 4, 59-60 <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Critical%20Support%20Services%20%28Part%20%29.pdf>> . See also, more generally, Law Council of Australia, *Rural, Regional and Remote (RRR) Australians Chapter* (The Justice Project, Final Report, August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Rural%20Regional%20and%20Remote%20%28RRR%29%20Australians%20%28Part%20%29.pdf>>.

<sup>11</sup> Ibid.