

Submission to the Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

Submitted by: **Body Safety Australia**

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Submission Summary

BSA is a youth-focused violence prevention organisation. This submission, therefore, is directed at recommendations for services and support for children and young people who have engaged in harmful sexual behaviours and/or experienced sexual violence.

We are recommending:

- A referral based restorative justice pilot program for young people who have experienced sexual violence from peers.
- A national accreditation scheme for therapeutic and educational providers of programs to children and young people who have engaged in harmful sexual behaviours.

About Body Safety Australia

Body Safety Australia (BSA) is Victoria's leading not-for-profit organisation delivering education programs for the prevention of childhood sexual abuse and gender-based violence. Our purpose is to promote childhoods free from violence where children enjoy equitable and respectful relationships.

Founded in 2015, BSA has delivered childhood sexual abuse prevention, consent, respectful relationships, diversity, and body image education programs to more than 98,000 children, young people, teachers, educators, parents, and carers in schools and preschools around Australia.

Our approach is centred on leading collaborative community solutions that foster robust, respectful relationships with children and young people. To enable this, we work with government and education experts to ensure that our evidence-based programs align with curriculum and legislation, and are trauma informed, best practice, culturally sensitive, and inclusive of all children and young people.

Young people who commit and/or experience sexual violence

According to the most recent Australian Bureau of Statistics (ABS) Recorded Crime Data¹, over 32,000 reports of sexual assault in 2022. Almost 85% were women, 46% were from people under the age of 18 and 38% were girls under 18. ABS data on offenders² demonstrates a significant discrepancy, with just over 9,500 sexual violence offenders recorded, 93% were males and 15% were under 18. The ABS³ estimates that 92% of women who experienced sexual assault in 2021-22 did not report it to the police.

¹ Australian Bureau of Statistics (2022), Recorded Crime - Victims, ABS Website, accessed 20 March 2024

<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2022#data-downloads>
² Australian Bureau of Statistics (2022-23), Recorded Crime - Offenders, ABS Website, accessed 20 March 2024.,
<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/2022-23#data-downloads>

³ Australian Bureau of Statistics (2021-22), Sexual violence, ABS Website, accessed 20 March 2024

<https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22#support-seeking-and-police-contact>

This means the actual number of sexual assaults in 2022 could be as high as 390,000 and we can infer that around one third of those sexual assaults were committed against girls under 18.

We also note that ABS data⁴ shows that just over 4,700 people were found guilty of sexual assault offences in 2022-23. While these victims and offenders will not match exactly, due to time taken by investigation and court proceedings, the numbers are broadly consistent across time, which indicates that **for each sexual assault conviction in Australia there are around 80 sexual assaults occurring where the offender is not reported, investigated, or convicted.**

This is consistent with our experience teaching consent, respectful relationships, and body safety education in schools and preschools. Our educators receive, on average, one disclosure of sexual violence each week from students. While we accept that mandatory reporting requirements might influence the disproportionately high representation of girls under 18 in the reported sexual assault data, we are concerned that, despite the overwhelming majority of teenage girls reporting peer perpetrators to us, this is not reflected in the offender data captured by police. In our experience, this discrepancy is explained by reluctance expressed by almost all adolescent girls to pursue a legal case against their assailant. They give a range of reasons for this reluctance, including:

- fear of retribution by the perpetrator and/or his friends,
- shame and fear their peers will not believe them,
- not wanting investigation and possible trial to consume the remainder of their school years,
- they do not want the offender punished,
- they want acknowledgement and remorse and do not believe the criminal justice response will provide this,
- reluctance to cause distress to their families.

Victim survivors, teachers, school leaders, and youth advisory committees have all expressed to us that they are deeply frustrated that there are only two options available: report to police or do nothing. Both options are perceived as dangerous, frustrating, and harmful to all concerned.

In the classrooms, our educators have observed varying responses from boys and young men identified as perpetrators of sexual violence against fellow students, including:

- Shame and distress that they didn't know or felt unable to manage non-consensual sexual contact,
- Bravado and amusement (performed for their peers) that they will not be held accountable for their actions,
- Anger and defensiveness over what they perceive as false allegations,
- Disengagement from any responsibility to understand or seek consent.

Given the prevalence data cited above, this dynamic is occurring in almost every school in the country and is causing enormous harm to all the young people directly involved, as well as having significant impact on their peers, teachers, and families.

BSA believes the principles of natural justice, which require a presumption of innocence and a high standard of proof, combined with long delays and the adversarial nature of Australia's criminal justice system make it incompatible with a victim-centred, age-appropriate, culturally sensitive, and trauma informed response to sexual violence between young people. While we would never want to deny young

⁴ Australian Bureau of Statistics (2022-23), Criminal Courts, Australia, ABS Website, accessed 20 March 2024
<https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2022-23#cite-window1>

people the option of seeking justice through the legal system, we strongly encourage believe they would benefit from an alternative that offers a restorative justice approach.

Restorative justice alternatives to the criminal justice system

Confidentiality is key to success. Our educators report that one of the most common questions from boys and young men in consent education classes is around how to protect themselves from false allegations or how defend themselves from official investigations of what they view as “mistakes”. These boys are incredulous when our educators present them with evidence that false allegations are rare and conviction rates for rape are low.

The National Community Attitudes Survey says 43% of young men agree that “It is common for sexual assault accusations to be used as a way of getting back at men” and young men are 2½ times more likely than young women to agree that “Many allegations of sexual assault made by women are false”.⁵

In our experience in delivering violence prevention education, we have seen that independent schools are often in a particularly difficult position in responding to their students who are perpetrators of sexual violence. These schools depend upon parents paying sometimes very high fees and are understandably concerned a perception that school leadership is strongly in favour of reporting all accusations of sexual violence to police could jeopardize their ability to attract and retain male students. At the same time, they could suffer equal reputational damage if they were to refuse to take any action to address perpetration of sexual violence. The lack of available alternatives puts such schools in an invidious position. BSA believes these schools would welcome a confidential, independent alternative to the criminal justice system that could provide restorative justice to victim survivors and take a therapeutic and educational approach to youth perpetrators.

Sexual violence and child sexual abuse and exploitation material

All jurisdictions in Australia separate sexual violence committed against adults and sexual violence committed against children. While we agree with this separation, we note the increasing prevalence of sexual violence committed against children by other children and young people. In the context of criminal justice response, this increase is of particular concern in the production and consumption of child sexual abuse material (CSAM) and child sexual exploitation material (CSEM).

Australian research⁶ shows a significant connection between viewing CSAM, contact child sexual abuse and exploitative actions to view live streaming CSAM.

The evidence that peers and siblings are often perpetrators of child sexual abuse is not new⁷, but there is now increasing evidence that children and young people are being coerced and manipulated into producing CSAM and CSEM for adults to consume (reference). The Internet Watch Foundation (IWF) is reporting increases in child extortion⁸ involving sexualized images, with teenage boys being the primary

⁵ Coumarelos, C., Roberts, N., Weeks, N., & Rasmussen, V. (2023). *Attitudes matter: The 2021 National Community Attitudes towards Violence against Women Survey (NCAS), Findings for young Australians* (Research report, 08/2023). ANROWS.

⁶ Teunissen C & Napier S (2023), *The overlap between child sexual abuse live streaming, contact abuse and other forms of child exploitation*. Trends & issues in crime and criminal justice no. 671. Canberra: Australian Institute of Criminology.
<https://doi.org/10.52922/ti78993>

⁷ Gewirtz-Meydan, A., & Finkelhor, D. (2020). *Sexual Abuse and Assault in a Large National Sample of Children and Adolescents*. Child Maltreatment, 25(2), 203-214. <https://doi.org/10.1177/1077559519873975>

⁸ Internet Watch Foundation, *Teenage boys targeted as hotline sees 'heartbreaking' increase in child 'sextortion' reports*, (2024), <https://www.iwf.org.uk/news-media/news/teenage-boys-targeted-as-hotline-sees-heartbreaking-increase-in-child-sextortion-reports/>

targets. Additional analysis by IWF has shown a significant rise⁹ in children being tricked or coerced into producing CSAM of themselves or their siblings and friends.

This presents a challenge to law enforcement and criminal justice response that must be addressed.

The internet is not a place where children go, it's a place where children live.

Additionally, the online world cannot be separated from young people's experience of contact sexual violence. We regularly hear from young people who understand the potential retribution for reporting perpetrators sexual violence will combine online and in-person attacks. They are very well aware that perpetrators can and do evade blocking to commit ongoing stalking and harassment, both as a precursor and a follow up to sexual violence. Young people express little faith in law enforcement's ability to address this online violence or to understand it as a continuation of sexual assault and a barrier to reporting.

Recent research¹⁰ in Australia into intervention approaches for children who engage in harmful sexual behaviours found "the current state of knowledge is limited". However, a **"key finding of this review was that growing awareness that children and young people who engage in harmful sexual behaviors are, first and foremost, children. They should not be regarded as soon-to-be-adults who are engaging in adult offending."**

Recommendations

Restorative justice option for young people: We recommend investing in a pilot program of a voluntary, independent, confidential, specialist, restorative justice program for young people who have engaged in harmful sexual behaviours and/or experienced sexual violence.

- While we encourage the pilot program to accept referrals from schools, as noted above, we are aware of the pressures that schools and school leadership experience from parents and students. We do not believe this program would be effective or trusted if it was conducted for or by individual schools or school-based staff. Therefore, we strongly recommend that the pilot program and all facilitators must be independent of the education system.
- We suggest consultation with the National Children's Commissioner and state-based commissioners for children and young people to establish the most relevant governing body for the pilot program.
- The pilot program would also require support from all relevant jurisdiction to ensure that all communications in the program are inadmissible in future criminal trials and that all participants are able to provide fully informed consent to this before proceeding.
- Program facilitators need to be specially trained in mediation and responding to young people who have experienced and/or engaged in sexual violence.
- **While it may not be practical for a pilot program, we strongly recommend the development of a national accreditation scheme specifically for facilitators of restorative justice programs for young people who commit or experience sexual violence to ensure such programs remain safe and effective. This accreditation should encompass expertise in therapeutic mediation, youth-focussed engagement, a deep understanding of the nature and dynamics of gender-based and sexual violence and be subject to ongoing reevaluation and review.**

⁹ Internet Watch Foundation, 'Beyond heart-breaking' abuse as predators groom children to film siblings and friends, (2024) <https://www.iwf.org.uk/news-media/news/beyond-heart-breaking-abuse-as-predators-groom-children-to-film-siblings-and-friends/>

¹⁰ McPherson, L., Vosz, M., Gatwiri, K., Hitchcock, C., Tucci, J., Mitchell, J., Fernandes, C., & Macnamara, N. (2024). *Approaches to Assessment and Intervention With Children and Young People Who Engage in Harmful Sexual Behavior: A Scoping Review*. Trauma, Violence, & Abuse, 25(2), 1585-1598. <https://doi.org/10.1177/15248380231189293>

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- Outcomes for youth offenders must be educative and therapeutic rather than punitive. Education programs need to focus on directly challenging beliefs that underpin sexual violence and provide effective tools to support behavioural change (noting that in our experience, changed attitudes do not always result in changed behaviours unless behaviour is addressed and practical tools to enable behavioural change are provided).
 - We recommend the establishment of a national accreditation scheme - with ongoing evaluation and review - for providers of such education to ensure these programs remain safe and effective.
 - Outcomes for youth victim-survivors must be restorative, healing, strength based, and long term.
 - Victim-survivors need experienced, specialist support to participate safely and ensure they are not subjected to pressure from peers, schools, families, or perpetrators to engage with a restorative justice program rather than a criminal justice response.
 - We strongly recommend a co-design approach to program design and outcomes, along with ongoing expert evaluation and review to ensure the program design is effective, impactful, appropriate, and retains ongoing support from young people.

Rehabilitation and educative options for youth offenders in the criminal justice system: where restorative justice options are not available, children and young people who participate in the criminal justice system need a therapeutic rather than punitive response.

- The Commonwealth should clarify that children and young people who engage in harmful sexual behaviours due to instigation, manipulation, or exploitation of an adult are victims not perpetrators of criminal behaviour.
- Law enforcement and courts need a clear pathway to a range of age appropriate, evidence based, culturally appropriate prevention/early intervention programs for children and young people convicted of sexual violence.
- The Commonwealth should consider partnering with the eSafety Commission or state based Commissions for Children and Young People to establish a menu of expert providers who can deliver, evaluate, review, and update effective, inclusive, and safe education programs for children and young people who have been found to have engaged in harmful sexual behaviours.