



**NASASV Submission in response to -
Scoping the development of specialised and
trauma-informed legal services for victims and
survivors of sexual assault
Discussion Paper, March 2023**

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About NASASV

The National Association of Services against Sexual Violence (NASASV) is the peak body for over 120 specialist sexual assault services who provide response services to all people who have experienced sexual violence including, trauma informed crisis care, counselling to manage and reduce the impacts of sexual violence, assistance to access medical and forensic services, and advocacy and support with reporting to police and dealing with the criminal justice system.

In addition, our services also engage in sexual violence prevention work including supporting schools to deliver Consent and Respectful Relationships sessions and community education.

We are dedicated to bringing about change to eliminate sexual violence through advocacy to improve policy and legislation, promotion of good practice to improve service program responses and increasing community awareness.

More information about NASASV is available on our website at [NASASV](#)

Acknowledgements

The National Association of Services against Sexual Violence wishes to acknowledge state member agencies who contributed to this submission directly.

NASASV also wishes to acknowledge and thank the many sexual assault victims who, in sharing their experiences with our member services, continue to inform our practice and support our work to prevent sexual violence.

National Association of Services against Sexual Violence acknowledges the Traditional Owners of country throughout Australia. We pay our respects to Aboriginal people and their cultures, and to elders past, present and emerging.

Sexual violence rates in Australia are high and increasing.

Recent ANROWS data (2022) shows the lifetime prevalence of sexual violence has been significantly underestimated:

- 51 per cent of women in their twenties have experienced sexual violence.
- 34 per cent of women in their forties
- 26 per cent of women aged 68 to 73.
- 1 in 25 men have experienced sexual assault.
- More than 1 in 10 girls experience sexual abuse before the age of 15.
- In 2021, police recorded a 13% increase in victims of sexual assault on 2020 – this represents the 10th year in a row of increased reporting. (ABS)

These alarming statistics highlight that sexual violence is much more common than previously thought and suggests that responding to the impacts and effective prevention of future sexual violence will require significantly more investment over time.

Removing barriers to reporting violence and engaging with criminal justice process and ensuring access to fair justice outcomes for victim survivors.

Regrettably, only a minority of sexual victims report their assault to police. According to the 2016 Personal Safety Survey, of the 639,000 women who experienced sexual assault by a male perpetrator in the ten years prior to survey, only 13% (86,000) contacted the police about the most recent incident. For those who do decide to report, participating in our current justice processes often proves too difficult with many victim survivors commencing the process of reporting only to become disheartened and become part of the attrition statistics.

Those who do continue to court frequently report that this experience is, in some cases, as re-traumatising as their original assault. Universally, victims report that their experience of the legal system results in them being minimised as mere ‘witnesses’ to violent crimes that were actually committed against them.

I felt that the perpetrator was seen as ‘innocent until proven guilty’ but that I was seen as ‘a liar until proven truthful’. (1)

Although the above quote belongs to a victim survivor of sexual violence in the UK, NASASV’s experience is that her statement would resonate deeply with a majority of victim survivors who have sought to report sexual assault and engage with the Australian justice system. Legal reforms are desperately needed to circuit break the current inadequate outcomes of our criminal justice systems for sexual violence victims and ensure legal accountability for those who use sexual violence.

NASASV thanks the Attorney General for the opportunity to respond to this important Discussion Paper and wishes to provide the following information and recommendations in response to the Discussion Questions targeted to All Stakeholders. NASASV would be very pleased to further discuss this submission with the Attorney General and relevant staff from the Responses to Sexual Assault section of the Criminal Justice Reform Taskforce

Many thanks for considering our submission,

Jo Sheehan-Paterson, OAM

Chairperson, National Association of Services Against Sexual Violence

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

Questions for all stakeholders:

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

NASASV suggests three key strategies to ensure legal services are trauma-informed, victim- and survivor-centric, culturally safe and accessible for victims and survivors and service providers:

- a) Training for all legal service staff in trauma-informed practice
- b) Ongoing client-friendly feedback opportunities so victim-survivors can provide feedback regarding their experience of legal services.
- c) Continuous quality improvement processes. For example, the Sexual Assault Response Team (SART) toolkit, developed by the National Sexual Violence Resource Centre in the US (2) provides resources to guide the development of effective coordinated and integrated sexual assault systems. The Toolkit supports processes for continuous evaluation of how systems are working. SART systems include quarterly meetings between police, courts (judges, lawyers), hospitals, Sexual Assault Forensic Examiners (the US equivalent of VIFM), sexual assault services peaks to look at case studies and initiate continuous quality improvement processes. This supports ongoing and responsive change.

In relation to a) ensuring all relevant legal service staff are trained in trauma-informed practice, NASASV notes the recent Closed Grant Opportunity (G06100) for Education and Training for the Justice Sector on Family, Domestic and Sexual Violence. While NASASV commends the government for initiating this project, we would like to highlight that specialist sexual violence services also have training expertise relating to the provision of trauma-sensitive practice and would respectfully like to suggest that NASASV and state Sexual Violence peak bodies be considered for inclusion in future open and closed grant opportunities.

9. What legal service delivery approaches or models should the pilot explore as a priority? Some examples of potential models include:

- **legal services co-located with other support services (like health or social services) or multi-disciplinary centres incorporating specialist legal services**
- **funding for civil proceedings**
- **end-to-end legal service support, including in-court legal advocacy**
- **expanded access to choice and control over how and when victims and survivors report to police, submit to forensic examination, provide other evidence, and engage with prosecutors and the court or restorative justice.**

NASASV proposes that the three service delivery models the pilots should explore as a priority are:

- Independent Sexual Violence Advisors
- Sexual Violence Legal Teams
- End-to-end legal service support, including in-court legal advocacy.

Independent Sexual Violence Advisors

As the 2021 Victorian Law Reform Commission report, *Improving the Justice System Response to Sexual Offences*, notes, independent sexual violence advisers (ISVA) have been available in England and Wales since 2007. In these jurisdictions they are generally social workers or counsellors who provide emotional and practical support to people who have experienced sexual violence, including assistance with understanding and navigating the legal system. Scotland has recently piloted a similar model. (3)

NASASV envisages a more specific legal role for independent sexual violence advisers than the UK model with the key functions of the advisors being to:

- provide accurate and impartial (legal) information to victim survivors regarding their rights and legal options.
- provide support before, during and after criminal and civil proceedings.
- act as a single point of contact in relation to the legal process.

Under the UK model, independent sexual violence advisors also:

- tailor support to the individual needs of the person they are supporting (including undertaking a needs assessment, ongoing risk assessment and developing a counselling/support plan)
- provide emotional and practical support.
- ensure the safety of victim survivors and the safety of their families.

NASASV service member experience is that in Australia, these functions are adequately and most appropriately undertaken by the counsellor advocates of specialist sexual violence services.

NASASV suggests that the key gap that an ISVA pilot program is needed to address is lack of legal information and support to engage with the criminal justice system and therefore that legal advocacy should be their key focus. NASASV strongly believes that this separate legal advisor is needed and that proposing a broader ISVA role that also entails a broader support and case management function may result in a confusing overlap with specialist sexual violence counsellors.

NASASV strongly supports the collocation of independent sexual violence advisor pilot programs with specialist sexual violence services and has previously noted 'A program of Independent Sexual Violence Advisers is needed to guide and support victim survivors through the legal system and reduce the risk of re-traumatisation. NASASV believes this program should be embedded within existing specialist sexual assault services.' (4)

NASASV envisages that the independent sexual violence advisers could be a mix of both sexual violence lawyers and counsellor advocates with a legal support focus.

Advantages of pilots having both types of practitioners are:

- The lawyers and counsellor advocates would work together using a multidisciplinary approach to ensure legal responses are trauma-informed and that the re-triggering impacts of the legal process so commonly identified by victim survivors during the justice process are avoided or reduced.
- Under this option, lawyers co-located with sexual violence services, for example, in multidisciplinary centres, would provide legal advice for victim survivors on the range of overlapping legal issues they experience including the criminal legal process, information

relating to victims, information on bail and parole, applying for protections and privacy issues and breaches, and information on civil remedies.

- Locating the pilots within specialist sexual violence services means that victim survivors would have access to the complex legal information they need in a supported environment without having to deal with another separate organisation or service layer. Access to joint appointments with both their trusted counsellor advocate and the SV specific lawyer 'under the one roof' would ensure responsiveness to victims' and survivors' unique and individual needs. NASASV believes this model would encourage more victim survivors to consider reporting, facilitate ongoing engagement with the justice system and reduce attrition.
- The fact that specialist sexual violence services are located in multiple sites spread across each state would also increase victim survivor accessibility as the lawyers could potentially work across a number of sites in the region in which they were based.

NASASV would like to highlight the following significant evidence cited by the VLRC to support their recommendation for the establishment of an advocate model similar to the UK ISVA model (5):

12.48 The VLRC recommended that the establishment of a model of advocates, similar to the UK ISVA model and proposed that the functions of these advocates should include:

- providing information about justice options and general information about legal processes
- supporting victim survivors to understand and exercise their rights, including their rights to information about the progress of their cases, under the Victims' Charter Act
- liaising with, and advocating for them to, services and legal systems.
- referring them to other services as needed

12.47 The VLRC report highlighted that in the UK, independent sexual violence advisers are generally located within sexual assault referral centres or SARCs. The report noted that SARCs have features in common with Victoria's multi-disciplinary centres, a co-located set of services including specialist sexual violence services, police and child protection practitioners.

12.54 An independent review of the criminal justice system in England and Wales observed that, as 'an example of a reform to a system that is effective, cost-effective and affordable, the establishment of [independent sexual violence advocates] is hard to beat'.

12.59 Advocates can improve engagement with the criminal justice system. Their support can enable victim survivors to report to the police. Advocates ease people's fears about court and they can be 'crucial' in helping people if they go to court. They also support them to deal with painful court outcomes.

12.60 There is increasing evidence of the value of the English adviser model. This research shows that advocates can make it easier for people to get justice, in the sense of helping them to recover from sexual violence. They can also influence practice and policy within organisations.

12.61 A recent review of the case files of over 500 rape cases in England has found a strong link between specialist support and criminal justice outcomes. Cases where a person received support from specialist services were significantly more likely to be deemed a crime, result in charge and almost twice as likely to result in a conviction than cases where a person did not. They were 42 per

cent less likely to result in police taking 'no further action' and 49 per cent were less likely to withdraw from the process than people who did not receive specialist support.

12.62 A survey by the Victims' Commissioner for England and Wales also found a promising link between support and attrition, with 10 per cent of those receiving support choosing to take no further action or withdrawing support, compared to 20 per cent of those who did not have support.

13.93 The VLRC report concluded that the simplest and most effective place to base an advocate model would be collocated with specialist sexual violence services which in Victoria are known as Centres Against Sexual Assault.

Sexual Violence Legal Teams

To address the key gap of victims' need for legal information and advocacy, NASASV also suggests that the option of establishing separate Sexual Violence Legal Teams is a service model worthy of consideration. This would enable victims to have legal representation to ensure that their legal entitlements and their rights to privacy and dignified treatment are provided throughout the justice process. NASASV envisages that Sexual Violence Legal Teams would be a partnership between specialist sexual violence services and women's legal services with whom our member services already have strong working relationships. NASASV suggests that this initiative would be best delivered by Women's Legal Services, who with additional funding, could create Sexual Violence Legal Teams which would be co-located within specialist sexual violence services.

This service model is consistent with a further VLRC recommendation which noted 'it is time to pilot a scheme of separate lawyers for complainants in sexual offence cases...Separate legal representation would go a long way to make sure their rights and entitlements are realised in practice.' (6)

While the VLRC recommends legal advice and representation up to the point of trial, NASASV proposes that separate legal advice and representation up to and including trials is needed to ensure victim survivors receive dignified treatment throughout the entire legal process. This would include allowing sexual violence complainants' lawyers the right to object during cross-examination as this is commonly identified by victim survivors as the most re-traumatising part of their criminal justice experience.

End-to-end legal service support, including in-court legal advocacy.

NASASV identifies that a service model providing end-to-end legal service support would significantly address the key gaps and barriers which result in the current consistently poor outcomes to victim survivors of sexual violence. We believe a key feature of this approach is embedding specialised responses at every stage of the legal process, including independent sexual violence advisors, sexual violence legal teams and specialist practitioners within the relevant judicial settings.

While NASASV has previously identified the value of specialist sexual violence courts that are trauma informed and provide wrap around support, we recognise that establishing stand-alone courts would entail significant cost. We are also mindful that a majority of the work of county courts already relates to hearing sexual offence matters.

The VLRC has identified that many of the potential benefits of specialist courts can be obtained through the establishment of specialist sexual violence lists that can reduce delays through better case management and promote the development of enhanced skills in prosecutions, judges and court staff (7). Elements of this approach would include:

- Scheduling specialist sexual violence lists at County Courts in each state
- Specialist training for judicial officers to ensure they understand the nature and dynamics of sexual violence and how to interact with people who have experienced trauma to reduce the risk of re-traumatising them.
- Specialist accreditation for lawyers appearing in sexual violence matters.
- Trialling professional jurors with appropriate background and training in sexual offending.

Fundamental to having the capacity to provide a specialised response is ongoing education. Education and training for lawyers and judicial officers in trauma-informed and victim-centred practice needs to be continuous to ensure their understanding remains current and attuned to emerging sexual violence issues. NASASV suggests that continuing professional development activities undertaken by lawyers and judicial officers involved in sexual violence trials need to include annual presentations by victim survivor advocates regarding their experience of court systems.

NASASV is mindful that numerous past positive legal training and education initiatives have been allowed to lapse requiring unnecessary ‘re-inventing of the wheel’. For example, as the VLRC notes ‘the Sexual Offences Interactive Legal Education Program was a pilot program of professional development and training for lawyers, led by the OPP and funded by the Legal Services Board. The Program was strongly supported and evaluated positively It included:

- an online module covering sexual offences, evidence, procedural and sentencing perspectives, information about victim survivors, the accused and conferencing
- four interactive workshops on legal advocacy
- confidential peer review after a sexual offence trial.

However, when the program’s funding was exhausted it was stopped and is no longer active. (8)

Similarly, in 2010, a Charter of Advocacy for sexual assault cases was developed as a guide for prosecution and defence lawyers about behaviours needed to demonstrate good conduct in sexual offence proceedings. The Charter provided valuable information about the challenges faced by victim survivors when giving evidence in court. Regrettably, it is no longer use. (9)

A plea for sustainability – victim survivors deserve more than pilot programs

This lack of sustainability is commonly the outcome in relation to good practice initiatives developed through pilot programs. For this reason, NASASV urges that whatever service models are selected for the sexual violence legal pilots, consideration needs to be given from the outset, regarding how they could be scaled up on a state or national level, to ensure that victim survivors everywhere have access to enhanced justice experiences.

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

NASASV identifies the following legal service gaps and barriers which the pilot projects should prioritise addressing:

- Consistent national access to ‘Just in Case’ forensic medical examinations (FMEs) without having to report to police. Currently, victim survivor access to FMEs in case they wish to report that they have experienced a sexual assault is variable across Australia. For example, In Victoria, availability of ‘Just in Case’ forensic medical examinations is very limited and victim survivors are required to involve police in order to access an FME, without having had sufficient time to think through the implications of making a report.

11. a) How should we measure the success and impact of the legal service pilot?

Key impacts that the legal services pilots should seek to achieve are:

- Building victim survivors' trust in the system
- Reducing further trauma for complainants
- Empowering victim survivors to participate in the legal process.
- Greater awareness and responsiveness among those responding to victim survivors.

Victim survivor feedback regarding their experience of the legal service pilot would be critical including:

- Extent that they had felt supported / not been re-traumatised by legal process.
- Their assessment of whether legal service staff encountered at different stages demonstrated understanding of sexual violence trauma.

Feedback from key staff groups would also be important including:

- Lawyers employed in the sexual violence legal pilots.
- Counsellor advocates from specialist sexual violence services
- Police and court staff

Ideal objective outcomes sought are likely to require longer-term implementation of the pilot models but would include:

- increased reporting rates
- reduced attrition rates
- increased conviction rates

b) What data do we need to collect?

National data re:

- Conviction rates
- Attrition rates (including data re which stage of legal process and victim survivors' reason for withdrawal.
- Victim Survivor experience and satisfaction ratings with the justice system

Collecting this information would require jurisdictions to implement a consistent online victim survivor feedback survey.

12. Other issues that should be considered in the development of the legal services pilot?

How services should be offered, for example, in person and through technology-enabled systems to enhance accessibility.

To ensure maximum accessibility for all victim survivors, NASASV proposes services provided by the legal service pilots should be offered using a range of approaches including:

- In person face-to-face appointments
- Online appointments
- Telephone appointments
- Email advice and online chat options
- Interpreter access

How victims' and survivors' legal rights, preferences and wellbeing can be better protected in the courtroom process.

Despite the fact that victims in some jurisdictions are recognised as 'participants' in criminal proceedings (10), these reforms have not translated into tangible improvements in victims' experience of the justice process.

NASASV would like to propose the following legislative and procedural protections for consideration as approaches for minimising harm and re-traumatisation of sexual assault victims when they give evidence.

- Extending the Video and Recorded Evidence (VARE) evidence provision to all victim survivors of sexual assault as part of increasing legislative protections for vulnerable witnesses. NASASV's experience is this that availability of this provision varies from state to state.
- Allowing a once-off cross examination as soon as the trial is listed that is videoed and can be used as evidence during the trial. This has the benefit of being closer in time to the event so memories are fresh, and less traumatising for the witness because outside of a public hearing. This cross examination could take place at a special hearing in an appropriate legal setting outside the court, for example, the Office of Public Prosecutions.
- Retaining complainants giving live evidence in court but placing strict limits on length of cross examination, topics that can be included, and managing the tone and approach to avoid witness badgering. The last of these actions should already be being routinely implemented however judges are inconsistent in their management of defence barrister behaviour.
- Piloting judge-only trials for sexual violence (a version of the Inquisitorial model) and ensuring only trained and trauma informed judges can hear sexual violence cases.
- Professional jurors with appropriate background and training in sexual harm and offending is a model that could be trialled as part of a sexual violence court pilot.
- Ensuring all sexual violence cases are heard in camera, with no public or media. Judges should at least have the discretion to close the court for the complainant's evidence.

Whether this service should provide advice other than in criminal law, such as advice on civil law claims or compensation claims.

- While providing advice on criminal law matters should be prioritised, NASASV suggests it would be appropriate for the legal service pilot projects to also provide initial information regarding civil law claims or compensation claims, backed up with referral options where victim survivors interested in pursuing these types of justice could obtain further assistance.

References

1 FINAL REPORT: Evaluation of the Sexual Violence Complainants' Advocate Scheme, December 2020, Authors -Olivia Smith & Ellen Daly

2 Sexual Assault Response Team Toolkit, National Sexual Violence Resource Centre, [SART Toolkit Index | National Sexual Violence Resource Center \(NSVRC\)](#)

3 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021

4 A Plan to better support victims of sexual violence: 5 Key Priority Actions, NASASV Pre-Budget Submission, January 2023

5 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021
See Chapter 12, Supporting people who have experienced sexual violence.

6 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021, 12.143

7 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021

8 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021

9 Improving the Justice System Response to Sexual Offences, Victorian Law Reform Commission 2021

10 Since 2018, victims in Victoria have been recognised under the Victims' Charter Act 2006 (Vic) (Victims' Charter) as 'participants' in criminal proceedings.