Submission to the Second Action Plan consultations

31 July 2026

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About Women's Legal Service NSW

Women's Legal Service NSW (**Women's Legal**) advocates for an end to gender-based violence and for gender equity in Australia. As a state-wide specialist women's legal service, we assist women across NSW by providing legal advice and representation from our trauma-informed, holistic legal practice across a range of practice areas including family law, domestic/family and sexual violence, compensation and victims support for victims of crime, discrimination, employment and sexual harassment.

We prioritise women who are experiencing deep and persistent disadvantage. Our specialist programs include:

- First Nations Women's Legal Program, led by First Nations staff and supported by a First Nations Women's Consultation Network
- Women's Rights, and
- Working Women's Centre.

All three programs focus on responding to legal issues faced by women with a particular focus on responding to gender-based violence and addressing women's safety, economic security and intersecting discrimination.

We use our experience gained from working with over one hundred thousand women and our feminist analysis of social issues and the law to determine where we can make the most impactful and positive change. We advocate for systemic change through policy and law reform, strategic litigation and providing education and training to the legal profession, the community services sector, and other key stakeholders.

Acknowledgments

We acknowledge the Traditional Custodians of the lands on which we work across NSW and on which we live. We pay deep respects to Elders past and present. Is, was and always will be Aboriginal land.

We acknowledge the many women who have been subjected to gender-based violence with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

Contributors

The following people contributed to this submission: Sarah Croskery-Hewitt, Liz Snell, Emily Jol, Gail Thorne, Pip Davis and Rishika Pai.

Use of language

Victim-survivor

We acknowledge that there are different preferences for the language used to describe a person who has been subjected to gender-based violence. Some prefer the terminology 'victim', some 'survivor' some 'victim-survivor'. Some people describe the experience as 'living through' gender-based violence. In this submission we use the term 'victim-survivor'. This is intended to be inclusive of all.

Gendered language

Throughout this submission we refer to the experience of women and girls. This reference is inclusive of all people who have experienced oppression as women, including cisgender, transgender, non-binary and gender diverse people. We also acknowledge the need to address the high rates of sexual, domestic and family violence and abuse perpetrated against LGBTIQ+ people more broadly and the same gendered drivers of such violence.

Criminal legal system

Many First Nations people have questioned the accuracy of the description of the 'criminal justice system' in Australia as a 'just' system, noting its continuing colonising impacts.

Many victim-survivors of gender-based violence who engage in the criminal legal system also challenge the description, advocating that systems must become more trauma and violence-informed.

In acknowledging that language matters, and the importance of using language that resonates particularly with First Nations people and victim-survivors, we use the language 'criminal legal system'.

Opening comments

1. We thank the Department of Social Services for the opportunity to make recommendations for the Second Action Plan (the **Action Plan**) under the *National Plan to End Violence against Women and Children 2022-2032* (the **National Plan**).

2. Despite the First Action Plan, rates of gender-based violence remain persistent. The consequences of inaction and passive responses to violence are devastating, with 29 women said to have been killed so far this year (almost all by men known to them).[1] This Action Plan will be critical to determining whether the National Plan achieves its objectives over its remaining six years. To deliver meaningful change, it must avoid replicating the limitations of the First Action Plan. It must move beyond broad commitments and establish specific, measurable and time-bound targets and robust accountability mechanisms, including a centralised implementation and delivery oversight mechanism.

3. The Action Plan must prioritise the transformative systems change that is necessary to eliminate responses that compound harm, particularly for Aboriginal and Torres Strait Islander victim-survivors and women experiencing intersectional disadvantage. It must be developed in close alignment with the first Action Plan under *Our Ways – Strong Ways – Our Voices*, so that the two plans operate as complementary, mutually reinforcing frameworks.

4. We have had the benefit of reviewing the submissions of Women's Legal Services Australia (WLSA), Working Women's Centre Australia (WWCA), and Women With Disabilities Australia (WWDA). We endorse the recommendations and commentary advanced in each of their submissions. Accordingly, this submission does not seek to repeat those matters, but instead focuses on areas where we can provide additional expertise and contribute a distinct perspective.

5. We have also reviewed the most recent *Blueprint for Reform* produced by the National Advocacy Group on Women on Temporary Visas Experiencing Violence. We strongly support the adoption of the *Blueprint for Reform* recommendations under the Action Plan.

6. Our submission is informed by our priority advocacy areas and reflects the need for nuanced responses to the many ways in which violence impacts every aspect of women's lives. By committing to truth telling, addressing racism and intersectional injustice, advancing women's economic security and financial independence, uplifting women's voices and holding decision-makers, structures and systems to account, we believe we can improve women's safety and prevent violence from occurring.

7. Our submission responds to all five priority areas identified in the consultation paper. However, given our role as a Women's Legal Service, we focus particularly on police and legal system responses to violence (engaging Priority Areas 1 and 4: victim-survivors and people who use violence). The first Action Plan (2023-2027) failed to include sufficiently ambitious legal system reform, and this must be a focus of the next Action Plan.

[1] Melissa Mackay, 'Safety of women and girls under national spotlight again after four alleged murders in four days', ABC News (online, 14 July 2026) <https://www.abc.net.au/news/2026-07-14/domestic-violence-national-spotlight/106911176>.

Recommendations

Recommendation 1

We recommend that the Action Plan includes a commitment to proper funding of specialist Women's Legal Services and Aboriginal and Torres Strait Islander Women's Legal Services, including specific funding for advice and representation for victim-survivors of sexual violence.

Recommendation 2

We recommend that the Action Plan sets out specific, measurable and time-bound targets, and regular and transparent reporting of outcomes.

Recommendation 3

We recommend that the Action Plan fully implements recommendation 5 of the Domestic Family and Sexual Violence Commission's yearly report, by establishing an Implementation and Delivery Oversight Mechanism with responsibility for Action Plan delivery and cross-government coordination.

Recommendation 4

We recommend that the Action Plan fully implements recommendation 9 of the DFSV Commission's yearly report, by establishing the DFSV Commission as a statutory authority and expanding its functions and powers to gather timely information and data.

Recommendation 5

We recommend that the Action Plan includes justice-specific performance indicators—for example, targets relating to police responsiveness, prosecution attrition, victim experience, court timeliness, and perpetrator accountability—rather than relying primarily on long-term prevalence measures.

Recommendation 6

We recommend that the Domestic, Family and Sexual Violence Commission, in partnership with the *Our Ways – Strong Ways – Our Voices* governance structure, is empowered and adequately resources to ensure consisted monitoring of the implementation of both Action Plans.

Recommendation 7

We recommend that the outcomes identified in the Wiyi Yani U Thanhani Institute First Nations Gender Justice *Change Agenda* be supported by and reflected in the Action Plans.

Recommendation 8

We recommend that the Action Plan embeds a 'social and systemic entrapment' framework for understanding gendered violence.

Recommendation 9

We recommend that the Action Plan embeds the implementation of the recommendations of the *National Anti-Racism Framework* and *An Anti-Racism Framework: Voices of First Nations.*

Recommendation 10

We recommend that the Action Plan includes specific actions to address misidentification of the person most in need of protection, within a social and systemic entrapment framework.

Recommendation 11

We recommend that the Action Plan addresses sexual violence as a distinct priority area.

Recommendation 12

We recommend that the Action Plan includes a clear roadmap for implementing recommendations from the ALRC's *Safe, Informed, Supported* report, including identifying timeframes, responsible government agencies and transparent monitoring.

Recommendation 13

We recommend that the Domestic, Family and Sexual Violence Commission is empowered and appropriately resourced to monitor the implementation of the ALRC's *Safe, Informed, Supported* recommendations.

Recommendation 14

We recommend that the Action Plan embeds the full implementation of ALRC recommendation 4.

Recommendation 15

We recommend that the Action Plan prioritises giving victim-survivors of sexual violence standing to appear, and access to independent legal representation, to assert their rights during the criminal trial process.

Recommendation 16

We recommend that the Action Plan prioritises comprehensive protection of victim-survivors' counselling communications.

Recommendation 17

We recommend that leave must be sought in relation to all subpoenas for access to complainants' personal, sensitive, or confidential information.

Recommendation 18

We recommend that complainants are notified of, and given standing to be heard on, all subpoena applications that relate to their personal, sensitive or confidential information.

Recommendation 19

We recommend that the Action Plan includes actions to make visible sexual violence in institutional settings, including in prisons, as well as actions to embed prevention, early and ongoing trauma-informed and culturally safe support for victim-survivors, and accountability of people and the state for perpetrating such violence.

Recommendation 20

We recommend reforming the Model Defamation Provisions to ensure that disclosures of gender-based violence that are made without malice are protected by absolute privilege.

Recommendation 21

We recommend the introduction of a Federal NDA Bill to regulate the use of NDAs to ensure that they cannot be used to the detriment of victim-survivors.

Recommendation 22

We recommend that crisis accommodation and domestic violence services are adequately funded to enable them to support women and children on temporary visas who are experiencing domestic and family violence.

Recommendation 23

We recommend adoption of the *Blueprint for Reform* recommendations under the Action Plan, including expanding eligibility for social and housing support for women on temporary visas who are experiencing domestic and family violence.

Recommendation 24

We recommend the evaluation and expansion of the WJV and SRP pilots to ensure that women on temporary visas can stay in Australia while they pursue workplace claims. We also recommend expanding the list of ATPs to include more community legal centres and Working Women's Centres.

Recommendation 25

We recommend that the Action Plan prioritises reforms that prevent perpetrators from using the superannuation system as a tool to economically abuse victim-survivors.

Recommendation 26

We recommend that the Action Plan includes as an action the implementation of the recommendations made by the Parliamentary Joint Committee on Human Rights in their report: *Inquiry into Australia's Human Rights Framework*,[90] including the introduction of a federal Human Rights Act.

The importance of specialist Women's Legal Services

1. Specialist Women's Legal Services and Aboriginal and Torres Strait Islander Women's Legal Services play a unique and integral role in responding to gendered violence. Services run by and for women provide safe, culturally appropriate spaces where women can seek support. We have deep expertise in the dynamics of gender-based violence and the impacts of trauma. We are well placed to identify and respond to systems abuse, to advocate for integrated and victim-centred responses, and to drive reforms to laws, policies and practices that improve safety and justice outcomes for women and children.

2. Victim-survivors rarely experience a single legal problem. Instead, they must navigate multiple, interconnected legal systems—including family law, criminal law, civil law and administrative processes—across both Commonwealth and state and territory jurisdictions. Specialist Women's Legal Services provide a "no wrong door" response, supporting victim-survivors to navigate these intersecting legal issues through a single, trauma-informed legal service rather than requiring them to engage with fragmented systems and multiple providers. This holistic model recognises that legal issues arising from gendered violence do not occur in isolation and that legal strategies and decisions in one matter may have significant consequences for decisions or strategy in another matter. Ensuring that the one legal service holds all of the various legal pieces together provides victim-survivors with coordinated legal assistance that addresses their safety, recovery and long-term economic security.

3. Access to justice for victim-survivors is a core focus of the National Plan, which specifically recognises the importance of Women's Legal Services in achieving its objectives. Capacity building for Women's Legal Services and Aboriginal and Torres Strait Islander Women's Legal Services is identified as a priority.[2] Proper investment in specialist Women's Legal Services is a practical means of delivering a more integrated justice response under the next Action Plan, ensuring that victim-survivors can access the full range of legal support they require through a single, specialist service.

4. In March 2025, in response to the recommendations of the Australian Law Reform Commission (**ALRC**),[3] the federal government announced an initial commitment of $19.6 million to establish sexual assault legal services in all states and territories. The ALRC specifically noted the importance of Women's Legal Services in providing sexual assault legal services in states where they have already been piloted, and recommended 'resourcing existing, trusted services, such as women's legal services' to provide these services nationwide.[4] In NSW, Women's Legal Services were not invited to tender for this funding, which was instead allocated directly to Legal Aid NSW. We consider this a missed opportunity for a much broader and holistic approach to the provision of sexual assault legal services to have been taken in NSW. We recommend that Women's Legal Services are funded to provide sexual assault legal services in all states and territories.

[2] *National Plan to End Violence against Women and Children 2022–2032* (Commonwealth of Australia, 2022) 62 and 118.
[3] Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143, January 2025) Recommendations 1 and 9.
[4] Ibid 130.

Recommendation 1

We recommend that the Action Plan includes a commitment to proper funding of specialist Women's Legal Services and Aboriginal and Torres Strait Islander Women's Legal Services, including specific funding for advice and representation for victim-survivors of sexual violence (including in family law, criminal law, civil law and administrative processes—across both Commonwealth and state and territory jurisdictions).

Ensuring effective implementation of the Action Plan

Embedding measurable targets

5. In her most recent yearly Report to Parliament, Australia's Domestic, Family and Sexual Violence Commissioner (the **DFSV Commissioner**) emphasised that:

> *The challenge is not generating solutions. It is creating the systems and accountability mechanisms to implement comprehensive and sustainable solutions … The second Action Plan must be a living mechanism that actively engages all governments, is updated regularly against evidence and emerging needs, with measurable targets and transparent and regular public reporting on progress.*[5]

6. We strongly echo this call for the Action Plan to embed specific, measurable and time-bound targets and transparent reporting on progress. This was a significant shortcoming of the first Action Plan and must not be replicated in the second Action Plan.

Recommendation 2

We recommend that the Action Plan sets out specific, measurable and time-bound targets, and regular and transparent reporting of outcomes.

Coordinated implementation and reporting

7. The DFSV Commissioner observed that, since the first National Plan in 2010, more than 1,000 recommendations have been made across royal commissions, inquiries and taskforces.[6] The Action Plan sits within a complex policy framework and intersects with a number of other Commonwealth plans. Coordination of delivery, and alignment with other relevant plans, will be key to the success of the Action Plan.

8. The DFSV Commissioner recommended that: 'The Commonwealth should establish an Implementation and Delivery Oversight Mechanism with responsibility for Action Plan delivery and cross-government coordination.'[7] This mechanism should: map and align relevant Commonwealth plans; embed lived experience and sector representation into Action Plan implementation and review; provide quarterly reporting dashboards to track Action Plan progress; and establish DFSV as a standing priority for all Secretaries.

[5] Domestic, Family and Sexual Violence Commission, *Yearly Report to Parliament* (Commonwealth of Australia, October 2025) 5–7.
[6] Ibid 46.
[7] Ibid Recommendation 5.

Recommendation 3

We recommend that the Action Plan fully implements recommendation 5 of the DFSV Commission's yearly report, by establishing an Implementation and Delivery Oversight Mechanism with responsibility for Action Plan delivery and cross-government coordination.

Accountability mechanisms

9. The DFSV Commissioner stressed the need for Action Planning to build in transparent evaluation processes, with 'progress tracked through both quantitative indicators and qualitative evidence of impact'[8] and 'consolidated year three evaluation'.[9] To ensure accountability, the DFSV Commission must be established as a statutory authority and empowered to compel all government agencies to provide information to enable monitoring of the implementation and funding associated with the National Plan.[10] Notably, this recommendation was also made by the Rapid Review Panel.[11]

Recommendation 4

We recommend that the Action Plan fully implements recommendation 9 of the DFSV Commission's yearly report, by establishing the DFSV Commission as a statutory authority and expanding its functions and powers to gather timely information and data.

Measuring police and legal system outcomes

10. The first Action Plan and associated policy framework has failed to set sufficiently ambitious targets for police and legal system reform. This must be addressed in the second Action Plan. The *National Plan Outcomes Framework: Performance Measurement Plan* (**Performance Measurement Plan**) sets several targets that relate to police and legal system responses to violence. However, these targets largely relate to decreased offending rates rather than system responsiveness to offending when it *does* occur.

11. For example, the outcome that 'People who choose to use violence are held to account through police and justice systems' is measured via reduced domestic, family, and sexual violence recorded offence rates. Whilst reduced offending is, of course, the overarching aim, it is not necessarily a measure of the efficacy of the legal system's responses. Instead, indicators should be used that meaningfully measure police and justice system performance such as: DFSV reporting rates; attrition of reported complaints (particularly sexual violence complaints); victim-survivor reports of their police and legal system experiences; rates of misidentification of victim-survivors; and rates of rectification of misidentification.

[8] Ibid 51.
[9] Ibid Recommendation 6.
[10] Ibid Recommendation 9.
[11] Rapid Review Expert Panel, *Unlocking the Prevention Potential: Accelerating Action to End Domestic, Family and Sexual Violence* (Report of the Rapid Review of Prevention Approaches, 2024) Recommendation 19.

Recommendation 5

We recommend that the Action Plan includes justice-specific performance indicators—for example, targets relating to police responsiveness, prosecution attrition, victim experience, court timeliness, and perpetrator accountability—rather than relying primarily on long-term prevalence measures.

Prioritising the safety of First Nations women

12. First Nations women experience vastly disproportionate levels of gendered violence. First Nations women are hospitalised due to family violence at a rate 27 times higher than non-Indigenous women,[12] and are murdered at a rate 7 times higher than non-Indigenous women.[13] Rather than being provided with the protection and support they need, First Nations victim-survivors too often encounter responses from mainstream systems and institutions that compound harm and obstruct access to safety and justice. Well-founded fears of misidentification as perpetrators (as paragraphs [25]-[34] will address), child removal, and institutional racism continue to deter many First Nations women from seeking help and engaging with legal and support systems.

13. We urge that the safety of First Nations women must be paramount in shaping the Action Plan. This requires embedding First Nations community-led responses and addressing the systemic barriers within mainstream institutions that prevent First Nations women from accessing safety, justice and support. We echo the observations of the Rapid Review Panel that: '[a]ddressing gender-based violence for communities experiencing intersecting forms of marginalisation lays the foundation for population-wide success.'[14]

First Action Plan under Our Ways – Strong Ways – Our Voices

14. The consultation paper states that submissions will also help inform the first Action Plan under the *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End FDSV*. We understand that there will be further opportunity to share our views on the *Our Ways – Strong Ways – Our Voices* Action Plan but, noting the need for coherence between the two National Plans and their associated Action Plans, we emphasise that our comments apply to both Action Plans. To achieve the ambitious vision of *Our Ways – Strong Ways – Our Voices*, the associated Action Plan must move beyond broad commitments and establish a clear roadmap for implementation. It should include specific actions, measurable targets, transparent reporting and sustained funding commitments.

15. We stress the need for coordinated implementation and oversight of the respective Action Plans and urge that the DFSV Commission, in partnership with the *Our Ways – Strong Ways – Our Voices* governance structure, must be empowered and adequately resourced to fulfil this monitoring

[12] Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander People* (23 April 2026) <https://www.aihw.gov.au/family-domestic-and-sexual-violence/population-groups/aboriginal-and-torres-strait-islander-people>.
[13] Samantha Bricknell and Hannah Miles, *Homicide of Aboriginal and Torres Strait Islander Women* (Statistical Bulletin No 46, Australian Institute of Criminology, October 2024).
[14] Rapid Review Expert Panel (n 11) 18.

function. We note our concerns at the inadequacy of the information supplied to the DFSV Commission to assess the implementation of the *Aboriginal and Torres Strait Islander Action Plan 2023–2025*.[15] We urge that mechanisms to ensure transparency and accountability of government agencies must be built into the *Our Ways – Strong Ways – Our Voices* Action Plan.

Recommendation 6

We recommend that the Domestic, Family and Sexual Violence Commission, in partnership with the *Our Ways – Strong Ways – Our Voices* governance structure, is empowered and adequately resourced to ensure consistent monitoring of the implementation of both Action Plans.

16. We further recognise the vital work of the Wiyi Yani U Thanhani Institute First Nations Gender Justice, including the Institute's *Change Agenda for First Nations Gender Justice*. The implementation of the *Change Agenda* is fundamental to the success of both Action Plans, and the Life and System Shifts Outcomes identified in the *Change Agenda* should be supported by and reflected in the Action Plans.

Recommendation 7

We recommend the outcomes identified in the Wiyi Yani U Thanhani Institute First Nations Gender Justice *Change Agenda* be supported by and reflected in the Action Plans.

Embedding a 'social and systemic entrapment' understanding of gendered violence

17. The extreme levels of gendered violence experienced by First Nations women cannot be addressed without recognising the ways in which it is driven by the ongoing impacts of colonisation – including systemic inequality, dispossession, state violence, and intergenerational trauma – as well as institutional racism. The actions taken under the Action Plans must address these underlying drivers of violence in order to effect meaningful change.

18. We urge that systemic change requires a 'social and systemic entrapment' framework of gendered violence to be adopted by government agencies. An 'entrapment' understanding of gendered violence requires an appreciation of not just 'the restrictions placed on a victim-survivor's autonomy and agency by their partner's abusive and controlling behaviors', but also the 'broader systemic patterns of harm' that limit the safety responses that are realistically available to them.[16] This requires careful attention to the inadequacy of institutional responses to violence, and how these responses are mediated by the victim-survivor's social context (such as her indigeneity, race, class, (dis)ability, gender identity, sexual orientation, age and geographic isolation).

19. Tolmie and colleagues discuss the particular importance of an entrapment framework in understanding Indigenous women's experiences of violence:

[15] Domestic, Family and Sexual Violence Commission (n 5) 86.
[16] Julia Tolmie, Rachel Smith and Denise Wilson, 'Understanding Intimate Partner Violence: Why Coercive Control Requires a Social and Systemic Entrapment Framework' (2024) 30(1) *Violence against women* 54, 55.

> *Although … entrapment is a concept that is useful for all victims of IPV, there are particularly harmful consequences in responding to [intimate partner violence] solely as an issue of coercive control for Indigenous peoples and marginalized groups targeted for oppression. A narrative of [intimate partner violence] that focuses on individuals renders invisible the state violence, institutional abuse, and the violence of social exclusion that many victim-survivors, their families, and communities experience. These latter forms of violence drive the overrepresentation of people subjected to intersecting forms of oppression in family violence statistics and greatly impede their safety, healing, and ability to be self-determining*.

An entrapment framework therefore requires an examination of how 'colonial and structural forms of violence continue to transgress the safety of Indigenous women',[17] and calls for transformative safety and justice responses.

20. The *Our Ways – Strong Ways – Our Voices* Plan has incorporated an entrapment framework, and it is crucial that the Action Plans now embed this understanding in concrete actions.

Recommendation 8

We recommend that the Action Plan embeds a 'social and systemic entrapment' framework for understanding gendered violence.

Full implementation of the AHRC Anti-Racism Frameworks

21. For First Nations victim-survivors' access to safety and justice to improve, systemic racism within the institutions that respond to them (such as justice, policing, child protection and other state agencies) must be addressed. Importantly, there are already comprehensive tools available to support the necessary systems reform.

22. More than eighteen months have passed since the release of the Australian Human Rights Commission's *National Anti-Racism Framework* and *An Anti-Racism Framework: Voices of First Nations,* a foundational document in the development of a standalone First Nations Anti-Racism Framework and Implementation Plan. Both Frameworks are the result of several years of research and community consultation. The Australian Government has not yet formally responded to these Frameworks.

23. The *National Anti-Racism Framework* provides 63 recommendations for a whole-of-society approach to tackling racism, including in the justice and legal system, health, education, workplaces, media and the arts, and data collection. *An Anti-Racism Framework: Voices of First Nations Peoples* also provides a number of recommendations, including in relation to: legislative reform; accountability mechanisms; the establishment of First Nations advisory bodies; standardised cultural safety education; and sector-specific recommendations for the education, health and justice sectors.

[17] Ibid 69.

24. We urge the Government to formally commit to the Frameworks and implement their recommendations. Addressing systemic racism is integral to improving the safety of First Nations victim-survivors, therefore implementing the Frameworks should also be a priority under the Action Plan.

Recommendation 9

We recommend that the Action Plan embeds the implementation of the recommendations of the *National Anti-Racism Framework* and *An Anti-Racism Framework: Voices of First Nations*.

Misidentification of the person most in need of protection

25. The National Plan identifies the need to 'address misidentification of perpetrators' and recognises that '[t]oo often, Aboriginal and Torres Strait Islander women are being misidentified as perpetrators when they seek assistance'.[18] The Plan identifies the need to:

> *Build capacity in mainstream frontline services responding to gender-based violence, such as health and policing, including the ability to accurately identify the 'person most in need of protection' and prevent misidentification of the victim-survivor as the perpetrator.*[19]

26. The *Our Ways – Strong Ways – Our Voices* Plan describes misidentification as 'a systemic failure reflecting racism toward women who often find themselves entrapped by systems'.[20]

27. In NSW, there has been a six-fold increase in both partners in an intimate-partner relationship being charged with assault offences in the last 10 years and a six-fold increase over a 7-year period in the proportion of cross-ADVOs.[21] For many women, misidentification is a pathway into prison. As of March 2026, First Nations women make up 45% of the population of women in prison.[22]

28. Misidentification disproportionately impacts First Nations women, refugee and migrant women, women with disabilities, young people and LGBTIQ+ communities. The consequences of misidentification are significant and include criminalisation, child removal, loss of employment, homelessness, economic insecurity and systems abuse.

[18] *National Plan to End Violence against Women and Children 2022–2032* (n 2) 42.
[19] Ibid 126.
[20] *Our Ways – Strong Ways – Our Voices: National Aboriginal and Torres Strait Islander Plan to End Family, Domestic and Sexual Violence 2026-2036*, 25 citing H Douglas, H McGlade, S Tarrant, and J Tomie, Facts seen and unseen: improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims), *Current Issues in Criminal Justice*: 2020, 32(4); S Tarrant, H McGlade and C Bahemia, Promoting Aboriginal women's human rights – understanding when not to prosecute Aboriginal women, *International Journal for Crime, Justice and Social Democracy*, 2024, 13(4):28-43.
[21] A Teperski and I Klauzner, 'Examining gender bias in the policing of intimate partner violence', *Crime and Justice Bulletin* (BoCSar, 2025), 3
[22] BOCSAR (2025) *New South Wales Custody Statistics*, NSW Prison Statistics, (Total Female and Aboriginal Female rows).

29. The Action Plan must address misidentification of the person most in need of protection[23] within a social and systemic entrapment framework to ensure misidentification is addressed through a lens of structural and systems failure and to avoid victim-blaming.

30. Focus must also shift in policing and the criminal legal system away from considering incidents in isolation, and towards considering the underlying dynamics and pattern of behaviour in the context of the whole relationship.

31. Scotland's 'domestic abuse' offence seeks to do this through a focus on 'relevant effects'. This seeks to focus attention on the underlying dynamics of coercive control.
'*Relevant effects*' include:
    a. *making B dependent on, or subordinate to, A,*
    b. *isolating B from friends, relatives or other sources of support,*
    c. *controlling, regulating or monitoring B's day-to-day activities,*
    d. *depriving B of, or restricting B's, freedom of action,*
    e. *frightening, humiliating, degrading or punishing B*.[24]

32. South Australia has adopted a similar approach in their *Criminal Law Consolidation (Coercive Control) Amendment Act 2025* with the inclusion of 'controlling impact'.[25]

33. Further research is required to understand if this framing is helping to shift policing and the criminal legal response away from incident-based policing of domestic and family violence.

34. We strongly call for:
    a. Legislative guidance to help police, courts, the health system, child protection system and other systems to accurately identify the person most in need of protection in the context of the whole relationship.[26]
    b. Legislating to limit cross or dual protection order applications.[27]
    c. Co-responder model that includes domestic and family violence specialists.
    d. Guidelines that require Police and ODPP documentation of their consideration of the public interest test in prosecutions in which there is a risk of misidentification.
    e. Regular independent reviews of police files relating to domestic and family violence.[28]

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[23] This framing ('person *most* in need of protection') recognises that the victim-survivor may use violence, for example, in response to the cumulative impacts of domestic and family violence, and it is vital to consider the use of violence in the context of the relationship as a whole. While all violence is unacceptable, not all violence, simply because it occurs within a 'domestic relationship' should be labelled domestic and family violence. This label should be focused on behaviour where the underlying dynamics include power, control and/or causing fear.

[24] Section 2 (3) of the *Domestic Abuse (Scotland) Act 2018*.

[25] See Cl 5, Division 7AAB s20B (2) of the Criminal Law Consolidation (Coercive Control) Amendment Act 2025 (SA) for the interpretation of 'controlling impact'.

[26] This term is used in the principles of the Act: s4(d) and(e) of the *Domestic and Family Violence Protection Act 2012* **(**Qld). Detailed legislative guidance is provided in s22A of the *Domestic and Family Violence Protection Act 2012* **(**Qld). Victoria has recently introduced a new subdivision on misidentification – see Division 3 Subdivision 3 of *the Justice Legislation Amendment (Family Violence, Stalking and Other Matters) Act 2026 (Vic)* that includes a list of misidentification factors to consider.

[27] See for example, Part 3 Division 1A of the *Domestic and Family Violence Protection Act 2012 (Qld*) relates to cross-applications.

[28] Such a review can highlight police work in identifying and evidencing domestic and family violence as well as identify missed opportunities and areas for further police training and education as well as cultural and systems reform. Such a review occurred in England in relation to the operation of their coercive control offence and identified the need to shift away from policing discrete incidents to a contextual understanding of domestic and family. See: C Barlow, K Johnson, S Walklate and L Humphreys, 'Putting Coercive Control into Practice: Problems and Possibilities, Brit. J. Criminal (2020) 60, 160–179 <

f. Commitments to addressing systemic discrimination, including, for example, state/territory and federal Governments committing to the proper implementation of the Australian Human Rights Commission's Anti-Racism Frameworks[29] and making proper implementation of these frameworks a requirement for government funding.
g. Further research to understand if legislation that includes a focus on 'relevant effects' or 'controlling impact' is helping to shift policing and the criminal legal response away from incident-based policing of domestic and family violence.

Recommendation 10

We recommend that the Action Plan includes specific actions to address misidentification of the person most in need of protection within a social and systemic entrapment framework.

The criminal response to sexual violence

35. Despite several decades of sustained reform attention, the criminal response to sexual violence remains ineffective and retraumatising. The likelihood of perpetrators being convicted is negligible, with less than 1 in 100 sexual assaults ultimately resulting in a conviction, and victim-survivors continue to report harrowing experiences of the criminal process. Drawing upon the ALRC's recent *Safe, Informed, Supported* report, it is vital for this Action Plan to prioritise concrete actions to address the intractable justice gap faced by victim-survivors of sexual violence.

Background

36. 22% of Australian women have experienced sexual violence since the age of 15,[30] yet most will never report to police due to a lack of trust in the criminal legal system, fear of not being believed, and/or fear of the perpetrator. Where victim-survivors do report to police, the prospects of the criminal legal system delivering justice are remote. In NSW, only 15% of adult sexual assaults reported to Police result in the commencement of criminal proceedings and just 6% result in a conviction.[31]

https://academic.oup.com/bjc/article-abstract/60/1/160/5536707?redirectedFrom=fulltext > ; A Myhill, K Johnson, A McNeill, E Critchfield & N Westmarland 'A genuine one usually sticks out a mile': policing coercive control in England and Wales, *Policing and Society*, (2023) 33:4, 398-413. The Expert Panel undertaking the Australian Rapid Review of Prevention Approaches also recommended independent oversight and accountability of police responses to domestic and family violence. See Recommendation 13e <https://www.pmc.gov.au/resources/rapid-review-prevention-approaches-update-28-nov-25>.

[29] Australian Human Rights Commission, *National Anti-Racism Framework: A Roadmap to Eliminating Racism in Australia* (2024); Australian Human Rights Commission and First Nations Co, *An Anti-Racism Framework: Voices of First Nations Peoples – First Nations Consultations for the Australian Human Rights Commission.*

[30] Australian Bureau of Statistics, *Sexual Violence, 2021–22 Financial Year* (Web Page, 23 August 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>.

[31] Brigitte Gilbert, *Attrition of Sexual Assaults from the New South Wales Criminal Justice System* (Bureau Brief No 170, NSW Bureau of Crime Statistics and Research, January 2025) 16.

37. Where matters do not progress to a criminal charge, this is typically a result of police inaction or unwillingness to proceed rather than deliberate withdrawal by the victim-survivor.[32] And, where matters progress to trial, victim-survivors continue to be subjected to degrading and dehumanising treatment. Recent NSW trial transcript research has concluded that, despite much reform, there is 'no foundation for concluding that sexual offence trials have been meaningfully transformed' since the 1990s.[33]

38. First Nations women are affected most severely by this justice gap. First Nations women experience 'unusually high levels of sexual violence in comparison to their non-Indigenous counterparts',[34] and institutional racism and mistrust of the legal system act as an additional barrier to their reporting of sexual assaults to the police.[35] Despite these strong disincentives to reporting, and the egregious treatment they face throughout the criminal process, First Nations women are significantly overrepresented as sexual assault complainants.[36]

Sexual violence must be a separate priority area

39. Sexual violence must be a distinct priority area in the next Action Plan, supported by dedicated actions and measurable outcomes. While sexual violence is frequently perpetrated in the context of domestic and family violence, it also occurs across a broader range of relationships and settings, and presents unique prevention, justice and service response challenges that warrant dedicated focus.

40. As recognised in the consultation paper, the prevalence of sexual violence is increasing and new forms of sexualised violence are emerging. At the same time, persistently low reporting rates, intractably high rates of attrition, and the harrowing treatment of victim-survivors during the criminal process mean that few perpetrators are held to account. When sexual violence is subsumed within broader domestic and family violence initiatives, these distinct challenges risk receiving insufficient attention.

Recommendation 11

We recommend that the Action Plan addresses sexual violence as a distinct priority area.

[32] Elena Campbell, Danielle Woolley and Frances Lockie, *'This Is My Story. It's Your Case, but It's My Story.' Interview Study: Exploring Justice System Experiences of Complainants in Sexual Offence Matters* (NSW Bureau of Crime Statistics and Research, 31 July 2023) [3.2.2].
[33] Julia Quilter and Luke McNamara, *Experience of Complainants of Adult Sexual Offences in the District Court of NSW: A Trial Transcript Analysis* (Crime and Justice Bulletin No. 259, NSW Bureau of Crime Statistics and Research, 2023) 34.
[34] Indigenous Law Centre, Sexual Violence and Indigenous Victims: Women, Children and the Criminal Justice System. Research Brief No 1 (University of New South Wales, 2010).
[35] A study by the Queensland Aboriginal and Torres Strait Islander Women's Task Force on Violence estimated that 88% of rape cases within Indigenous communities go unreported: Robertson, Boni, Aboriginal and Torres Strait Islander Women's Task Force on Violence Report (Queensland Government, Department of Aboriginal and Torres Strait Islander Policy and Development, 200). See also, Willis, Matthew, 'Non-disclosure of violence in Australian Indigenous communities', 2011 Trends & Issues in Crime and Criminal Justice no. 405 (Canberra: Australian Institute of Criminology).
[36] ABS data records that 9% of victims of reported sexual assaults in NSW in 2022 identified as Aboriginal or Torres Strait Islander, while only 3% of the NSW population identify as Aboriginal or Torres Strait Islander. See: <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2022>.

Implementation of the ALRC's 'Safe, Informed, Supported' report recommendations

41. Eighteen months have now passed since the ALRC completed its *Safe, Informed, Supported* report into the justice response to sexual violence. This report made a comprehensive suite of recommendations to combat the 'reform resistance' of the criminal response to sexual violence, with recommendations directed at the Commonwealth, states and territories. To date, uptake of these recommendations has been limited. There is little clarity as to the timeframes for actioning the recommendations,[37] nor any accountability mechanism for ensuring their implementation.

42. The DFSV Commissioner has therefore urged that: "The Commonwealth should ensure the second Action Plan includes a roadmap for implementing recommendations from the Australian Law Reform Commission report including identifying timeframes and responsible government agencies."[38] We strongly support this call and stress the need for an independent monitoring mechanism for the implementation of the ALRC's recommendations. Given that responsibility for implementation is dispersed across Commonwealth, state and territory governments, centralised monitoring and coordination is crucial.

Recommendation 12

We recommend that the Action Plan includes a clear roadmap for implementing recommendations from the ALRC's *Safe, Informed, Supported* report, including identifying timeframes, responsible government agencies, and transparent monitoring.

Recommendation 13

We recommend that the Domestic, Family and Sexual Violence Commission is empowered and appropriately resourced to monitor the implementation of the ALRC's *Safe, Informed, Supported* recommendations.

Oversight of police practice

43. With only 15% of sexual assault reports to police progressing to a criminal charge, the ALRC has urged that the reasons for such unreasonable levels of attrition at police reporting stage must be investigated to 'develop strategies to address any systemic failures'.[39] The ALRC stated that:

> *The criminal justice system is failing to fulfil its protective purpose when it has reached the stage where a consistently high proportion of people who report sexual violence to the police do not progress through the system and it cannot explain why*.[40]

[37] Notably, the first of the few ALRC recommendations that were time-bound has already passed its prescribed deadline. Recommendation 4 was for each state and territory to establish an independent taskforce within 12 months to investigate attrition of police complaints, and this has not occurred. Recommendations 49 and 55 are also time-bound but have a 24-month timeframe.
[38] Domestic, Family and Sexual Violence Commission (n 5) Recommendation 28.
[39] Australian Law Reform Commission (n 3) 172.
[40] Ibid.

44. At a state and territory level, reports have observed police responses to sexual violence to be: mired in concepts of 'real' rape and judgments about the victim-survivor';[41] informed by 'a fundamental lack of insight about the realities of sexual violence';[42] and frequently involving 'a misapplication of legal principles'.[43] At Women's Legal, we see the impacts that these policing practices have on victim-survivors on a daily basis. Despite progressive 'affirmative consent' reforms and 'rape myth-busting' jury directions in NSW since 2022, our clients continue to report the use of questions derived from outdated understandings of consent and other rape myths.

45. Meaningful oversight and accountability for police decision-making is crucial to address the sexual assault justice gap. To this end, ALRC recommendation 4 was that:

    State and territory governments should each establish and fund an independent taskforce within 12 months of this Report to:
    a. *undertake an initial review of all reports of sexual violence made to police within the prior 12 to 18 months that did not progress to charge and publish a report of its findings …*
    b. *develop a model for an independent, ongoing review mechanism for all reports of sexual violence that the police do not progress to charge that publishes reports … [and]*
    c. *develop a model for an independent, ongoing, and complainant-initiated review mechanism to enable complainants of sexual violence to seek a review of the police decision not to progress to charge in their case[.]*

46. The 12-month timeframe for the establishment of these independent taskforces has now passed without action.[44] Previous calls for similar action at a state and territory level have also gone unheeded,[45] as has the Rapid Review Panel's recommendation for all jurisdictions to establish independent (civilian-led) oversight mechanisms for police management of DFSV.[46]

47. This Action Plan must prioritise concrete steps to address systemic failures in police responses to sexual violence. As the ALRC identified, this will necessitate a thorough and independent examination of the reasons that cases are currently not progressing, as well as ongoing (and wholly independent) review mechanisms. To this end, we urge that the full implementation of ALRC recommendation 4 is explicitly included in the Action Plan.

Recommendation 14

We recommend that the Action Plan embeds the full implementation of ALRC recommendation 4.

[41] Campbell, Woolley and Lockie (n 32) [3.2.6].
[42] Rachael Burgin and Jacqui Tassone, *Beyond Reasonable Doubt? Understanding Police Attrition of Reported Sexual Offences in the ACT* (Swinburne University of Technology, 2024) 9.
[43] Ibid.
[44] We note that the Commonwealth has commissioned research by the Australian Institute of Criminology as a preliminary response to this recommendation. However, this research is not of the scope prescribed by the ALRC, which called for each state and territory to establish an independent taskforce to undertake a considerably larger study.
[45] For example, in NSW see the 2023 recommendations for 'accountability of police … for their actions and decisions', including public reporting of reasons why cases do not proceed: Campbell, Woolley and Lockie (n 32) [3.2.6] and Recommendation 14.
[46] Rapid Review Expert Panel (n 11) Recommendation 13(e).

Independent legal representation for victim-survivors of sexual violence

48. Within the criminal process, victim-survivors of sexual violence are positioned as witnesses in the state's prosecution of the accused. That is; prosecutors represent the interests of the state, not the victim-survivor, and there is nobody in the courtroom whose primary concern is upholding the rights and dignity of the victim-survivor. In our view, independent legal representation for victim-survivors would be the single most effective mechanism to improve the treatment of victim-survivors and thus to increase engagement with the criminal process.

49. As existing research has identified, the Crown may be disincentivised from making use of progressive reforms and protections for victim-survivors for a variety of reasons (such as concerns at being perceived to be too protective of complainants, or to improperly impede the defence).[47] Judges can also face disincentives to enforcing legislative protections, from a reluctance to abandon long-embedded practices, to the prospect of appeals. Giving standing to an independent representative would ensure that there is someone in the courtroom whose sole priority is upholding the rights of the complainant. This person would not be prevented by competing concerns from intervening to prevent inappropriate or inadmissible lines of questioning.

50. The need for independent representation to assist complainants in protecting their counselling communications has been recognised for some time. The ALRC has recommended that this should be extended to all of a complainant's personal, sensitive, or confidential information,[48] and other jurisdictions provide models of independent representation for a range of purposes (such as resisting the admission of sexual experience evidence).[49]

51. In Victoria, where "ground rules hearings"[50] are mandated for all sexual offence trials, the Victims of Crime Commissioner has emphasised the need for complainant representation. The Commissioner has proposed that, at a ground rules hearing, the independent representative could:
    a. assist the court in determining the manner and content of questioning;
    b. ensure cross-examination and the structure of questioning will not cause undue trauma; and
    c. assist a complainant to better prepare for giving evidence and understand the type of questioning.[51]

[47] Quilter and McNamara (n 33) 38.
[48] Australian Law Reform Commission (n 3) [6.82]-[6.85].
[49] See, for example, *Sex Offenders Act 2001* (Ireland), s 34. For a summary of international models of independent representation, see With You We Can, *What No One Told Us: How Critical Gaps in Legal Literacy Shape Poor Responses to Sexual Assault in Australia, and the Way Forward* (November 2025) 28–29.
[50] A ground rules hearing is used to discuss and establish how a witness will be questioned, or how the hearing will be conducted, to enable the witness to give their best evidence and minimise distress. The Court sets 'ground rules' for the trial, generally in the form of directions. For example, this may relate to the need for breaks, communication aids and the topics or questions that may be asked of the witness.
[51] *Sidelined and Silenced: Systemic Inquiry into Victim Participation in the Justice System* (Victorian Victims of Crime Commissioner, November 2023) 382–3.

52. The Commissioner has further recommended that the independent representative is present throughout cross-examination in order to:
    a. ensure that questioning complies with the directions made at a ground rules hearings;
    b. assist the court in ensuring compliance with evidentiary protections (i.e. that the victim is not asked improper questions); and
    c. ensuring that sexual history evidence laws are complied with.[52]

    In making these recommendations, the Commissioner emphasised that this would not prejudice the accused's right to a fair trial or alter the adversarial nature of the trial. The representative would have a purely protective role, and the complainant would remain a participant and not a party to the proceedings.

53. Expanding victim-survivors' standing to be heard on matters affecting their rights, and providing independent legal representation to do so, is vital to address the harm and disempowerment inflicted during the criminal process. As the ALRC recognised, to be effective, these legal services must be provided by organisations with a deep understanding of the dynamics of gender-based violence and a trauma-informed and culturally safe approach to legal practice.[53]

Recommendation 15

We recommend that the Action Plan prioritises giving victim-survivors of sexual violence standing to appear, and access to independent legal representation, to assert their rights during the criminal trial process.

Protection of victim-survivors' confidential records

54. Concerns have been raised for many years that as traditional avenues for discrediting victim-survivors (such as sexual history evidence) are restricted, defence counsel have pivoted towards 'fishing expeditions' into their health and private records in order to discredit.[54] Across jurisdictions, victim-survivors' intimately personal counselling communications have been a focus of these distressing, and increasingly pervasive, defence tactics.

55. The risk of disclosure of counselling communications has severe impacts both upon victim-survivors at an individual level, and on the criminal response to sexual violence at a systemic level. Without certainty of confidentiality, victim-survivors can feel compelled to choose between accessing therapeutic support and seeking justice. The mere threat of disclosure may deter reporting and therefore impede the ability of the legal system to address sexual violence. Where disclosure occurs, it can have an extremely harmful and retraumatising impact. A victim-survivor cited by the ALRC explained the distress of her perpetrator being given 'intimate details about my life and mental state', describing this as a 'profoundly invasive and traumatic experience'.[55]

[52] Ibid 384.
[53] Australian Law Reform Commission (n 3) [6.91].
[54] Wendy Larcombe, 'The "Ideal" Victim v Successful Rape Complainants: Not What You Might Expect' (2002) 10(2) *Feminist Legal Studies* 131, 135–8.
[55] Australian Law Reform Commission (n 3) 378.

56. Women's Legal played a central role in NSW being the first Australian jurisdiction to enact a sexual assault communications privilege (**SACP**) in 1997 and,[56] in 2010, we successfully piloted the first independent representation service for victim-survivors seeking to protect their confidential records.[57] After three decades of advocacy, we are immensely frustrated by the extent to which the practical application of the SACP by actors within the criminal legal system continues to thwart its objectives. Despite a succession of measures to strengthen the SACP scheme, its application remains highly uneven and fraught in practice.[58]

57. The ALRC has similarly raised 'significant concerns'[59] about how discretionary privilege regimes (such as the NSW SACP) are operating in practice and, across jurisdictions, analyses of similar regimes have found that judicial decisions have operated to reinforce rape myths and stereotypical conceptions of the 'ideal victim'.[60] For these reasons, the ALRC recommended that there should be consideration of 'whether sexual assault counselling communications should be absolutely privileged'.[61]

58. We are of the view that only an absolute prohibition on access to victim-survivors' counselling communications (unless the victim-survivor consents) will adequately protect victim-survivors' wellbeing and support the prosecution of sexual violence. As subsequent paragraphs will address, this must also be accompanied by a leave regime for access to victim-survivors' personal, sensitive or confidential information beyond counselling communications.

Recommendation 16

We recommend that the Action Plan prioritises comprehensive protection of victim-survivors' counselling communications.

59. Subpoenas for counselling communications are just one aspect of the invasive 'fishing expeditions' against victim-survivors that require attention. As our lives become increasingly mediated by technology, vast quantities of victim-survivors' digital records are often being sought. These records may be extremely wide-ranging and of limited relevance to the matters at issue in a sexual assault trial.

[56] See, for example, the advocacy of former solicitors Ruth Pilkinton, Janet Loughman and Alicia Jillard: Anne Cossins and Ruth Pilkinton, 'Balancing the Scales: The Case for the Inadmissibility of Counselling Records in Sexual Assault Trials' (1996) 19(2) *University of New South Wales Law Journal* 222; Alicia Jillard, Janet Loughman and Edwina MacDonald, 'From Pilot Project to Systemic Reform: Keeping Sexual Assault Victims' Counselling Records Confidential' (2012) 37(4) *Alternative Law Journal* 254.
[57] Women's Legal Service NSW coordinated the 2010 Sexual Assault Communications Privilege Pilot Project, which was delivered in partnership with the ODPP, law firms Ashurst, Clayton Utz and Freehills, and the NSW Bar Association.
[58] For example, the Legal Aid SACP Service observed that defence subpoenas were issued without leave in over 60% of cases referred to them in 2023-24: Robyn Gilbert, 'Sexual Assault Communications Privilege — An Update' (2025) 37(1) *Judicial Officers' Bulletin* 1, 3.
[59] Australian Law Reform Commission (n 3) 374.
[60] See, e.g., Elisabeth McDonald, 'Resisting Defence Access to Counselling Records in Cases of Sexual Offending: Does the Law Effectively Protect Clinician and Client Rights?' (2013) 5(2) *Sexual Abuse in Australia and New Zealand* 12; Jennifer Temkin, 'Digging the Dirt: Disclosure of Records in Sexual Assault Cases' (2002) 61(1) *Cambridge Law Journal* 126; Lise Gotell, 'Tracking Decisions on Access to Sexual Assault Complainants' Confidential Records: The Continued Permeability of Subsections 278.1–278.9 of the Criminal Code' (2008) 20(1) *Canadian Journal of Women and the Law* 111; Lisa Gotell, 'When Privacy Is Not Enough: Sexual Assault Complainants, Sexual History Evidence and the Disclosure of Personal Records' [2006] *Alberta Law Review*; Jennifer Temkin and Barbara Krahe, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing, 2008) [7.3].
[61] Australian Law Reform Commission (n 3) Recommendation 43.

60. Recent research has confirmed the ubiquity of reliance on victim-survivors' phone records, in particular, with digital communications being led 66% of analysed NSW and Victorian trials.[62] These records were commonly utilised by the defence 'to facilitate rape myth-based cross-examination of the complainant'.[63] As with therapeutic records, the threat of such invasive breaches of victim-survivors' privacy can reduce their willingness to engage with the criminal legal process and thus impede the administration of justice.

61. We are also concerned by the wide range of other highly personal records that may be sought by defence counsel to discredit victim-survivors, such as their educational, health and welfare histories. The use of such records can powerfully support and encourage engagement with myths about the lack of credibility of specific marginalised groups (such as women with experiences of mental ill-health, disability, childhood trauma, addiction and homelessness). Women who face intersectional discrimination, and First Nations women in particular, are disproportionately impacted. Women who have had extensive interactions with government systems – such as those who have been in state care or accessed mental health or disability support – may have lengthy recorded histories and may be vulnerable to highly discriminatory credibility assessments by juries.

62. The harm – and myth-based reasoning – that can result from access to victim-survivors' personal records necessitates close scrutiny of the relevance of such evidence. A leave regime governing defence access to such records is required to ensure that scrutiny of this practice. This is also supported by the findings of the ALRC, which recommended that victim-survivors should have access to legal representation to be heard in relation to all subpoenas for their 'personal, sensitive, or confidential information' (including subpoenas to third parties).[64]

Recommendation 17

We recommend that leave must be sought in relation to all subpoenas for access to complainants' personal, sensitive, or confidential information.

Recommendation 18

We recommend that complainants are notified of, and given standing to be heard on, all subpoena applications that relate to their personal, sensitive or confidential information.

[62] Julia Quilter and Luke McNamara, *Reforming Rape Trials: The Impact of Law Reform on Criminal Trials in Australia* (Oxford University Press, 2026) 128.
[63] Ibid 128–129.
[64] Australian Law Reform Commission (n 3) [6.82]-[6.85].

Visibility and accountability for sexual violence in all its forms in all settings

63. The Second Action Plan must make visible and ensure accountability for sexual violence in all its forms, in all institutional settings. This includes sexual violence perpetrated against older women and women with disabilities in aged-care and residential care settings; sexual violence perpetrated against children and young people in out of home care and other settings; and sexual violence perpetrated against women, young people and children in detention, prison and other non-voluntary settings.

64. Women's Legal has a long history of providing legal services to women in prison.

65. The pathway for many women into prison stems from a history of being subjected to gender-based violence which pre-dated their incarceration. Frequently, this includes a long and complex history of trauma and abuse spanning decades and multiple offenders.

66. Our work with incarcerated women, the NSW Special Commission of Inquiry into offending by former Corrections Officer Wayne Astill, survivor-led advocacy,[65] and media reports all evidence that sexual violence against women in prison perpetrated by Correctional Services staff and others employed in prisons is systemic. It is state-perpetrated sexual violence.

67. In a culture of silence, abuse thrives. Limited transparency, independent oversight, and data collection prevents accountability at all levels, hinders law reform efforts to prevent state-perpetrated sexual violence, and prevents safety for all women who are in prison and those who work for Corrective Services (or work in prisons for other employers).

68. It is vital the Action Plan includes actions: to hold those perpetrating such violence accountable; to ensure proper support for victim-survivors to assist in their healing and recovery; and to prevent sexual violence.

69. We strongly support actions including:
    a. Safe, confidential, independent and accessible reporting mechanisms for women subjected to sexual violence in prison.
    b. Access to gender-based violence and trauma-informed, culturally safe services to support victim-survivors in their healing.
    c. Development of survivor-led educational resources for women in custody that include information about staying safe in custody, pre-cursors, grooming behaviour and safe reporting avenues.
    d. Embedding cultural reform within prisons that upholds the dignity and human rights of women in prison to be free from gender-based violence and increases transparency and accountability of Correctional Services through independent oversight and public reporting.

[65] Survivor Leadership Group, K Austin, P Evans, *Breaking Silence: In Search of Safety': Solutions from survivors of staff-perpetrated sexual violence in custody* (Report, 2025).

e. Strong and effective mechanisms that hold all staff working in Corrective Services and Correctional Centres in Australia accountable for misconduct and sexual violence.
f. The Australian Human Rights Commission, SafeWork NSW and Safe Work Australia being properly resourced to assess the implementation of the positive duty to prevent workplace sexual harassment and psychosocial workplace hazards, including in institutional settings.

Recommendation 19

We recommend that the Action Plan includes actions to make visible sexual violence in institutional settings, including in prisons, as well as actions to embed prevention, early and ongoing trauma-informed and culturally safe support for victim-survivors, and accountability of people and the state for perpetrating such violence.

Use of the law as a tool for silencing victim-survivors

Australia's plaintiff-friendly defamation laws

70. Threatening or commencing defamation proceedings has become a widely used tactic by alleged perpetrators to silence women who have been subjected to gender-based violence.[66] Australia's plaintiff-friendly defamation laws have been found to discourage victim-survivors from reporting gender-based violence, creating a culture of silence whereby perpetrators and institutions are not held accountable for abuse.[67]

71. Legislation currently allows alleged perpetrators to initiate defamation proceedings by serving victim-survivors with a 'Concerns Notice' for reporting violence to employers, health practitioners, education providers, housing providers, loved ones and, in Western Australia, even the police.[68]

72. Women's Legal has seen 'Concerns Notices' issued against clients who have disclosed:
    a. sexual assault to an education and housing provider where the perpetrator was a fellow student living in the same dorm;
    b. domestic violence to close friends and family;
    c. workplace sexual harassment to an employer;
    d. historic abuse to a religious organisation where the perpetrator was a senior figure within that organisation; and
    e. sexual assault by a sportsperson in a private group chat.

73. From the outset, a victim-survivor's purportedly defamatory statement is presumed to be false, forcing her to bear the onus and legal costs of establishing truth or making out other available

[66] Regina Featherstone and Sharmila Bargon, *Let's talk about confidentiality: NDA use in sexual harassment settlements since the Respect@Work Report*, University of Sydney, Law School, 6 March 2024.
[67] Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry Report* (2020) ch 5 ('Defamation laws and protections for witnesses in civil proceedings').
[68] The defence of 'absolute privilege' does not cover reports or 'publications' made to police in Western Australia. See *Defamation Act 2005* (WA) s 27.

defences. The financial, psychological, reputational risks involved, and the lack of procedural protections for victim-survivors in civil courts, deter many women from defending these claims. This often means they must make an 'Offer of Amends', which may include retracting their report, paying monetary compensation to the perpetrator and, in some cases, issuing an apology.

Recommendation 20

We recommend reforming the Model Defamation Provisions to ensure that disclosures of gender-based violence that are made without malice are protected by absolute privilege.

Widespread use of Non-Disclosure Agreements (NDAs) to silence victim-survivors

74. NDAs are frequently used to silence women who have been subjected to sexual harassment and violence.

75. In the employment context, research indicates that 75% of lawyers routinely use strict NDAs to resolve sexual harassment complaints.[69] These commonly contain strict confidentiality and non-disparagement clauses of unlimited duration and contain disproportionate penalties for breach. NDAs are frequently used as a tool to protect the reputations of perpetrators and employers and prevent victim-survivors from accessing supports essential to their recovery. Their widespread use also prevents the systemic addressing of workplace sexual harassment and allows employers to circumvent their Positive Duty obligations to eliminate workplace sex discrimination.

76. In 2025, the Australian Human Rights Commission (**AHRC**) recommended that legislation be introduced to restrict the use of NDAs so that they cannot be misused to silence victim-survivors, or prevent the sharing of information that could undermine broader efforts to prevent workplace sexual harassment.[70] Women's Legal, along with a coalition of Working Women's Centres across Australia, has been advocating for the implementation of a Federal NDA Bill to regulate the use of NDAs to ensure confidentiality clauses are used to protect the safety of the harassed person, rather than the reputation of the perpetrator.

77. Outside the employment context, NDAs are also used in the settlement of civil claims involving sexual violence. Survivor-informed research and policy analysis indicate that NDAs in sexual violence matters can deter help-seeking, create confusion about whether disclosures to police, lawyers, or support services are permitted, and restrict access to justice and therapeutic support.[71] Reflecting these concerns, a number of jurisdictions have begun to restrict or render void NDAs in relation to sexual violence matters, particularly in institutional settings such as universities.

[69] Featherstone and Bargon (n 63).
[70] Australian Human Rights Commission, *Speaking from Experience: What needs to change to address workplace sexual harassment* (2025), Recommendation 8.
[71] Canadian Gender-Based Violence Knowledge Centre, *The Use of Non-Disclosure Agreements in Cases of Gender-Based Violence: Backgrounder* (2023); UK Ministry of Justice, *Victim-facing guidance on non-disclosure agreements (NDAs)* (updated 2025).

Recommendation 21

We recommend the introduction of a Federal NDA Bill to regulate the use of NDAs to ensure that they cannot be used to the detriment of victim-survivors.

Expanding access to supports for migrant and refugee women

Visa dependency heightens risk of domestic violence but access to support is limited

78. Uncertain visa status creates heightened risks for women on temporary visas who are subjected to domestic and family violence. Perpetrators leverage limited access to resources, financial and visa dependence, and the risk of deportation to maintain power and control over women on temporary visas.[72] One in three women in Australia from migrant and refugee backgrounds have experienced domestic and family violence.[73]

79. Where domestic violence is perpetrated, access to support is contingent on migration status, rather than risk of harm.[74] Women on temporary visas are excluded from social safety nets and have very limited access to social security benefits such as Medicare and Centrelink. This significantly increases the risk of housing insecurity and homelessness for women and children without permanent residency.[75] Crisis accommodation services are often forced to turn away temporary visa holders due to limited capacity, funding constraints, long processing times, the complexity of support required and the scarce exit pathways out of refuge.[76]

80. When faced with deportation and homelessness, women on temporary visas may choose to stay with or return to a violent partner, increasing the risk of being subjected to further violence that could lead to serious injury or death.[77] Between 2000-2022, 12.8% of people killed in the context of domestic violence were temporary visa holders.[78]

81. The National Advocacy Group on Women on Temporary Visas Experiencing Violence has produced a *Blueprint for Reform* that outlines key changes necessary to ensure that temporary visa holders who are subjected to domestic violence have access to safety. That report recommends increased funding for specialist and legal services, improvements to the migration system and the expansion of eligibility to social security and housing for women on temporary visas who are experiencing domestic and family violence.[79] We encourage adoption of these recommendations as a priority under the Action Plan.

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[72] National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Path to Nowhere: Women on Temporary Visas Experiencing Violence and Their Children* (Report, 2018) 10.
[73] Harmony Alliance, *Migrant and Refugee Women in Australia: The Safety and Security Study* (Report, December 2023) 9.
[74] Marie Segrave, *Temporary Migration and Family Violence: An Analysis of Victimisation, Vulnerability and Support* (Report, Monash University, 2017) 3.
[75] Australian Housing and Research Institute, Temporary visa holders and housing: findings from an Investigative Panel (Final Report, November 2025) 48.
[76] National Advocacy Group on Women on Temporary Visas Experiencing Violence, *Blueprint for Reform: Securing Safety for Victims/Survivors of Domestic and Family Violence Who Are on Temporary Visas* (Third Edition, July 2026) 18.
[77] Ibid.
[78] Domestic Violence NSW, *Breaking Barriers: Critical Support for Temporary Visa Holders Experiencing Domestic and Family Violence in NSW* (Report, March 2025) 5.
[79] National Advocacy Group on Women on Temporary Visas Experiencing Violence (n 75).

Recommendation 22

We recommend that crisis accommodation and domestic violence services are adequately funded to enable them to support women and children on temporary visas who are experiencing domestic and family violence.

Recommendation 23

We recommend adoption of the *Blueprint for Reform* recommendations under the Action Plan, including expanding eligibility for social and housing support for women on temporary visas who are experiencing domestic and family violence.

Migrant and refugee women experience significant rates of gender-based violence in the workplace

82. Almost one in two migrant and refugee women experience sexual harassment in their workplace. One third of those women were threatened or warned not to report it.[80]

83. Women with employment-reliant temporary visas conditions are inherently vulnerable to workplace exploitation. For example, a 2025 report from ANU revealed that women engaged in the Pacific Australia Labour Mobility (**PALM**) scheme experienced sexual and gender-based violence, as well as reproductive coercion, in the course of their work. Participants were subjected to sexual harassment, violence and coercion in PALM accommodation settings, and by other workers in the scheme.[81] Women in the PALM scheme face significant barriers to reporting sexual violence and are not always able to access confidential, independent and culturally appropriate support.[82]

84. In 2024, the Department of Home Affairs established the Workplace Justice Visa (**WJV**) and Strengthening Reporting Protection (**SRP**) pilots to allow certain temporary visa holders to remain in Australia to pursue workplace exploitation claims, such as sexual harassment. To be eligible for protection under the WJV or SRP a visa holder must have their workplace exploitation matter certified by an Accredited Third Party (**ATP**). This WJV and SRP pilots have provided vital protection for migrant women experiencing sexual harassment and other forms of workplace exploitation.

85. Soon after implementing the pilots, the UN Special Rapporteur raised concerns about the sexual and gender-based violence faced by migrant workers in Australia and considered the WJV and SRP schemes as a 'significant step' to address exploitation. The Special Rapporteur recommended measures be taken to ensure equal access to the scheme and suggested that community legal centres be properly funded to provide certification.[83]

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[80] ANROWS, Migrant and refugee women: *A national study of experience of, understandings of and responses to sexual harassment in the workplace* (Report, 2024) 10.
[81] Lindy Kanan, *It's Not Illegal To Be Pregnant: Research report on reproductive justice and the Pacific Australia Labour Mobility scheme* (Report, May 2025) 11.
[82] Ibid 48.
[83] United Nations, *Visit to Australia; Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Tomoya Obokata* (16 July 2025) A/HRC/60/28/Add. 1, 36.

86. The AHRC has also recommended reducing immigration-related barriers to help seeking to improve safety for migrant and refugee workers.[84] A key measure to achieve this would be to evaluate and expand access to the WJV and SRP pilots, as well as expanding the list of ATPs to include more community legal centres and Working Women's Centres.

Recommendation 24

We recommend the evaluation and expansion of the WJV and SRP pilots to ensure that women on temporary visas can stay in Australia while they pursue workplace claims. We also recommend expanding the list of ATPs to include more community legal centres and Working Women's Centres.

Increasing awareness of and support for economic abuse

87. Up to 90% of women seeking support for domestic and family violence are subjected to economic abuse.[85] Economic abuse has devastating long-term financial impacts on victim-survivors and their children, including post-separation, with a survey indicating that 80% of separated mothers had their former partner use the Child Support program to perpetrate financial abuse.[86]

88. It is estimated that only 15% of women experiencing economic abuse sought help, and of those, 44% could not access support.[87] Specific services to support women being subjected to economic abuse are rare. Greater investment in the provision and promotion of economic abuse support services is therefore essential to enabling financial recovery after violence.[88] The financial insecurity caused by economic abuse also generates significant costs for governments, with victim-survivors and their children often requiring ongoing income support, housing, health, legal and other services long after separation. Investment in specialist economic abuse services is thus an investment that reduces long-term demand on public services.

Economic abuse and superannuation

89. The average Australian woman will retire with $51,000 (or 25%) less superannuation than a man.[89] This is driven by multiple complex and intersecting factors, such as workplace gender inequality, patriarchal product design and economic abuse.

90. Perpetrators weaponise the superannuation system against women by blocking workforce participation and preventing accrual, or by abusing Self-Managed Super Funds. Early withdrawal schemes are also being misused, with perpetrators leveraging compassionate release or other schemes to coerce women to withdraw from their balance. It is estimated that up to 70,000

[84] Australian Human Rights Commission (n 67) Recommendation 6.
[85] UNSW and Social Policy Research Centre, *Responding to economic abuse* (Issues Paper, 2019).
[86] Commonwealth Ombudsman, *Weaponising Child Support: when the system fails families* (Report, June 2025) 6.
[87] Centre for Women's Economic Safety, Women's Economic Safety Snapshot 2025 (Report 2025).
[88] Ibid.
[89] Super Members Council, *Economic security in retirement: How life events affect older Australian women* (Report, September 2025).

women were coerced to take out up to $20,000 under the COVID-19 early withdrawal scheme.[90]

91. Perpetrators are also exploiting loopholes in superannuation legislation and regulations to financially benefit from their abuse. We welcomed Treasury's recent consultation into reforms that would prevent perpetrators of domestic violence from accessing their victim's superannuation death benefit. Alongside the Economic Abuse Reference Group, Women's Legal advocated for broader trustee discretion that would allow perpetrators to be set aside as beneficiaries where domestic violence is substantiated. We are hopeful that those reforms would be implemented.

92. The cumulative lifetime impact of economic abuse on a woman's retirement fund is profound. Older women are more likely to live in poverty,[91] and are the fastest growing demographic of people experiencing homelessness.[92] As such, we recommend that the Second Action Plan prioritises reforms that will work towards closing the gender superannuation gap, provide better legislative protections against financial abuse in superannuation and better ensure women's financial security when they reach retirement.

Recommendation 25

We recommend that the Action Plan prioritises reforms that prevent perpetrators from using the superannuation system as a tool to economically abuse victim-survivors.

A Human Rights Act

93. We recommend that the Action Plan includes an action to introduce a federal Human Rights Act as well as a NSW Human Rights Act. Our submission to the Federal Inquiry into Australian's Human Rights Framework[93] and our submission to the Inquiry into a *Human Rights Bill 2025* in NSW[94] set out the reasons why this action is imperative to address gender-based violence. In particular, we called for an express right to live free from gender-based violence and specific rights for victim-survivors of gender-based violence.

Recommendation 26

We recommend that the Action Plan includes as an action the implementation of the recommendations made by the Parliamentary Joint Committee on Human Rights in their report: *Inquiry into Australia's Human Rights Framework*,[95] including the introduction of a federal Human Rights Act.

[90] Katina Curtis, 'A perfect storm: Up to 70,000 women may have been coerced into withdrawing super', Sydney Morning Herald (online, 21 February 2022) <https://www.smh.com.au/politics/federal/a-perfect-storm-up-to-70-000-women-may-have-been-coerced-into-withdrawing-super-20220217-p59xac.html>.
[91] Super Members Council (n 85).
[92] Australian Human Rights Commission, *Older Women's Risk of Homelessness* (Background paper, 2019) 15.
[93] Women's Legal Service NSW, *Submission in response to the Inquiry into Australia's Human Rights Framework*, 30 June 2023, Submission No 97.
<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Submissions>
[94] Women's Legal Service NSW, *Submission in response to the Inquiry into Human Rights Bill 2025 NSW*, 3 July 2026.
[95] Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework* (Report, 2024).