



7 May 2023

Responses to Sexual Assault Section
Criminal Justice Reform Taskforce
Attorney-General's Department
By email: Sexual.Violence.Responses@ag.gov.au

Dear Attorney-General's Department,

Consultation on the Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault: Discussion Paper

1. Youth Law Australia thanks the Australian Government and the Attorney-General's Department for the opportunity to make a submission on the *Scoping the development of specialised and trauma-informed legal services for victims and survivors of sexual assault: Discussion Paper* (**the Discussion Paper**). We commend the Attorney-General for taking action to prioritise providing victims and survivors of sexual violence with greater access to specialised and trauma informed legal services to support their recovery and facilitate safer participation in the criminal justice system.
2. We also thank the Commonwealth Attorney-General's Department (**the Department**) for the opportunity to participate in the *Populations Overrepresented in Sexual Assault Statistics Workshop – Legal Services Pilot* on Friday 28 April 2023. We particularly wish to acknowledge the care taken to create a safe and inclusive consultation space.

Acknowledgements

3. We acknowledge the disproportionate, ongoing and intergenerational harm experienced by Aboriginal and Torres Strait Islander children and young people and their families and communities. We also acknowledge the many young people who have been courageous and hopeful in sharing their experiences with us.

About Youth Law Australia

4. Youth Law Australia (**YLA**) (formerly the National Children's and Youth Law Centre) is an accredited community legal centre dedicated to helping children and young people under the



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age of 25 years and their supporters to understand their legal rights and find solutions to their legal problems. YLA is Australia's only national, technology-based community legal service, providing specialist child-safe and trauma-informed legal services and referrals primarily through web content, email, phone and live webchat.

5. We have significant experience and expertise in advising and supporting children and young people and their advocates on matters involving sexual violence, including sexual assault; historical child sexual abuse; children and young people using harmful sexual behaviours; grooming; online harm such as child abuse material, image-based abuse and sextortion; and sexual harassment, particularly in employment and education contexts. We also assist children daily to navigate the complex laws around age of consent, similar age defences, sexting and accessing pornography.
6. We provide advice, advocacy, and referrals in relation to legal issues such as reporting to police, providing statements or giving evidence, obtaining records through processes like freedom of information requests, victims and injury compensation, information sharing and protecting sensitive records, dealing with the media, and defamation.
7. We work closely with the National Office for Child Safety and receive funding under the *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* to enhance and expand legal assistance services for victims and survivors of child sexual abuse by providing a national online legal webchat service for children and youth experiencing, or at risk of experiencing harm including sexual abuse.
8. We also provide a holistic legal practice for children and young people which means that whatever the presenting legal problem, we can also assist with any other legal problems that arise. For example, children and young people experiencing child sexual abuse may also be dealing with family and domestic violence and need support to leave home; obtain identification documents; obtain copies of records; change their name or gender; obtain housing; transfer school enrolments; obtain and understand the effect of a restraining order; or make an application for victims support.
9. We have an extensive national referral network developed over 30 years of practice and we have relationships to facilitate referrals with organisations like Headspace, Kids Helpline and the eSafety Commissioner.
10. Wherever possible we support Gillick competent young people¹ to make independent decisions and prioritise the direct participation of all children and young people in all matters that impact them where safe to do so. This is particularly important when responding to sexual violence, as it is common for victims and survivors of sexual violence in the current policing and justice cultures to feel ancillary or unnecessary to the legal processes which are about them.

¹ *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112 (“Gillick”).

Introduction

11. We commend the Department for the Discussion Paper which is both a useful summary of the need for reform, and an acknowledgment and validation of the decades of advocacy by victims and survivors and their advocates.
12. We respond to the *Questions for all stakeholders* from the Discussion Paper below and in doing so primarily address the experiences, needs, gaps and priorities for children and young people.
13. We believe that there is overwhelming evidence that the Department must prioritise specialist sexual violence legal services for children and young people.
14. Children and young people are the most overrepresented cohort in sexual violence statistics. For example:
 - In the national recorded crime statistics for 2021, 61% of victims of sexual assault were under 18 years of age at the date of incident.²
 - In the recent Australian Child Maltreatment Study (**ACMS**), of the 3,500 children and young people aged 16-24 years who participated in the study, 25.7% reported experiencing sexual abuse, with girls significantly more likely to experience sexual abuse, 35.2% of 16-24-year-old females in the study.³ The ACMS data also found a median prevalence for sexual abuse of 3.5 times.⁴
15. Children and young people also experience intersections with all but one of the other population cohorts which are overrepresented in sexual violence statistics.⁵ They are also often the cohort most likely to be impacted by emerging forms of sexual victimisation, particularly in relation to online harm. The ACMS report noted that their forthcoming analyses of the data “will show additional concerning trends, and new emerging forms of child sexual abuse requiring major national prevention efforts”.⁶
16. Additionally, children and young people who have experienced child maltreatment such as sexual abuse have increased health risk behaviours, for example, they are 4.6 times more likely to have self-harmed in the past 12 months than peers who had not experienced maltreatment.⁷
17. It is our experience that when provided with free, confidential, trauma sensitive and child rights informed access to legal services, children and young people are proactive and engaged in help

² The Australian Bureau of Statistics, *Recorded Crime - Victims: National statistics about victims of a range of personal, household and family and domestic violence offences as recorded by police*, release date 28/07/2022, accessed at: <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-victims/2021>.

³ Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023), *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*, Australian Child Maltreatment Study, Queensland University of Technology, accessed at: http://www.acms.au/wp-content/uploads/2023/04/ACMS_BriefReport.pdf.

⁴ As above at 3.

⁵ The exception being *older people*.

⁶ As above at 3.

⁷ As above at 3.

seeking and finding solutions to their legal problems and are not afraid or uncomfortable to talk about sexual abuse.

18. The key principles that must underpin the provision of services to children and young people in response to sexual violence are:

- The safety of children and young people must be prioritised.
- Direct participation of children and young people to give effect to Articles 12 and 19 of the *Convention on the Rights of the Child (CRC)*.⁸
- Children are not a homogenous group and require flexible and varied points of access including digital service delivery involving both active and passive technologies, place-based options, as well as phone lines as not everyone can access technology or devices.
- Having an option for anonymous access to assist children and young people to build trust in the service and gain confidence in discussing sensitive matters.
- Preservation of the legal relationship to ensure confidentiality and provide children and young people with the opportunity to make an informed choice about next steps.
- All organisations that provide services to children and young people in response to sexual violence must be committed to a child-safe culture, including implementing the National Principles for Child Safe Organisations.

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?

19. There must be ongoing consultation with victims and survivors and their advocates. Whatever service delivery model is adopted, we recommend the inclusion of research with children and young people to allow any expansion to be guided by the user experience.

20. Care must be taken to identify and understand the specific ways that each cohort experiences and perceives sexual violence, as well as applying an intersectional lens to recognise and respond to the multiple forms of discrimination and unique barriers that each individual may experience. We outline some of the issues and barriers for children and young people below.

21. Children and young people require and deserve a specifically targeted legal service for children and young people so that they know that it is a child-safe organisation and a service that they can trust. The most common barriers to access for children and young people that we encounter are fear that a parent or carer will find out about what has happened and anxiety that they will get in trouble from police. It is crucial to preserve and emphasise the confidentiality of communications with lawyers who are also not mandatory reporters.⁹

⁸ United Nations, *Convention on the Rights of the Child*, 20 November 1989, articles 12 and 19.

⁹ Except for legal professionals in the NT pursuant to *Care and Protection of Children Act 2007* (NT), see sections 15, 16, 26 and 27.

22. There must be at least one option to access the legal service anonymously to receive legal information and referrals. This combined with digital legal service delivery will both facilitate earlier disclosures and give the child or young person control over the pace of the disclosure and when they want to trust the service with their personal details.
23. Acknowledgement that some children and young people also face additional barriers, for example due to being in a closed environment like a detention centre or from not having independent, unmonitored access to phones or internet capable devices.
24. Use of softer language like “unwanted experience” or “uncomfortable experience” to help children and young people recognise that sexual violence comes in many forms.
25. Ongoing mandatory training for all key stakeholders responding to sexual violence, particularly police, judiciary, court staff and legal professionals, which is trauma-informed, victim and survivor-centric and culturally safe. For those working with children and young people, they must also be required to undertake regular training about child-safe organisations, how to speak with children and young people and how to assess the maturity and capacity of children and young people to participate.
26. Be where children and young people are, which necessitates a service delivery model which incorporates digital access to legal assistance that is available 24 hours a day and in a manner which can be responsive to the circumstances of the child. For example, we observe that children and young people will contact us through our live webchat, but only be able to stay engaged in a chat for a limited time as they may be online during a break at school or when a parent is briefly out of the house. They may contact us a few times to provide details of what they are dealing with and to slowly build up trust and work out a plan for what to do next.

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

- o *legal services co-located with other support services (like health or social services)*
- o *multi-disciplinary centres incorporating specialist legal services*
- o *funding for civil proceedings*
- o *end-to-end legal service support, including in-court legal advocacy*
- o *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*
- o *restorative justice.*

27. We continually reflect on what a best practice sexual violence legal service for children and young people could look like and what needs to be prioritised. There must be a prevention focus that enables early identification and response, including to the risks of further harm from both known and new perpetrators.
28. We want earlier and ongoing engagement by children and young people; higher reporting rates; transparent and expedited police and court processes; lower withdrawal rates; children and young people being empowered to make informed choices; a reduction in the trauma and

adverse consequences associated with contact with police and court processes and increased safety and wellbeing.

29. We also want a legal service that can be flexible to respond to when a child or young person is ready and able to engage, and which is also capable of longer-term holistic engagement for continuity of care, including end-to-end legal service support.
30. We do not believe that services for children and young people should be offered as part of a one stop shop model for all victims and survivors of sexual violence. Children and young people have specific barriers to accessing justice linked to paternalistic views of childhood and persistent systemic failure to assess their maturity and capacity to participate in decision making about them independently.
31. We do see potential in a sexual violence legal service for children and young people being co-located with other health and support services or as part of a multi-disciplinary centre if care is taken to preserve confidentiality and maintain protection from mandatory reporting. For example, in practice this would mean that the child or young person first has contact with the lawyer until such time that they identify that they are ready to engage with non-legal services with an informed understanding of mandatory reporting and who else may then become involved in the matter, and the processes that this would trigger. Noting the often lengthy waiting lists for therapeutic and other non-legal supports, whatever model is adopted we recommend that specific care is taken to implement an arrangement between agencies to ensure capacity to accept and action referrals quickly.
32. Any place-based service delivery model must also be accompanied by a digital strategy to ensure genuine and flexible access for all children and young people. There must also be resourcing for the provision of legal education and direct promotions into the community.
33. There are also a cohort of children and young people who have both experienced and used sexual violence, especially in relation to online behaviours. It is therefore essential that any legal service assisting children and young people who are victims and survivors of sexual abuse, is also capable of providing advice and support in response to the use of harmful sexual behaviours. This may require consideration of where a legal service is located as some organisations have policies which require them to cease working with clients once they disclose harmful or offending behaviours.

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

34. There are currently very limited options for children and young people seeking legal assistance in relation to sexual violence, as well as for other types of related harm such as family and domestic violence. The pilot must focus on children and young people and prioritise prevention, early identification, and early response to sexual violence, with the combined aims of keeping children and young people safe and reducing the repeat victimisation into adulthood and ongoing trauma which is common for victims of childhood sexual violence.

35. As highlighted in the recent ACMS study, it is also vital to obtain better data about the frequency and severity of sexual violence experienced by children and young people, including an intersectional analysis and engagement with people with lived experience.
36. It is also crucial to educate children and young people so that they can identify that they have a legal problem, that they have rights, that there are specific legal services for them and that they can participate in decision making about them.
37. A common theme arising in our work with children and young people dealing with sexual violence is that they have tried to self-help by searching for relevant information and services online but have not been able to locate the information that they are seeking. There is very limited publicly available information about many aspects of reporting and prosecuting sexual violence, and even less that has been written with children and young people as the intended audience. Key gaps include details about police processes when interviewing children and young people who are victims and survivors of child sexual abuse; what legal steps they can take; being a witness and what to expect when the matter goes to court; the evidence required for a conviction; what to do if something goes wrong; why certain decisions have been made, including the reasons for an action or inaction; rights to confidentiality and privacy; how information will be shared; how to access their own records or statements and how to make a complaint.
38. Having access to an independent legal service would also assist children and young people to understand the decisions made by authorities. We routinely hear from children and young people that they have reached out for assistance, often very bravely contacting police, or speaking to a teacher to report harm only to be told that it is not serious enough to warrant intervention at this stage and to come back when something else happens. We appreciate that this is a common experience for all victims and survivors, but as a child having your voice ignored by the people you have been told to trust negatively shapes future help seeking behaviours.
39. The children and young people that we speak to are also concerned about the level of involvement of their parents and carers. This is a significant barrier to reporting, especially for peer-on-peer sexual violence for under 18s, and even more so where it intersects with cultural and community expectations. Reporting can be the catalyst for a range of negative consequences like loss of home and family, loss of respect, loss of peer support, disruption to education, punishment and triggering high levels of anxiety and self-harm due to fear that it will become known that they have engaged in behaviours which could disappoint or bring shame to parents and carers and community. This means that children and young people are at greater risk of ongoing sexual harm if they are not provided with an opportunity to seek legal assistance independently of their parents and carers.
40. Where a young person under the age of 18 years has experienced sexual violence from a peer, it would also be helpful to have a process to support Gillick competent young people to create a record of what happened with the police without it triggering an investigation or a child protection response. This could be via a customised format like the Sexual Assault Reporting

Option form used by NSW Police for adult sexual violence.¹⁰ We have observed the use of informal sexual violence reporting processes by our 18–25-year-old clients to be an effective tool to facilitate recovery, as it reduces the hypervigilance and anxiety that can arise from trying to retain details that might be required in the future.

41. It is also important to develop transparent processes to support children and young people to make a formal statement to police if they wish to without having to make a commitment to an investigation at that time.
42. While there are benefits in place-based service provision, without a significant increase in funding this will not be possible across Australia. We also note that children and young people in rural, regional and remote locations may be unable or unwilling to access a local service due to issues related to the cultural and social characteristics of living in small communities. Specific barriers include lack of privacy as they and/or the perpetrator may be known to local services providers and stigma and shame linked to community gossip. Children and young people within First Nations and culturally diverse communities are likely to face similar barriers. In order to leave no child behind, it will be essential to prioritise capacity to scale projects nationally and to be accessible everywhere via digital service delivery.
43. Children and young people are also at greater risk of having information shared about them without their knowledge or consent due to the combined effect of things like mandatory reporting requirements, concealing child abuse offences and failure to assess Gillick competency to facilitate independent engagement with service providers. In our work with victims and survivors of child sexual abuse, we have observed that there is significant anxiety and frustration about not knowing what records say about them. This includes records that may have been created by child protection authorities, police and teachers in relation to disclosure of notifications as well as records arising from medical and therapeutic interventions.
44. In our practice we assist clients with freedom of information applications to obtain these records. This often causes additional harm as there are commonly lengthy delays in processing times for these requests. Despite this, clients are prepared to wait as it is important to them to have ownership of their story during recovery and children and young people may never have been told exactly what has happened to them. We have observed that the longer client engagement created by the delays in waiting for records is a positive experience for the client as they feel connected to us in a shared experience. We have also noticed that these clients are more comfortable to engage earlier to raise new legal issues that may arise and to also provide instructions on other historical harm.
45. An emerging area that we are working in involves victims and survivors contacting us for assistance to speak out and share their experiences in various forums, including traditional media, social media, public forums and academic materials. There is significant concern about

¹⁰ NSW Police Force, Sexual Assault Reporting Option, accessed at: https://portal.police.nsw.gov.au/adultsexualassault/s/sexualassaultreportingoption?language=en_US

the risk of defamation proceedings and a victim-centric service model must prioritise resources to facilitate victims and survivors retaining control over sharing their story.

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

46. Measures of success for specialised and trauma informed legal services must prioritise obtaining qualitative feedback from the victims and survivors who have used the service. This is because what a successful outcome looks like is dependent on many intersecting and unique factors for each individual service user. For example, a successful outcome for one person may be having their experience validated by a legal professional so that they feel believed and can then progress with their recovery. For others success may require a conviction to be recorded against the offender or receiving an injuries compensation award. Mapping this could be achieved by completing an intake survey about what the client hopes to achieve by contacting the legal service and then reviewing this periodically and at the conclusion of the service.
47. It would also be helpful to compare levels of engagement with legal services by the overrepresented population cohorts before and after the establishment of the specialised legal service. Related to this would be the duration of engagement with the legal service.
48. Monitoring the time delay between act of violence and when the victims and survivors access the legal service could also assist to demonstrate whether the service is easily identifiable and accessible.
49. Also recording data on disengagement from the legal service and if possible, the reason for the disengagement would be a valuable way to monitor the relevance and effectiveness of the service. It could be helpful to include a mechanism that allows the client to provide feedback via an alternative method rather than directly to the service in case they wish to provide negative feedback.
50. Build in strategies from the start which encourage staff and service users to identify and acknowledge wins and moment to celebrate.
51. Greater transparency in police and court processes.
52. Longer term given there is significant data on the costs of repeat victimisation for the individual and for the community, it may be helpful to have a cost benefit analysis of the impact of the service by obtaining consent from victims and survivors to follow up with them at periodic intervals. This would need to be conducted with sensitivity to the fact that the client may be in an unsafe situation at a future date or harmed by revisiting traumatic content.

12. Are there any other issues that should be considered in the development of the legal services pilot? You might like to think about:

- o *The appropriate role of the proposed legal service, based on the needs and gaps identified by those with lived experiences who have engaged in the criminal justice system.*
- o *The type(s) of service providers that should be considered for this pilot?*
- o *Recommendations for particular locations for this pilot. Factors to consider include: the ability for clients to access services, the location's demand for services and the availability of complementary support services.*

- *How to structure services to respond to victims' and survivors' unique and individual needs.*
- *How services should be offered, for example, in person and through technology-enabled systems to enhance accessibility.*
- *How victims' and survivors' legal rights, preferences and wellbeing can be better protected in the courtroom process.*
- *Whether this service should provide advice other than in criminal law, such as advice on civil law claims or compensation claims. Are there resourcing and other impacts of including multiple fields of law in the one service that should be considered?*

53. We have addressed many of these other issues for consideration throughout our response above.
54. As a national legal service for children and young people we know that there is need for a specialised and trauma informed legal service responding to sexual violence for children and young people across Australia. Based on our current engagement with clients and stakeholders we can see that there are significant unmet and increasing legal needs in this area as well as emerging issues that require ongoing assessment of the needs of children and young people.
55. We believe that the needs of children and young people are best met by a service like Youth Law Australia capable of providing national digital legal services at scale, combined with a place-based model to facilitate an opportunity to provide holistic and longer-term support. The placement of the service will ideally be in proximity to complementary support services but operate independently to ensure that children and young people have access to confidential legal support without the risk of statutory interventions until they determine that is the direction they want the matter to go.
56. Our practice model is holistic in that we assist children and young people across all practice areas and clients regularly return when they have a new legal problem. We also note the benefits of record keeping by an established practice as children and young people may return years later to pursue a matter when they feel ready to do so and will benefit from easy access to their records and continuity of care.

We agree to this submission being made public under the name of Youth Law Australia and welcome any opportunity to participate in future conversations about the development of specialised and trauma-informed legal services for victims and survivors of sexual assault or to assist with related implementation measures. If you would like to discuss any aspect of this submission, we can be contacted on [REDACTED]

Yours faithfully,
Youth Law Australia

[REDACTED]

Director

[REDACTED]

Principal Solicitor (Harm Practice)