



The NSW Women's Alliance
Nine-Point Plan to Address Sexual Violence
within the context of domestic and family
violence

Policy Position Paper

October 2021

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The NSW Women's Alliance Nine-Point Plan to Address Sexual Violence within the context of domestic and family violence

1. Introduce affirmative consent laws in NSW.
2. Better recognise sexual assault in the context of domestic and family violence in our laws, including introducing jury directions on sexual, domestic, and family violence.
3. Introduce changes to evidence and procedural law to make the court process more accessible, safe, and trauma-informed for adult sexual assault complainants.
4. Fund independent legal representation for sexual assault complainants in criminal trials.
5. Develop a model for the practical implementation of court specialisation for matters involving sexual, domestic, and family violence in NSW, including attached support services for victim-survivors and offenders.
6. Fund sexual assault case management teams and supports for young offenders.
7. Introduce mandatory reporting and systematic audits of sexual assault complaints in aged and disability care settings, and develop a trauma-specialist, survivor-led response to disclosures.
8. Fund a comprehensive, whole-of-community primary prevention strategy for NSW, in line with the national frameworks *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* (Our Watch et al., 2015) and *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children* (Our Watch, 2018).
9. Fund development of a NSW model of complementary pathways to supplement the criminal justice system in holding perpetrators to account and delivering justice for victim-survivors.

Acknowledgement of Country

The NSW Women's Alliance would like to acknowledge Aboriginal and Torres Strait Islander people across the breadth and depth of Australia. We recognise that Aboriginal and Torres Strait Islander people have lived and cared for Country for over 65,000 years and continue to do so, honouring ancestors and knowledge holders within community, and observing ancient cultural practices.

We concede that Aboriginal and Torres Strait Islander women are at the highest risk of sexual, family, and domestic violence compared with other women in Australia. We acknowledge that sexual, domestic, and family violence are not part of Aboriginal culture.

We would like to recognise the impacts of colonisation and the ongoing systemic racism and oppression that is still present within institutions and the broader community. We acknowledge the strength and resilience of Aboriginal and Torres Strait Islander people and hold their stories with great care.

About the NSW Women's Alliance

The NSW Women's Alliance represents peak organisations and state-wide service providers that work to prevent and respond to sexual, domestic, and family violence. NSW Women's Alliance member organisations are specialist sexual, domestic, and family violence services.

Alliance members work with women, children and families affected by sexual, domestic, and family violence, including Aboriginal and Torres Strait Islander people, sexuality and gender diverse people, (LGBTQIA+) people, and people of all ages, cultures, languages, religions, ability, and socio-economic and health status.

The objective of the NSW Women's Alliance is to ensure that everyone is safe to live, work and learn free from violence.

The members of the NSW Women's Alliance are:

- Domestic Violence NSW
- Rape & Domestic Violence Services Australia
- ACON
- Immigrant Women's Speakout Association NSW
- Mudgin-Gal Aboriginal Corporation
- Multicultural Disability Association of Australia (NSW)
- Muslim Women Australia
- NCOSS
- No to Violence
- Older Women's Network NSW
- People with Disability Australia (NSW)
- Seniors Rights Service
- Women's Safety NSW
- Women's Legal Service NSW
- Women's Health NSW
- Warringa Baiya Aboriginal Women's Legal Service
- Youth Action

Note on the context of domestic and family violence

NSW Women's Alliance members urges the NSW Government to address sexual violence across NSW in all its iterations, not just in the context of domestic and family violence. Sexual violence is insidious and prevalent in all aspects of our society, including workplace sexual harassment, institutional child sexual abuse and female genital mutilation. However, as the members of the NSW Women's Alliance are primarily experts in the sphere of domestic and family violence, the NSW Women's Alliance has focussed the Nine-Point Plan specifically on sexual violence within the context of domestic and family violence, due to the expertise of the group.

'Intimate Partner Sexual Violence generally occurs in the context of other forms of violence and was often part of a larger pattern of coercive control in a relationship. Intimate Partner Sexual Violence should be considered a tactic of DV, and not a separate phenomenon' (Cox, 2015).

The Personal Safety Study recorded that 1.7 million people experienced sexual assault by a known person since the age of 15, which is 4 times as high as the number of people who experienced sexual assault by a stranger (ABS, 2016).

The NSW Women's Alliance members urges the NSW Government to conduct further consultation and to implement a comprehensive, well-funded, whole-of-government plan to address all forms of sexual violence separately, and in addition to the Nine-Point Plan.

Note on the inclusivity of marginalised communities

While anyone can be a victim of sexual violence, statistics show that women and girls are far more likely than men and boys to experience sexual offences.

Women and girls are more likely to experience sexual violence and this is particularly the case for women with disability, Aboriginal and Torres Strait Islander women, women from culturally and linguistically diverse communities and those in regional NSW (Australian Bureau of Statistics, 2019).

Recognising the higher risk of experiencing sexual, domestic, and family violence, all marginalised communities should be included as part of the funding and implementation of the *Nine-Point Plan to Address Sexual Violence*.

The following Priority Population Groups experience greater levels of violence (National Story, 2019). As such, they should be prioritised in policy development and program funding under the *Nine-Point Plan*.

People with lived expertise should be consulted as best-practice in the development of policy related to sexual, domestic, and family violence.

Priority Population Groups

Aboriginal and Torres Strait Islander women

- Sexual assault victims are more likely to be female (ABS, 2018b).
- Aboriginal and/ or Torres Strait Islander women are nearly three times more likely than non-Indigenous women to experience sexual assault (Our Watch, 2020).
- Between 2010 and 2017, the sexual assault victimisation rate for Indigenous Australians rose in NSW. Females were 3.4 times as likely as males to be victims in NSW (626 female victims, compared with 182 male victims) (ABS, 2018b).
- Perpetrators of sexual assault were likely to be known to the victim. 84% (684) of Indigenous victims in NSW knew their perpetrator (ABS, 2018b).
- 3 in 5 Aboriginal and/ or Torres Strait Islander women have experienced sexual or physical violence perpetrated by a male intimate partner (Our Watch, 2020).
- Family violence occurs at higher rates in Aboriginal and Torres Strait Islander communities than in the general population (AIHW, 2019).
- Indigenous Australians have increased risk factors for family violence, such as social stressors like poor housing and overcrowding, financial difficulties and unemployment (AIHW, 2019).
- 1 in 7 (14%) Indigenous women had experienced physical violence in the previous year. Of these, about 1 in 4 (28%) reported their most recent incident was perpetrated by a cohabiting partner. (AIHW, 2019).
- Indigenous women were 32 times, and Indigenous men 23 times, as likely to be hospitalised due to family violence as non-Indigenous women and men (AIHW, 2019).
- 2 in 5 Indigenous homicide victims (41%, or 32 victims) were killed by a current or previous partner, compared with 1 in 5 non-Indigenous homicide victims (22%, or 94 victims) during 2012–14 (AIHW, 2019).
- Indigenous children were about 7 times as likely as non-Indigenous children to be the subject of substantiated child abuse or neglect (AIHW, 2019).
- NSW in 2018, had more female Aboriginal and/ or Torres Strait Islander victims 2,764 of assault compared to male victims 1,671 (ABS, 2018).

Culturally and Linguistically Diverse people

- Sexual, domestic, and family violence occurs across all cultural groups.
- Non-government organisations working directly with clients report that recent arrivals and refugee women are reluctant to disclose what they consider as private.
- CALD communities are often characterised by marital relationships, caring and extended family caring structures and high levels of religious affiliation (Krayem, 2021) and (Sergrave, et al 2021).
- In 2017, researchers studied 300 case files from women after incidents of sexual, domestic, and family violence in migrant & refugee communities. 117 women had been threatened by their partners with deportation, and 132 were threatened that their visa application would be withdrawn (Sergrave, 2017).
- Between March 2013 and June 2016, the Australian Federal Police received 116 female referrals for forced marriages (AIHW, 2019).

- Using basic modelled calculations, the Australian Institute of Health and Welfare (AIHW) estimated 53,000 women and girls born overseas but now living in Australia may have undergone female genital mutilation/cutting (AIHW, 2019).

Lesbian, gay, bisexual, transgender, queer (or questioning), intersex & asexual people

- LGBTQIA+ people of all genders experience sexual violence at disproportionately high rates, including in intimate relationships (Hill et al., 2020).
- The prevalence of sexual violence and experiences of help seeking also differ within LGBTQIA+ communities, for example, 64.3% of non-binary participants in one recent national study of LGBTQIA+ people disclosed having experienced sexual assault in their lifetimes, compared with 34.7% of cisgender men (Hill et al., 2020).
- Research also tells us that trans women who have experienced sexual violence report feeling afraid and unable to access sexual trauma support services for women (Ussher, et al., 2020).
- In the last five years, workplace sexual harassment was higher among those identifying with diverse sexual orientation (52%) than those identifying as straight or heterosexual (31%) (AHRC, 2018).
- Risk of online harassment has been self-reported by women with diverse sexual orientations (eSafety Commissioner, 2021).

Women with disability

- Women and men with disability are more likely to have experienced sexual violence than those without disability.

Based on the Australian Bureau of Statistics (ABS) 2016 Personal Safety Survey, when compared with people without a disability or long-term health condition, people with disability were:

- 1.8 times as likely to have experienced physical and/ or sexual violence from a partner in the previous year, compared with people without disability 2.5% (72,300) women & 1.1% (32,200) men with disability (ABS, 2016).
- 1.5 times as likely to have experienced emotional abuse from a partner since the age of 15 (ABS, 2016).
- 1 in 3 (32%, or 929,000) women and 1 in 5 (20%, or 558,000) men with disability experience emotional abuse, compared with 1 in 5 (19%, or 1.2 million) women & 1 in 7 (14%, or 877,000) men without a disability (ABS, 2016).
- 1.7 times as likely to have experienced sexual violence since the age of 15 (ABS, 2016).
- 1 in 4 (25%, or 748,000) women and 1 in 20 (6.5%, or 184,000) men with disability experienced sexual violence, compared with 15% (980,000) women and 3.9% (240,000) men without a disability (ABS, 2018).
- Women with disabilities are at particular risk from technology-facilitated abuse (Harris & Woodlock, 2021).
- People with disabilities commonly experienced abuse in the form of financial abuse, deprivation of basic needs such as food, shelter, sleep, or assistive aids and/ or insults intended to cause shame or humiliation (ABS, 2018).

Older women

- In 2017–18, more than 10,900 calls were made to Elder Abuse Helplines across Australia (AIHW, 2019).
- Most perpetrators were an adult child, grandchild, sibling, spouse, or partner (AIHW, 2019).
- Female victims disproportionately outnumbered male victims in each state, ranging from 66% to 74% and the proportion of victims rose with age (AIHW, 2019).
- Emotional and financial abuse were the most common types of elder abuse reported (AIHW, 2019).
- People living in the same house, people living in the same residential care facility and people reliant on care may also be considered to be in a domestic relationship if their relationship exhibits dynamics which may foster coercive and abusive behaviours (Joosten et al., 2017).

Young women

- In 2017, young women aged 15–34 accounted for more than half (53%, or 11,000) of all police-recorded female sexual assault victims.
- Comparing women aged 35 and over to women aged 18–34, younger women are:
 - almost three times as likely to have experienced physical and/or sexual violence from an intimate partner—4.0% (117,000) women aged 18–34, compared with 1.5% (96,000) women aged 35;
 - six times as likely to have experienced sexual violence—4.3% (125,000) women aged 18–34, compared with 0.7% (45,000) women aged 35 and over (ABS, 2018a).

People in regional and remote Australia

- People living in regional and remote Australia may be more vulnerable to sexual, domestic, and family violence partly due to the increased presence of risk factors (higher rates of risky alcohol use and gun ownership) (AIHW, 2019).
- Living in regional and remote areas restricts a victim-survivor’s ability to leave a violent relationship and their ability to access both informal support (from friends & family) and formal support (police; health; and sexual, domestic, and family violence support services) (AIHW, 2019a; Campo & Tayton, 2015a; Noonan et al., 2017).

Children and young people

- Kids Help Line answered 234,236 calls from children and teenagers out of 433,605 attempted calls in 2019 -2020 (Yourtown, 2020).
- Family relationship calls were 14,915 19.0% (Yourtown, 2020).
- In 2016–17, there were 288 hospitalisations of children for abuse injuries perpetrated by a parent (217) or other family member (71) (AIHW, 2019).
- One in 13 people (7.7% or 1.4 million) aged 18 years reported experiencing child sexual abuse (ABS, 2016).
- Victims of sexual abuse by a parent were 15x more likely to experience sexual abuse from their father/step-father than their mother/step-mother (Costello & Backhouse, 2019b).
- 11.8% of all NSW sexual abuse victims below 15 were Aboriginal (ABS, 2018)

The nine-point plan priorities

1. Introduce affirmative consent laws in NSW

Recommendation

- The members of the NSW Women's Alliance ask that the NSW Government work with the Alliance to introduce affirmative consent laws in NSW.

Rationale

- Affirmative consent laws will enable victim-survivors of rape and other forms of sexualised violence to better access justice.
- The members of the NSW Women's Alliance represent key organisations in NSW that work with, and assist, victim-survivors, and have the knowledge and expertise to determine the potential impact of any draft legislation.
- Affirmative consent laws mean that consent must be actively sought and actively communicated ('yes means yes').
- Current legal standards for proving sexual assault put the onus on the victim-survivor to prove that they clearly expressed non-consent ('no means no'). Affirmative consent requires the accused to take meaningful steps to ascertain consent. Currently, those accused of sexual assault can argue that they believed they had consent because the victim-survivor did not visibly or vocally object. They can also rely on outdated and misogynistic assumptions about consent.

Background

- A Bill to give effect to strengthening and simplifying sexual consent laws will be introduced to NSW Parliament later this year.
- The key reforms announced by the NSW Attorney General include stipulating that:
 - (a) a person does not consent to sexual activity unless they said or did something to communicate consent, and
 - (b) an accused person's belief in consent will not be reasonable in the circumstances unless they said or did something to ascertain consent.
- The reforms mean that a person does not consent to initiating or continuing sexual activity unless they said or did something to communicate consent; and that an accused person's belief in consent at the time of the sexual activity will no longer be reasonable in the circumstances unless they said or did something to ascertain consent. In practice, affirmative consent means asking someone if they want to have sex prior to having sex.

2. Better recognition of sexual assault in the context of domestic and family violence in our laws

Recommendation

- Sexual violence needs to be recognised as a form of domestic and family violence.
- The NSW Women's Alliance asks that NSW laws better recognise sexual assault in the context of domestic and family violence, including by introducing specific and comprehensive jury directions on sexual, domestic, and family violence.
- The jury directions should include:
 - that sexual violence is a form of domestic and family violence,
 - the prevalence of sexual violence within a domestic and family violence context,
 - the meaning of domestic and family violence to ensure it extends beyond physical violence and encompasses all forms of coercive control (including emotional and financial control).
- The jury directions should be introduced in criminal proceedings to address common misconceptions and misogynistic attitudes about sexual assault in the context of domestic and family violence.

Rationale

- Sexual violence is very common in domestic and family violence (AIHW, 2019).
- More must be done to ensure the specific experiences of victim-survivors of domestic and family violence are better understood.
- Jury directions aimed at challenging myths about sexual violence and how people respond to sexual violence must be developed with input from victim-survivors and sexual, domestic, and family violence experts (including the membership of the NSW Women's Alliance) and be tested for their effectiveness.
- The NSW Women's Alliance encourages the NSW Government to advocate for safe and consistent approaches to sexual violence in the context of domestic and family violence in NSW and across all jurisdictions including, but not only, in family courts, immigration law, and disability and care contexts.
- Intimate partner sexual violence generally occurs in the context of other forms of violence and is often part of a larger pattern of coercive control in a relationship (ANROWS, 2015).
- Jury directions made specifically on this issue will help educate juries.

Background

- In May 2021, the NSW Government announced that it would introduce five new jury directions available for judges to give at trial to address common misconceptions about consent: "These directions will support complainants by ensuring their evidence will be assessed fairly and impartially, and that juries will be able to better understand the experiences of sexual assault survivors" (Communities and Justice, 2021).

3. Making court process more accessible, safe, and trauma-informed for adult sexual assault complainants

Recommendation

- The members of the NSW Women's Alliance ask that the NSW Government introduce changes to evidence and procedural law to make the court process more accessible, safer, and trauma-informed for adult sexual assault complainants.
- The NSW Government needs to:
 - address barriers to reporting sexual violence to police
 - address delays and the length of time of current court processes
 - ensure more trauma-informed processes
 - provide better case management of sexual assault matters.
- Judicial officers, police, prosecutors, lawyers, and all persons involved with the justice system need to be properly trained on the context in which sexual violence operates and the impact of intersectional discrimination on myths and misconceptions about sexual violence.

Rationale

- One of the most significant barriers in addressing sexual assault relates to issues with reporting sexual assault (AIHW, 2020).
- The justice system needs to be more trauma informed, gender-based violence and abuse informed, culturally safe, disability aware and LGBTIQ+ aware.
- There needs to be tighter case management in the prosecution of sexual offences to reduce delays and to introduce a more trauma-informed approach, including in relation to cross-examination.
- If we want survivor and sector confidence in the system, we need to address barriers to accessing the justice system.
- All children and adult sexual assault complainants anywhere in NSW should have the choice to give their evidence remotely, and by way of a pre-recording, as occurs in the Child Sexual Offence Evidence Pilot Program in Sydney and Newcastle.
- All children and adult complainants and witnesses should also be able to access witness intermediaries to ensure they understand the questions being asked of them. These intermediaries should be culturally safe, for example, Aboriginal and Torres Strait Islander complainants should be able to access an Aboriginal and Torres Strait Islander intermediary.
- Such mechanisms reflect trauma-informed practice – reducing the number of times a survivor needs to tell their story and focusing on minimising secondary trauma. This is important to ensure complainants can give their best possible evidence, which is in the interests of justice.

Background

- As part of the NSW Government announcement in May 2021, NSW Police publicly stated it is committed to preventing sexual assaults and supporting victims–survivors who come forward. Police also raised concerns about low prosecution rates for sexual assault matters, and argued a clear definition of consent was integral to improving outcomes for victim–survivors (Communities and Justice, 2021)
- The NSW Law Reform Commission report notes only 8% of sexual offences reported to the NSW Police Force between July 2018 to June 2019 resulted in charges being finalised (NSWLRC, 2020).
- Safer, trauma-informed court processes and recognition of sexual assault in the context of domestic and family violence must actively include all Priority Populations. For example, to achieve accessible and safer courts for victim-survivors, all judicial officers should be provided

with training that supports them to understand the contexts in which sexual violence is perpetrated against Aboriginal and/ or Torres Strait Islander women, refugee and migrant women, women with disability, LGBTQIA+ people, and women and children more generally, across their lifespan. In addition, all judicial officers must understand the impacts of intersectional discrimination, sexism, racism, ableism, heteronormativity, and cisgenderism and ageism on myths and misconceptions about sexual violence, and how these affect the ability of people in Priority Populations to recognise their experiences as sexual violence, and then to seek help. Similarly, all service providers and legal representatives working with people who have experienced sexual violence must have access to this training.

4. Fund independent legal representation for sexual assault complainants

Recommendation

- The NSW Women's Alliance asks that the NSW Government improve support services for sexual assault complainants, including exploring the funding of independent legal representation for sexual assault complainants in criminal trials, and low-cost legal advice for non-government sexual assault services when responding to subpoenas.

Rationale

- Better support and protections for sexual assault complainants enables them to give the best possible evidence which builds public confidence in the criminal law system. One such support is independent legal representation to sexual assault complainants.
- An accused's right to test evidence must be balanced with a survivor's right to a safe and trauma-and-violence-informed process, so re-traumatisation from trial proceedings is limited as much as possible.
- Sexual Assault Communications Privilege (SACP) is a legal protection that limits the disclosure in court of counselling, health, and other therapeutic information about a survivor of sexual assault. Despite SACP, survivors' counselling records may not always be protected. The disclosure of survivors' records undermines the therapeutic process and is a barrier for increased reporting of sexual assault (because complainants are afraid that their records will be disclosed). Survivors might not be aware that their counselling records have been subpoenaed. Services that have provided counselling might not be aware of how they can claim SACP or may face barriers to claiming SACP (including lack of resources and knowledge).
- Defence counsel do not always follow legislative requirements relating to SACP.
- Cross-examination needs to be better managed on a practical level.
- Despite the court's inherent power to control proceedings and section 41 of the *Evidence Act 1995* (NSW) which disallows improper questions, improper questions are regularly asked of complainants and not always challenged by lawyers and judges. Many complainants view the cross-examination process as court-sanctioned violence which compounds trauma and re-traumatises survivors.
- It is not enough that an improper question be disallowed. The asking of the question has a negative impact on a complainant even if they are told not to answer the question. Further restrictions need to be considered on improper questioning so that defence counsel is prevented from asking them in the first instance.
- There should be consequences if a defence counsel continues to ask improper questions.

5. Implementation of court specialisation for matters involving sexual, domestic and family violence

Recommendation

- The NSW Women's Alliance asks that the NSW Government develop a model for the practical implementation of court specialisation for matters involving sexual, domestic, and family violence in NSW, including attached support services for victim-survivors and offenders, as set out in the 9 Point Plan.
- Specialisation is required from reporting to police through to court processes with specialist police, specialist prosecutors, specialist judges, specialist interpreters and specialist support services.
- Support offered by the Women's Domestic Violence and Court Advocacy Service in local courts should be universal and extend throughout the entire court process (including court hearings). It is important survivors in all courts are able to access the support they need and have someone who can explain the process to them.
- The NSW Women's Alliance is fully committed to equal access to justice and exploring the practicalities of enabling equal access to justice across NSW. Equal access to justice is only possible if court systems are trauma informed and culturally appropriate for all members of society and especially Priority Populations.

Rationale

- Court specialisation has been shown to be effective in other jurisdictions (ALRC, 2010).
- Evaluation of the specialist domestic and family violence court in Southport, Queensland, has revealed the strong and positive impact of a specialised court. Contrasted with a non-specialised court in Ipswich, 81% of victim-survivors rated their experience as 'excellent' and 73% felt believed by the Magistrate, in contrast with 50% and 40% respectively. Further to this, victim-survivors had a greater understanding of court outcomes, with 88% understanding an order versus 64% (Bond et al., 2017).
- Specialisation is important to promote trauma-informed, gendered, and sexual, domestic and family violence-informed, culturally safe, disability-aware and LGBTQIA+ inclusive and affirming practices.

Background

- NSW is a large state with a diverse population, and any specialisation models should respond to the circumstances of this state.
- The intention is that specialised courts would be, by their nature, safe and trauma-informed for victim-survivors and would respond to the specific needs of priority populations. A specialised court would include, as a minimum, requirements set out in the Nine-Point Plan such as separate, independent legal representation for victim-survivors, culturally appropriate witness intermediaries, specialised rules of evidence and procedure and intensive training for all staff.

6. Fund sexual assault case management teams

Recommendation

- The NSW Women's Alliance asks that the NSW Government fund sexual assault case management teams that:
 - operate in every region;
 - provide intake and assessment, case management, counselling, legal support, and provide access to child and adolescent specialists;
 - provide case management for all Priority Populations;
 - provide support that is accessible for residents of aged care facilities and people living in disability residential accommodation settings; and
 - augment, support and address the service gaps currently unable to be addressed by NSW Health Sexual Assault Services and Rape & Domestic Violence Services Australia.
- Provide increased training and professional development across the specialist domestic and family violence sector to ensure all workers have the skills and capability necessary to appropriately assess and respond to sexual violence.
- Ensure all frontline sexual violence responders have access to appropriate supervision and support with vicarious trauma.
- Bring together all providers of sexual assault services (including government, non-government, and private practitioners) in a 'community of practice'.
- Case Management Teams should participate in state-wide, coordinated prevention strategies by appropriately qualified persons (primary prevention is discussed further at Recommendation 8 below).
- Supports for young offenders should be provided by specialist services within NSW Health.

Rationale

- Sexual assault case management work is drastically underfunded and under resourced across the specialist domestic and family violence sector, especially for women from culturally and linguistically diverse communities; in regional NSW, for LGBTQIA+ people of all genders, and in aged care facilities and disability residential accommodation settings.
- There is a gap between the availability of crisis services and long-term case management and support.
- Wait lists exist across NSW specialist sexual, domestic, and family violence services of many months (DVNSW, 2021).
- Women's Health Centres, Aboriginal Health Centres, and Community Health Centres need to be available and adequately resourced state-wide to ensure that people all over NSW have the essential and confidential NGO services they need.
- Frontline services need to be supported through the expansion of healthcare pathways for trauma informed counselling services and therapeutic resilience programs as recommended by the NGO women's health and Aboriginal health sectors.
- There is no established community of practice specifically for sexual assault services in NSW. This is a crucial omission for the sector which denies the sector the opportunity to formally coordinate, collaborate, and share best practice.
- A community of practice must be funded to enhance networking, skill-sharing, research, and the improvement of healthcare pathways.

Background

- The sexual assault case management teams would be in addition to sexual assault services in non-government settings which provide counselling.

7. Introduce mandatory reporting of sexual assault complaints in aged and disability care settings

Recommendation

- The NSW Women's Alliance asks that the NSW Government introduce mandatory and timely reporting and systematic audits of sexual assault complaints in aged and disability care settings and develop a trauma-specialist survivor-led response to disclosures.
- All providers must - as an initial and important step - record sexual assaults as a 'high-impact' incident in the Serious Incident Response Scheme.

Rationale

- Long-term institutional change must take place to address:
 - an institutional culture that does not acknowledge older people or the witnesses of abuse as credible witnesses, and which puts priority on the efficiency and reputation of the organisation rather than on the welfare of people in its care; and
 - a general lack of trained staff and appropriate medical care, and a specific lack of specialist care needed to identify and investigate allegations of sexual violence.
- A person who has experienced violence needs to have agency to direct and be able to make an informed decision regarding the process. In cases where the person is unable to articulate their needs, providers of care need to ensure that they are protected from further assaults.
- There is a need for transparency so that organisations are held to account.

Background

- The *Final Report: Care, Dignity and Respect* (Royal Commission into Aged Care Quality and Safety 2021b) found that there are at least 50 cases of sexual assaults taking place in residential aged care facilities and termed it a "national disgrace." The commission stated that "mistreatment [in the aged care sector] is more likely to be a cultural issue than a 'bad apple' problem," and recommended the development and implementation of myriad framework and legislative reforms to enable older Australians to age with dignity and in safety. Recommendations 75 to 87, and particularly 77–79, discuss changes to the minimum standards for the aged care workforce. This is an opportunity to develop better minimum standards that include specialist training. Recommendation 100, on serious incident reporting, is an opportunity to implement mandatory reporting and systematic audits of all sexual assault complaints in aged and disability care settings.
- Data from community-wide surveys provide evidence that older people are at risk of sexual abuse and, sadly, evidence from aged care services reveals that the abuse can continue when they enter care. The data from the *Report on the Operation of the Aged Care Act* (Department of Health, 2020) shows that sexual assault in residential services is widespread, and consistent from year to year.
- In 2021, OPAL Institute and Celebrate Ageing founder Dr Catherine Barrett launched an older people and sexual rights project this year called #ReadyToListen. The aim of #ReadyToListen is to improve responses to, and prevent sexual assault, in residential aged care.
- The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability's Interim Report outlines the problems faced by people with disability in being believed when they tell their stories of sexual assaults (2020).

8. Fund and implement an NSW Primary Prevention Strategy

Recommendation

- The NSW Women's Alliance recommends that the NSW Government fund a comprehensive, whole-of-community primary prevention strategy for NSW, in line with the national frameworks *Change the story: A shared framework for the primary prevention of violence against women and their children in Australia* (Our Watch et al., 2015) and *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children* (Our Watch, 2018).
- The NSW Primary Prevention Strategy should be co-designed with diverse sexual, domestic, and family violence primary prevention experts (including the members of the NSW Women's Alliance), victim-survivors, marginalised communities and Priority Populations and, as appropriate, young people themselves.
- The NSW Primary Prevention Strategy must align with the National Plan to address gendered violence.
- The NSW Primary Prevention Strategy must include a roll out of whole-of-school community education on consent and child protection.
- In practice, a whole-of-school approach needs to feature commitment and leadership from the school, a strategy for professional learning, integrating community, support for teachers and students which lead to a shift in the school environment (Domestic Violence Resource Centre Victoria, 2017).
- Resources and guidance should be provided for all school staff, highlighting the possibility that consent education could prompt young people to disclose abuse and ensure school staff are trained and supported to respond appropriately.
- Resources should be provided for parents, guardians and carers, informing them of the content and providing guidance on how they can have age-appropriate conversations with their children that reinforce the education they are receiving at school.

Rationale

- Consent education should be ongoing and age appropriate throughout primary and secondary school rather than be viewed as a once-off, and in line with child protection education frameworks.
- A change to affirmative consent laws must be accompanied by broader community education on consent. The NSW Law Reform Commission has acknowledged this in its latest review on consent laws in NSW (NSWLRC, 2020).
- Primary prevention education should be universal, culturally safe and placed based. Primary prevention education should be undertaken by people specialised in trauma-informed approaches, trained to respond effectively to disclosures, such as the Sexual Assault Case Management and Counselling Teams discussed at Recommendation 5. Sexual Assault Case Management and Counselling Teams will need to be resourced to respond to the inevitable increase in referrals as a result of primary prevention initiatives.

Background

- There is widespread acknowledgement that a whole-of-school approach is more successful in educating on gendered violence.

- As outlined by P. Kinnersly (in *Our Watch*, 2021), every part of the school community should be involved, including the principal, staff, students and parents; school cultures, structures and policies must ensure they promote and support gender equality for students, teachers and the wider community; and schools, workplaces and community hubs should be viewed as spaces that can influence what is socially acceptable and what is inappropriate.
- The work of the Domestic Violence Resource Centre provides a useful introduction to the whole-school approach to respectful relationships education (Domestic Violence Resource Centre Victoria, 2017).

9. Fund an NSW model of complementary pathways to deliver justice for victim–survivors of sexual violence

Recommendation

- That the NSW Government fund development of an NSW model of complementary pathways to supplement the criminal justice system in holding perpetrators to account and delivering justice for victim–survivors.

Rationale

- Current responses to sexual, domestic, and family violence are failing victim–survivors.
- The overwhelming majority of victim–survivors of sexual violence are not reporting to police or engaging in current court processes but do want access to justice.
- The ABS (2019) reports that between 2019 and 2020, victims who reported an incident of sexual assault to police:
 - within a year, decreased from 8,225 to 7,369 victims (down 11%)
 - one year and over, increased from 2,732 to 3,902 victims (up 43%).
- The most fundamental reason victim-survivors don't report violence is the fear that they won't be believed. This is multi-faceted and includes:
 - fear that they will be victim-blamed,
 - that the violence 'isn't bad enough',
 - that they'll somehow be punished, or
 - because they themselves aren't ready to identify as someone who has experienced sexual, domestic, and family violence.
- There are specific barriers to reporting for women from marginalised communities. Women from culturally and linguistically diverse communities often wait until a point of crisis before they seek help. This under-reporting is "influenced by a lack of information about their rights and how to access them, a fear of authorities, and not knowing what constitutes family violence" (InTouch, 2010) in Australia. These barriers are compounded by significant external pressure from their families and community to stay silent.
- Women from marginalised communities who experience sexual, domestic, and family violence are often required to navigate concurrent systems, engaging in formal and informal processes, in dealing with sexual, domestic and family violence, family conflict and custody matters (Muslim Women Australia, 2020).
- Reforms to the criminal justice system to improve processes and outcomes for complainants of sexual, domestic, and family violence must be coupled with investigations into complementary pathways for perpetrator accountability.
- Best practice and restorative justice models operate alongside criminal justice processes and centre the safety and wellbeing of victim–survivors whilst holding perpetrators to account.
- Victim-survivors should be afforded options for complementary means by which their perpetrator is held to account.
- Best practice, restorative justice, and complementary pathways for women from marginalized communities must rely on therapeutic models which are culturally, linguistically, and religiously responsive to victim-survivors (Muslim Women Australia, 2020).

Background

- The AIHW (2020) found that just one in six women who self-report experiencing sexual assault sought justice through reporting to police and less than half reported their sexual assault to a

health service. This suggests that the vast majority of women do not have confidence in our existing reporting pathways and criminal justice responses.

- We know that our existing criminal justice system prosecutes a tiny minority of the few cases that are reported. A 2020 story by the Australian Broadcasting Authority found that across Australia, fewer than one in three cases of sexual assault reported to police result in an investigation and that a mere 5% of sexual assault cases are *investigated*, to say nothing of prosecution (Ting & Palmer, 2020). The statistics are even worse when broken down by state: sexual assault investigations in NSW are half as likely to lead to legal action as they are in Victoria.
- The most fundamental reason women don't report violence is the fear that they won't be believed. This is multi-faceted: fear that they will be victim-blamed; that the violence "isn't bad enough;" that they'll somehow be punished; or because they themselves aren't ready to identify as someone who has experienced domestic and family violence. These fears are well founded. *Australians' attitudes to violence against women and gender equality, Findings from the 2017 National Community Attitudes towards Violence against Women Survey (NCAS)* (Webster et. al., 2018) shows: 11% of Australians believe that women are "probably lying" about sexual assault if they do not report it straight away, almost half agree that it is "common for sexual assault accusations to be used as a way of getting back at men." In some cases: women might not be aware that what they've experienced is a crime; may not know where or how to report; or may have reported a sexual assault but their case has not proceeded to court or if it proceeds to court may not result in a conviction.
- There are specific barriers to reporting for women from marginalised communities. For instance, InTouch - Multicultural Centre Against Family Violence 2010 paper on barriers to the justice system faced by culturally and linguistically diverse (CALD) women experiencing family violence found that women from CALD communities often wait until a point of crisis before they seek help. This under-reporting is "influenced by a lack of information about their rights and how to access them, a fear of authorities, and not knowing what constitutes family violence" (InTouch, 2010) in Australia. These barriers are compounded by significant external pressure from their families and community to stay silent.
- *Issues Paper G: Sexual Offences: Restorative and Alternative Justice Models* by the Victorian Law Reform Commission (2020) provides an overview of restorative justice models and the circumstances where such alternative models are appropriate.
- Mediation is one such promising restorative justice intervention (Carrick & Carter, 2017). A pilot report by Loff, Naylor and Bishop (2019) found that Melbourne's South East Centre Against Sexual Assault (SECASA)'s restorative justice program "is capable of meeting victims' justice interests" and that this type of victim-centered restorative process can positively change a victim-survivor's internal narrative and sense of agency.

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