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Dear Members of the Australian Law Reform Commission,

APS response to *Justice Responses to Sexual Violence Issues Paper*

The APS welcomes the opportunity to provide input into the *Justice Responses to Sexual Violence Issues Paper 2024 (JRSV Issues Paper)* published by the Australian Law Reform Commission (ALRC). We commend the initiative for its depth and breadth in addressing the critical aspects of institutional responses to sexual violence. It is vital that we reconsider and reform these frameworks to better serve justice on perpetrators and support victim-survivors.

Many of our members work with clients who are victim-survivors or perpetrators of sexual violence, domestic and family violence and coercively controlling behaviours in a range of settings. As with all our work at the APS, we consider the current issues in light of the Sustainable Development Goals (SDGs)¹. Of particular relevance to coercive control is SDG Target 5.2 Eliminate all forms of violence against all women and girls² and 16.1 Significantly reduce all forms of violence and related death rates everywhere in the public and private spheres, including trafficking and sexual and other types of exploitation³.

We wholeheartedly agree with the *JRSV Issues Paper* that it is essential to provide victim-survivors with increased agency and meaningful consideration throughout the judicial process. Historically, the lack of victim-survivor-centred approaches has not only perpetuated harm but also undermined the efficacy of our justice system. Enhancing the role and voice of victim-survivors in these processes is not just a matter of justice but also of necessary reform to ensure their rights and needs are adequately protected and addressed. Given this, we also commend the ALRC on the use of a lived-experience expert advisory group to ensure victim-survivors can participate in and influence system improvements ^{see also 4}.

However, we would like to highlight a notable omission in the discussion—namely, the prevention of sexual violence, early intervention, and the rehabilitation of offenders. Such a holistic approach would help to move the onus away from victim-survivors (or would be victim-survivors) to reduce the impact of abuse in our community. Many victims are motivated by a desire to prevent future crimes and protect others from similar experiences. Addressing this motivation requires us to broaden our focus beyond immediate judicial responses to include preventative measures, evidence-based early intervention and rehabilitative programs for offenders. Without a comprehensive approach that includes these elements, we will do little to reduce the likelihood of future victimisation.

While the *JRSV Issues Paper* makes significant strides towards reforming our justice responses to sexual violence, incorporating a stronger emphasis on prevention, early intervention, and rehabilitation could provide a more holistic and effective approach.

Evidence-based rehabilitation programs for those convicted, and accessible treatment for individuals at risk of committing sexual offences are crucial. We look forward to seeing these aspects included in the ongoing discussions and eventual reforms.

In considering our response, we would also like to reiterate the importance of cultural safety and sensitivity positioned at the heart of all reform. As discussed in the *JRSV Issues Paper*, Aboriginal or Torres Strait Islander women are more likely to have experienced sexual violence compared to other women (Page 8). It is essential that the outcomes of this inquiry are genuinely co-produced with Aboriginal and Torres Strait Islander peoples. This is particularly important for a number of reasons including:

- The unique impact of colonisation means that there must be deep recognition of the intergenerational trauma and ongoing disenfranchisement that has been created in Australian society.
- The important role of culture as a protective factor and as part of positive wellbeing of individuals and groups⁵. This can be expressed or experienced in many different forms such as being on country, or through language or art. These factors all need due attention and must be responsive to the individual and community's needs. Culture can be used to build and strengthen social and emotional wellbeing and resilience.⁶
- Acknowledging that many of the social determinants of sexual violence and other crimes are not uniform across communities. Interaction with the criminal justice system,⁵ racism and discrimination,⁷ service inequalities, disconnection from country, education outcomes, health outcomes, and substance use are some of the many factors that may contribute to sexual violence, domestic and family violence, and poor mental health. These inequalities must be addressed appropriately to see tangible progress.

We also recognise that access to mainstream sexual violence support and domestic violence services is not equitable. When dedicated services for Aboriginal and Torres Strait Islander peoples are not available, some initiatives need to be adapted to become more responsive to the particular needs of these communities.

While we have attempted to respond to the consultation questions in our submission, some content is outside the scope of the APS. For simplicity, we have arranged our recommendations according to the major themes below. We also note that individuals with lived experience may find the process of responding to the 56 consultation questions in the *JRSV Issues Paper* traumatic or overwhelming and, therefore, encourage the consultation to be as flexible as possible in receiving input.

We thank you for the important work you are doing in this matter and we would be pleased to contribute to the next steps. If any further information is required from the APS, we would be happy to be contacted through the national office on (03) 8662 3300 or by email at z.burgess@psychology.org.au

Yours sincerely

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The APS would like to acknowledge and sincerely thank the members who so kindly contributed their time, knowledge, experience and evidence-based research to this submission.

APS Response to *Justice Responses to Sexual Violence Issues Paper*

1. Prevention, early intervention, and rehabilitation focussed reform

The APS strongly advocates for the ARLC to be involved in prevention efforts to help minimise the incidence of sexual and other violence. Working with people who use violence can be challenging, as it often requires a marked shift in their long-entrenched attitudes and beliefs about what is appropriate behaviour and what is their 'right' as an individual⁸. Insights gained from *The National Community Attitudes Survey on Violence Against Women* included an investigation of the knowledge about, and attitudes towards, the various forms of sexual assault in Australia⁹. The results suggest that many Australians still think victims of sexual offences are at least partially to blame. Similar beliefs have also previously been reported in the police force¹⁰. In particular, the following was found for Australians aged 16 and over:

- 1 in 5 (19%) were unaware that non-consensual sex in marriage is against the law,
- 1 in 10 (11%) believed that women were 'probably lying' about sexual assault if they did not report it straight away,
- 2 in 5 (42%) agreed that 'it was common for sexual assault accusations to be used as a way of 'getting back at men',
- 1 in 3 (33%) believed that 'rape resulted from men not being able to control their need for sex',
- 1 in 8 (13%) agreed that a man is justified in having non-consensual sex if the woman initiated intimacy in a scenario where a couple had just met, and
- 1 in 7 (15%) agreed non-consensual sex was justified in a scenario where the couple were married and the woman initiated intimacy.⁹

There will clearly need to be widespread social change to reverse this culture in Australia. Psychologists are equipped to **support attitudinal change** and overcome biases in perception and information processing using evidence-based approaches^{11,12}, ideally commencing from early in life (during school age). On a related issue, it is clear that Australian media still features, and in ways promotes, violence against women¹³. Increased acceptance of aggression and sexual violence helps to normalise it and contributes to the perception it is 'too difficult' to fix¹³⁻¹⁵. Widespread attitudinal change programs should be targeted to the current community readiness level¹⁶. The APS would be pleased to assist in the co-design and implementation of initiatives to increase the knowledge and understanding of sexual and other offences to change these current destructive, widespread attitudes.

Related to such attitudes are also expectations regarding sexual consent. The APS commends the jurisdictions in Australia that are considering the reformation of sexual consent legislation. The absence of affirmative (or active) consent leaves room for misinterpretation and increases difficulty in convicting offenders¹⁷. Furthermore, the fact that consent laws differ according to each State and Territory¹⁸ is confusing and complicates efforts to raise public awareness of the issues and to deliver education programs. A consistent message delivered to all Australians will help community understanding about the importance of **affirmative consent** and what constitutes acceptable sexual behaviour and what constitutes a sexual offence.

2. Practices that increase empowerment and respect

As discussed in the *JRSV Issues Paper*, professional training including **trauma-informed curricula**¹⁹ for police, court staff, medical personnel, and others involved in the criminal justice system is essential. We advocate for this to be extended to all effective prevention practices²⁰ to further advance justice responses.

The APS commends policing practices that **empower victims** to decide, in consultation with attending police, what action they prefer to occur. If sexual violence occurs in the context of domestic violence or coercive control, this may be moving the victim (and possibly children) to a safe location unknown to the perpetrator, or removing the perpetrator from the family house. Collaborative decision-making enables victims to be informed of the impact of their choices and be empowered to have agency over their situation²¹. Empowerment is central to the core principles of **trauma-informed practice** which supports the recovery of victims²².

Another example of a practice that could be more acceptable to victims while ensuring valuable information is not lost is **pre-recording complainant evidence** as a means to avoid further questioning in open Court²³. Given this, we are, in general, in support of the proposed 'special measures' in Part 51 of the *JRSV Issues Paper*. This has the following advantages:

- With an effective and trauma-informed interview, the complainant's statement can be taken in full and presented as Evidence in Chief,
- The complainant is in a more relaxed environment, which may encourage them to provide more information,
- By producing a video-recorded interview, investigators have access to the linguistic, psychological and factual evidence produced. Much of this evidence is removed in a transcript, or summarised statement,
- By using a trained, experienced, and independent psychologist to conduct interviews, any evidence will be tested as to its admissibility during the interview, and this can inform police investigations, reducing attrition rates upon trial, and
- Legal professionals can also have confidence in the interviewing process.

However, to be effective, we do acknowledge that the use of pre-recording of evidence would constitute a 'profound shift' in police processes and approach²³. Central to any changes should be the **safety of victim-survivors**.

At present, there are limited **centralised support services** that can assist a person who has experienced a sexual offense. The Barnahus model in Europe shows significant promise where medical professionals, law enforcement and support services are co-located to provide individuals with access to specifically trained persons to assist with evidence collection and therapeutic interventions²⁴.

Similarly, we support the use of psychologists, as experts in human behaviour to act as intermediaries (see Part 52-57 of the *JSV Issues Paper*) and advocate for increased funding and support of their involvement.

3. Need for best practice interview approaches

APS members have reported their clients' (often negative) experiences of police handling of sexual violence reports. Clients have reported not being taken seriously and/or not being informed about the process or progress of their case. This is particularly challenging for adults reporting historical abuse as it often takes many years and considerable anguish to come forward to report the incident. The psychological impact of coming forward must be understood by police personnel and at all times, all activities must be trauma-informed. We also strongly advocate for **psychological support** for complainants who must engage in a phone conversation with the alleged perpetrator to gather evidence as this can be a highly traumatic process.

The APS strongly endorses evidence-informed **interviewing techniques** and we commend the suggestions in Part 33 in the *JRSV Issues Paper*. We also acknowledge that there has been some recent movement in some jurisdictions to improve interviewing of complainants of sexual violence^{25,26}. Interviews conducted by appropriately trained and experienced psychologists can avoid retraumatizing complainants and produce increased levels of probative evidence to continue legal actions. Important considerations include:

- Evidence indicates that 41% more detail is elicited using a **cognitive interview** than standard investigative interviews alone²⁷. A newer study using an **enhanced interview technique** elicited four-and-a-half times more information than the cognitive interview²⁷.
- A significant challenge to these interviews is the time taken (two to three hours), which is longer than many police officers have given their other duties.
- An interview with a significant contribution from a psychologist can clarify the information that police are often reluctant to engage with including the difference between consensual sex and rape, will test the veracity of the information, and can also address 'rape myths' in the evidence elicited, potentially removing the requirement for cross examination.

Skills such as rapport building, question selection, and wording for successful interviewing are skills maintained by psychologists, particularly forensic psychologists, in these settings.

In the United States, the 'Start by Believing' philosophy began to take shape in April 2011, which **includes trauma-informed approaches** to interviewing, policies, practices, training and collaboration

of responding professionals²⁸. Again, specialist interviewers work with complainants of sexual assault, recognising the impact of trauma on an individual attempting to provide information. This philosophy draws from a neurobiological basis of trauma and seeks to identify additional cues of trauma in the interview, such as narrowed attention, dissociation, impaired reasoning etc. By recognising these cues within the complainant's narrative and being able to elicit this information, more thorough evidence-based investigations can be supported by the interview. We also support the NSW SARO²⁹ approach as an alternative to speaking directly with a police officer.

4. Aspects relating to trial processes

- **Assessment of the credibility and reliability of complainants:** We commend the commentary in the *JRSV Issues Paper* regarding the research related to memory in the context of trial proceedings and the potentially traumatising process of assessing the credibility of complainants (Part 58-68). Suggestions that complainants prior sexual activity, preferences, clothing, alcohol use, or work is related to their experience of being sexually assaulted is both (1) undermining and can have devastating consequences on the mental health of complainants as well as (2) being discouraging to others who have been assaulted to come forward³⁰. We agree that judges and personnel must be trained in the relevant memory scientific literature, as well as common 'rape myths' or misconceptions that can influence interpretations of complainants' accounts³⁰.
- **The importance of process:** A large body of work stemming from procedural justice theory³¹ demonstrates that decision-making *processes* are equally, if not more important than *outcomes* for achieving justice. In particular, features such as trust, neutrality, respect and voice are key in determining victim satisfaction with justice responses³². Procedural justice is particularly important in the context of sexual violence, and can reduce the distress experienced by victims of such crimes, for whom the need for expression and understanding is heightened^{33,34}.
- **Restorative justice procedures:** One approach that has attracted support from many victims of sexual assault is restorative justice procedures. But because different victims may have different justice needs, ideally they would be able to choose from a suite of process options³⁵. However, victim preferences regarding particular sentencing outcomes should be balanced against the likely reintegrative potential of that sentence (e.g., sex offender registries, which are stigmatising and some evidence suggests do not reduce recidivism³⁶).
- **Use of victim impact statements:** While we cannot comment on the legal implications of Victim Impact Statements (VIS), our members report them as being helpful for their clients therapeutically. The opportunity for victim-survivors to describe the impact of their experience can provide restorative elements to proceedings but may not necessarily have an impact on offenders' remorse³⁷.

5. Need for research to develop evidence-based interventions and rehabilitation opportunities for offenders

There is a critical need to develop and evaluate offender programs to ensure that supported initiatives are evidence-based ^{see 38,39}. Funding such programs may not be as attractive to Governments as initiatives to support victim-survivors, however, action must be taken to stop the cycle of abuse from perpetrators.

Research clearly demonstrates that punitive measures (imprisonment) do not necessarily lead to a decrease in aggressive behaviour or changes to perpetrator attitudes towards violence⁴⁰. In part, this could be due to their **experience in prison lacking opportunities** to learn new skills, approaches, or strategies to cope with, often very challenging life in the community. Importantly, a very high proportion of people in prison have histories of trauma: a predictor of both offending and reoffending⁴¹. For example, up to 75% of child sex offenders have experienced child sex abuse themselves^{42,43}. Restorative justice provides an alternative that could be explored but at the very least, this indicates a high need for **psychological support** for people in prison.

An APS member with specific expertise in the area of coercive control drew our attention to one program which uses a different approach to working with perpetrators of domestic violence (and other offences). Using immersive, outdoor activities and other counselling and mentoring sessions, *Hard Cuddles* facilitators and mentors, some with lived experience, create an environment to **remodel communication patterns** and address a variety of emotional challenges⁴⁴.

Similarly, The Australian Institute of Criminology has recently released detail of an integrative 'nature-based' intervention with men who have perpetrated domestic and family violence⁴⁵. Initial results are positive, with trends towards improving men's engagement and enabling informal conversations. It is clear, however, that more research is needed including with larger sample sizes and in different settings.

Importantly, it is important to acknowledge that effective cognitive and behavioural change is not the same as merely attending any intervention or rehabilitation program ^{see 46}. Thorough psychological assessment is required to determine whether any behavioural change program has been effective. We would be happy to work with the ALRC to advocate for greater support for research to develop the best evidence-based interventions and rehabilitation initiatives.

Summary of recommendations

- *Undertake widespread community initiatives to help promote positive attitudinal change regarding sexual violence and affirmative consent.*
- *Utilise trauma-informed, evidence-based practices that encourage respect and empowerment to support complainants.*
- *Use best practice, evidence-based and trauma-informed interview approaches, ideally undertaken by psychologists or other highly trained police personnel.*
- *Train judges and judicial personnel in issues relating to trauma-related memory and common sexual violence misconceptions.*
- *Consider processes that may provide restorative justice options for victim-survivors.*
- *Develop evidence-based interventions and rehabilitation opportunities for perpetrators and/or offenders.*

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