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29 July 2026

Second Action Plan Consultation
Domestic, Family and Sexual Violence Group
Department of Social Services

Dear Consultation Team,

Submission to the consultation on the Second Action Plan under the National Plan to End Violence against Women and Children 2022–2032

Thank you for the opportunity to contribute to the development of the Second Action Plan. We welcome the ANROWS consultation paper, Evidence to Action, and in particular its candour about where the National Plan is not yet working.

This submission responds primarily to Priority Area 1 (Victim-Survivors) and Priority Area 5 (System Integration and Workforce), with implications for Priority Areas 3 and 4. It makes one central argument: sexual violence is the form of violence on which Australia has made the least progress, the justice system is where that failure is most acute yet most fixable, and the Second Action Plan will not shift the numbers unless it commits to concrete, named, measurable justice reform. We set out what that reform looks like.

About Us

With You We Can is a lived-experience led national advocacy organisation demystifying the police and legal systems for victims of sexual violence while working to improve them. We provide an online education hub promoting equity of access to the law by making justice processes transparent, understandable and navigable for victims and their loved ones, and campaign to replace fragmented advocate services with comprehensive legal assistance throughout criminal proceedings.

In partnership with legal, academic and frontline services, we are calling for improved access to independent legal representation for victims of sexual violence across Australia, including increased government funding for free legal advice and representation services, and legislative reforms to ensure victims and their lawyers have standing to appear in criminal proceedings to protect victims' procedural rights.

Our 2025 report, *What No One Told Us*, draws on stakeholder consultation, lived experience and a comparative review of independent legal representation models across Europe, the United Kingdom, Canada and the United States. It outlines how critical gaps in legal literacy and legal advocacy drive justice system failure and democratic erosion, and identifies the reforms needed in every state and territory.

Executive Director Sarah Rosenberg contributed submission 132 to the Australian Law Reform Commission's inquiry into justice responses to sexual violence, jointly with Associate Professor Mary Iliadis, and is also a member of the Expert Advisory Group. Recommendations 9 and 10 of the ALRC's final report, Safe, Informed, Supported (January 2025), reflect the reform we have pursued since our founding.

Summary of recommendations

We recommend that the Second Action Plan:

1. Establish a distinct sexual violence stream, with its own actions, funding, workforce measures and performance indicators, separate from those for family and domestic violence.

2. Name the implementation of ALRC Recommendation 10 as a deliverable of the Plan, with the Standing Council of Attorneys-General as the vehicle for national consistency and a model bill as the mechanism.

3. Commit the Commonwealth to legislating first, by amending the Evidence Act 1995 (Cth) and the Crimes Act 1914 (Cth) to insert a dedicated sexual assault communications privilege, with statutory standing, mandatory notification and a referral obligation to independent legal advice and representation.

4. Extend protections beyond counselling notes to all personal, sensitive or confidential material, with standing pre-trial and at trial, and mandatory notification whenever such material is sought.

5. Convert the independent legal representation pilots into permanent national infrastructure — automatic, fully funded, non-means-tested and nationally consistent — tied to Commonwealth legal assistance funding agreements and national service standards.

6. Fund a national legal literacy campaign and embed legal literacy in consent education in schools and universities, as an early-access and prevention measure.

7. Build a specialist victims' legal workforce as part of the workforce agenda under Priority Area 5, and treat independent legal representation as the connective tissue of an integrated response.

8. Make it measurable, by adding justice-access indicators to the National Plan Outcomes Framework and Performance Measurement Plan, with annual public reporting.

1. Sexual violence needs its own stream in the Second Action Plan

The evidence in the consultation paper is unambiguous. Physical violence, intimate partner violence, cohabiting partner abuse and sexual harassment have all declined at a population level. ANROWS reports an overall 71% reduction in female intimate partner homicide since 1990. Sexual violence has not moved. Rates have remained mostly stable since 2005, showed no significant change between 2016 and 2021–22, and are higher than in 2012. Victoria is the only jurisdiction to have recorded a decline since 2016. Stalking, which frequently accompanies sexual violence, has not declined since 2005 either.

ANROWS is direct about why this matters:

> *"The differences between sexual violence and harassment, and domestic and family violence, need to be recognised. Sexual violence and harassment require clear strategy and action to ensure a comprehensive approach to prevention, early intervention, unmet demand and recovery."*
>
> ANROWS, Evidence to action, p. 28

> *"Sexual violence prevention, early intervention, response and recovery remains siloed from the domestic violence response service system."*
>
> ANROWS, Evidence to action, p. 29

We agree, and we would put it more plainly. Sexual violence has not been siloed so much as subordinated. Under a national architecture built around the family and domestic violence service system, sexual violence has been carried along as an adjunct — sharing helplines, sharing funding envelopes, sharing workforce, sharing measures — and it has quietly been the one form of violence that has not improved, despite underscoring all categories. A whole-of-population strategy that is delivering for one form of violence and not for another does not need more of the same effort. It needs a distinct plan.

The First Action Plan delivered more than 583 initiatives. Very few of them changed anything about what happens to a victim of sexual violence who walks into a police station. That is the gap the Second Action Plan must close.

Recommendation 1: The Second Action Plan should establish a distinct sexual violence stream, with its own actions, funding, workforce measures and performance indicators, separate from those for family and domestic violence. Where sexual violence occurs within a domestic or family violence context, the two streams must be designed to connect — but the strategy, the specialist expertise and the accountability must be visible and separately reported.

2. Priority Area 1 — the justice system is where the National Plan is failing sexual violence victim-survivors

Priority Area 1 asks what service or system responses would make the biggest difference to victim-survivors' safety, wellbeing, healing and recovery, and what barriers prevent people from seeking help or engaging with systems. For sexual violence, the answer to both questions is the same: the criminal justice system.

The scale of the failure

- 92% of women do not report their most recent sexual assault.
- 85% of the reports that are made do not proceed to a charge.
- In NSW, only 15% of the 5,869 sexual assault incidents reported to police in 2018 resulted in charges being laid. Of those, two in five defendants had all charges withdrawn, dismissed or otherwise disposed of before verdict. Overall, roughly 7% of sexual assaults reported to NSW Police result in a guilty verdict.
- In the ACT, 42% of cases analysed were closed as "victim withdrawal". Victims were not withdrawing, they were disengaging from a police process they described as triggering.
- At least 90% of physical and sexual violence against First Nations women goes undisclosed.

Figures as collated in With You We Can, What No One Told Us (2025), drawing on ABS, AIHW and BOCSAR data.

Attrition of this magnitude is not a series of individual choices. It is a design feature of a system that gives a complainant no legal status, no legal advice and no legal representation, while the accused is entitled to all three. In the consultation paper's own terms, it is systems abuse — and the paper rightly identifies the systematic addressing of systems abuse across sectors, including the justice system, as a key opportunity for the Second Action Plan.

"I once asked a room of lawyers: if your daughter or son were raped last night, who here would encourage them to submit themself to the ordeal of a criminal trial? Not one stood. When it becomes personal, even the staunchest traditionalists see the deficiencies."

Michael O'Connell, Consulting Victimologist and inaugural Commissioner for Victims' Rights (SA), in What No One Told Us

The mechanism: private records as a weapon

The sharpest edge of that systems abuse is the routine extraction of a complainant's most private material. Counselling notes, medical records, diaries, text messages, social media history, school and employment records, Centrelink files. These materials are frequently sought not because they are genuinely probative, but because they can be used to distress, discredit or humiliate complainants, often by invoking rape myths and stereotypes. A record of a PTSD diagnosis following an assault becomes an argument that the complainant is unstable and imagined the crime. A record of a termination, or of substance use, or of a difficult adolescence, becomes an argument about character. And once accessed, this information cannot be unseen. Even where leave is ultimately refused, the invasion of privacy has already occurred.

Every state and territory has legislated protections against this. The Commonwealth has not. And in practice, the protections that do exist are routinely circumvented — because in most jurisdictions the person whose privacy is at stake has no right to notice, no right to be heard, and no lawyer.

The patchwork

Whether a victim-survivor is told that her counselling notes have been subpoenaed, whether she can be heard in court, and whether she can be represented by a lawyer, depends entirely on where the offence is prosecuted.

Key Legislation		Protects medical/health records beyond counselling?	Express standing for the complainant?	Direct notice and told of right to be heard?	Referral to legal advice?
ACT	Evidence (Miscellaneous Provisions) Act 1991, Ch 4 Pt 4.4 Div 4.4.3 (ss 79–79M)	No — s 79K excludes medical information from a physical examination	Yes — s 79IA (no leave to appear); scope at preliminary exam (s 79G) is unclear	Via prosecutor (s 79E); court duty to ensure awareness + opportunity for advice (s 79IB)	Partial — "opportunity" only (s 79IB); no active referral or named service
NSW	Criminal Procedure Act 1986, Ch 6 Pt 5 Div 2 (ss 295–306)	Partial — by broad judicial interpretation only; no separate category	Yes — s 299A (broadest; any protected confider, incl. third parties)	Yes — s 299C notice; s 299 court duty	Partial — "opportunity" only (s 299)
VIC	Evidence (Miscellaneous Provisions) Act 1958, Pt II Div 2A (ss 32AB–32G)	Yes — unique "protected health information" category (s 32BA)	Yes — criminal: appear as of right (s 32CE); civil: with leave (s 32CB)	Yes — detailed notice incl. legal-advice info (s 32CD)	Yes — leave barred unless advice opportunity given (s 32D(1A))
QLD	Evidence Act 1977, Pt 2 Div 2A (ss 14A–14P)	No — forensic examination expressly excluded (s 14A(2))	Yes — s 14L (tied to privilege determination)	Yes — s 14G notice; s 14K court duty	Partial — "opportunity" only. DPP expressly not to give legal advice (s 14K(4))
WA	Evidence Act 1906, Pt IIIB (ss 19A–19M)	No — counselling only	Yes — s 19D: appear or be represented by counsel/solicitor	Yes — and must be informed of the right (s 19D(1))	No named service; informed of right to appear only
TAS	Evidence Act 2001, Pt 10 Div 1A; ss 127B, 131A, 132	No — counselling only (Div 1A can cover professional confidences, weaker)	Weak — s 127B silent; Div 1A implies right to apply	No — s 132 duty limited to witness/party	Silent
SA	Evidence Act 1929, Pt 7 Div 9 (ss 67D–67F)	No — physical examination carved out (s 67E(2)(a))	No — no express standing conferred	No — no notification requirement	Silent
NT	Evidence Act 1939, Pt 7 (ss 56–56G)	No — forensic examination carved out (s 56F(1)(b))	Conditional / weak — s 56D(2) (defeated where victim is a witness)	Direct notice (s 56C), but no duty to advise of right to appear	Silent
Cth	Evidence Act 1995 (Cth); Crimes Act 1914 (Cth)	No dedicated sexual assault communications privilege	No	No	Silent

Four conclusions follow from this:

- **The protection covers the wrong material.** Only Victoria protects health information as a standalone statutory category; in NSW it is covered only by judicial interpretation of the counselling definition. Diaries, phone and social media data, government-held records, and employment and school records are protected nowhere in Australia — even though these are precisely the materials now most commonly sought.

- **Standing is absent or illusory in three jurisdictions.** South Australia confers no legal standing at any stage. The Northern Territory's standing is generally unavailable to a complainant precisely because she will be a witness. Tasmania gives no express right to appear or to be represented, and imposes no notification requirement at all.

- **Notification is tied to the wrong trigger.** In every jurisdiction that has it, notification is triggered by an application for leave — not by the issue or service of a subpoena on a third party. There is no jurisdiction in Australia in which a complainant is entitled to be told, as a matter of course, that her records have been subpoenaed. That is exactly the gap ALRC Recommendation 10 was written to close.

- **The Commonwealth itself is not a bystander.** The Evidence Act 1995 (Cth) governs evidence law in federal courts and is the model for uniform evidence law across Australia, and the Crimes Act 1914 (Cth) provides certain protections for vulnerable witnesses and complainants in proceedings for Commonwealth offences. Yet there is no dedicated sexual assault communications privilege at the federal level, no statutory standing for complainants, and no mandatory notification regime. The Commonwealth, which asks the states to lead, has legislated nothing.

The fix: ALRC Recommendation 10

The Australian Law Reform Commission has already told governments what to do. Recommendation 10 of Safe, Informed, Supported provides:

"The Commonwealth, states, and territories should amend relevant legislation to provide that independent legal advisers have standing to appear in court on behalf of complainants of sexual violence in applications to subpoena or inspect materials directed to third parties which may contain a complainant's personal, sensitive, or confidential information, including sexual assault counselling communications. The legislative changes should include a mechanism which ensures the complainant is notified that a subpoena has been sent to a third party to produce personal, sensitive, or confidential information, including sexual assault counselling communications, relating to the complainant."

ALRC, Safe, Informed, Supported (2025), Recommendation 10

Recommendation 9 provides the funding limb: governments should fund independent legal advisers to give complainants legal advice through the criminal justice process, and to represent them when applications are made for their private material.

These recommendations have been made, but not implemented. Eighteen months after the ALRC reported, not one jurisdiction has fully legislated Recommendation 10. Recommendation 10 is a discrete, well-scoped, expert-endorsed reform, with an identified legislative vehicle in every jurisdiction, and it is sitting on a shelf. The Second Action Plan is the instrument that can take it off the shelf.

Recommendation 2: The Second Action Plan should name the implementation of ALRC Recommendation 10 as a deliverable, with the Standing Council of Attorneys-General as the vehicle for national consistency. The Commonwealth Attorney-General should table a model bill at SCAG to harmonise protected-confidence laws across all states and territories, using the Evidence Act 1995 (Cth) as the precedent for cooperative reform. Recommendation 10 should be a named priority deliverable in the next SCAG communiqué, and a specific, time-bound action in the Second Action Plan itself.

Recommendation 3: The Commonwealth should legislate first. Amend the Evidence Act 1995 (Cth) and the Crimes Act 1914 (Cth) to insert a dedicated sexual assault communications privilege, modelled on the strongest state and territory regimes, including statutory standing for complainants, mandatory notification of subpoena and access applications, a requirement that complainants be referred to independent legal advice and representation, and protection extending beyond counselling notes to other categories of personal, sensitive or confidential material — including health and medical records, digital records, education and employment records, and government-held records. This would set the national benchmark. The Commonwealth has both the standing and the obligation to lead: it is the federal legislator, the convenor of SCAG, the lead agency for the National Plan, and the primary funder of the legal assistance sector. Commonwealth sexual offences — including child sexual abuse offences committed by Australians overseas, online grooming, child abuse material offences, and offences under the modern slavery and trafficking framework — are routinely prosecuted in state courts under state procedure and evidence law (Judiciary Act 1903 (Cth), s 68), so victim-survivors of federal offences are exposed to exactly the same patchwork.

Recommendation 4: Protections must extend beyond counselling notes to all personal, sensitive or confidential material — therapeutic and medical records, diaries and journals, digital communications and social media, government-held records, and education and employment records. Standing must attach pre-trial and during trial, because late applications made mid-trial are precisely where complainants are currently left unprotected. And notification must be mandatory, because without clear notice, standing is illusory.

3. Independent legal representation: the reform that makes the rest work

Independent legal representation gives a victim of sexual violence their own lawyer during criminal proceedings — a lawyer independent of the prosecutor, whose duty runs to the victim.

"Independent legal representation changes two fundamentals: you finally have client-legal privilege (confidentiality), and you have a lawyer whose obligations are to you."

Julie Sarkozi, in What No One Told Us

The ACT, Victoria and Western Australia have introduced pilots, and pilots in the remaining jurisdictions were slated to begin in 2026. But awareness of independent legal representation among victims as well as frontline staff is close to zero, scope remains narrow, and pilots are, by definition, temporary. Pilots do not build the workforce, do not create the entitlement and do not shift the numbers.

Three design principles should govern the national model. Independent legal representation must be:

- **Automatic** — offered at first contact with police, not hidden or discretionary. In practice, this means a legal obligation on police and prosecuting agencies to inform complainants of their rights, including their standing and protections under criminal procedure and evidence legislation, at or shortly after reporting.

- **Fully funded and non-means-tested** — a right that depends on a means test is not a right. Lawyers should be government-funded, trauma-informed and hold specialist expertise in sexual offences.

- **Nationally consistent** — not a metro-only postcode lottery. Regional and remote victim-survivors, and First Nations victim-survivors, cannot be the last to receive it.

Representation should attach no later than the decision to prosecute, and continue through pre-trial applications and into trial, including where late applications are made, as they regularly are, during cross-examination.

To the objection about fair trials

Independent legal representation in limited, defined circumstances does not compromise fair trial rights. Standing does not equate to control over the prosecution or the outcome of the trial. It ensures that when courts undertake balancing exercises involving sensitive, personal information, they are properly informed of the nature of the material, the harm of disclosure, and the complainant's perspective — matters the prosecution is not well placed to articulate, because the prosecution does not act for the complainant and never has.

"The right to be legally represented as a victim witness does not mean affording victims additional participation rights in the adversarial system but simply ensuring that a lawyer can protect the rights already afforded to victims."
Professor Kerstin Braun, in What No One Told Us

Practitioner experience points the same way. Michael O'Connell, who has taken independent legal representation briefs, reports that with the victim's perspective properly before them, prosecutors negotiated more robust charge bargains, matters resolved faster, and unjustified withdrawals were averted. We are candid that this is practitioner testimony rather than evaluation data — and that is itself a finding. Australia has been running independent legal representation pilots without publishing evaluation. Properly funded, independent evaluation of the pilots should be a Second Action Plan commitment in its own right, and we would expect it to confirm what practitioners are already reporting.

The underlying logic is not seriously contested. Independent legal representation secures quality, probative evidence which is properly adduced and tested, minimises unnecessary delay, and supports the integrity of proceedings for *all* parties. It is not a concession to victims. It is a correction to a system that currently spends significant public resources building a brief of evidence and then loses the witness on whom the whole case depends.

Recommendation 5: Convert the pilots into permanent national infrastructure. The federal government has already signalled its commitment, with funding allocated to pilot specialist trauma-informed legal services for victims of sexual violence. The next step is to entrench, scale and harmonise that work. Commonwealth legal assistance funding agreements with the states and territories should require recipient jurisdictions to fund independent legal advice and representation for victim-survivors in all proceedings to which Recommendation 10 applies, tied to compliance with national service standards developed in consultation with the sector. Referral obligations should be made enforceable through amendments to victims' charters and administrative review mechanisms.

4. Legal literacy: the missing early-access measure

Priority Area 1 asks what helps people access support earlier. For sexual violence, one of the strongest levers is the least discussed: people do not know what the justice system is, what it will do to them, or what rights they have inside it.

- 73% of women did not perceive their sexual assault as a crime at the time it occurred.
- 31% did not report because they felt ashamed or embarrassed; 27% understood it as something that "just happens".
- Contributors to What No One Told Us consistently described entering reporting systems without understanding the legal consequences of their choices — and discovering, too late, that their confidentiality was not absolute.

Figures as collated in With You We Can, What No One Told Us (2025), drawing on ABS, AIHW and BOCSAR data.

Australia has invested heavily and rightly in consent education. It has invested almost nothing in explaining to young people what happens after a report. The result is a population that increasingly knows how to name sexual violence and has no idea what to do about it. Legal literacy is not a legal-sector concern; it is a precondition of reporting, and therefore a precondition of accountability. It belongs in Priority Area 2 as much as Priority Area 1.

Recommendation 6: The Second Action Plan should fund a national, victim-survivor-led legal literacy campaign and embed a legal literacy module in existing consent or civic education in schools and universities. That module should cover: how the criminal justice system works, including that sexual assault is prosecuted by the state and not the victim; what actually happens when you report, and on what realistic timelines; the roles of police and prosecutors; and the options available — forensic examination, delayed and anonymous reporting, counselling privilege, victims services, and independent legal representation. Legal literacy should also be built into training for first responders, general practitioners, educators and universal services.

5. Priority Area 5 — independent legal representation is the connective tissue

Priority Area 5 asks what would make the biggest difference in creating a more coordinated and connected system response, and what workforce capabilities are most needed.

For victims of sexual violence, the fragmentation is acute. A single person may be dealing simultaneously with police, a prosecuting agency, a sexual assault service, a counsellor, a GP, a victims' compensation scheme, an employer, and sometimes a family court, a child protection agency and a civil claim. Nobody holds the thread. The prosecutor cannot: they act for the state, they are assigned late, they change, and they are frequently meeting the complainant days before trial. Support workers and advocates do extraordinary work but cannot give legal advice, cannot claim privilege, and cannot appear in court.

An independent legal representative can do all three. Beyond opposing subpoenas, the lawyer becomes a single, continuous point of contact who can explain the process, interpret decisions, secure information from agencies, and hold the system to procedures that are legislated but routinely ignored. That is not an add-on to system integration, rather the missing role that makes integration possible for the individual person.

This has workforce consequences that the Second Action Plan should own. Australia does not currently have a specialist victims' legal workforce at scale. Building one requires funded training, defined competencies in trauma-informed sexual offence practice, career pathways, supervision and vicarious trauma support — the same workforce infrastructure the consultation paper contemplates for other specialist workforces. It also requires that the workforce reflect the communities it serves, and that culturally safe, self-determined models led by Aboriginal and Torres Strait Islander organisations are resourced to deliver it, consistent with Our Ways, Strong Ways, Our Voices.

Recommendation 7: The Second Action Plan's workforce agenda should include the development of a specialist, trauma-informed victims' legal workforce, with national service standards, defined competencies, supervision and vicarious trauma supports — and should treat independent legal representation as core system-integration infrastructure, not a niche legal service.

6. Make it measurable

The First Action Plan counted initiatives, organisations and people supported. Those are inputs. The Second Action Plan should be judged on whether the experience of a victim of sexual violence in the justice system changes — and that requires indicators that do not currently exist.

As the consultation paper notes, there are few nationally consistent measures of victim-survivor help-seeking or system experience. Justice access is one of the largest of those blind spots. What is not measured will not be delivered.

Recommendation 8: Add justice-access indicators to the National Plan Outcomes Framework and Performance Measurement Plan, reported annually and publicly. At a minimum these should include: the proportion of sexual offence complainants notified of an application for their personal, sensitive or confidential information; the proportion offered and the proportion receiving independent legal representation, disaggregated by jurisdiction, remoteness and First Nations status; attrition rates between report, charge, committal and verdict; and jurisdictional progress against ALRC Recommendation 10. Implementation of Recommendation 10 should itself be a measurable indicator under the National Plan.

Conclusion

The consultation paper says that most forms of violence in Australia are declining or static, and that this should give us confidence that change is possible. We accept that. But sexual violence is the exception, and it has been the exception for twenty years. It will remain the exception for as long as the system that is supposed to deliver accountability continues to deter the very people it depends on.

Ninety-two per cent of women do not report. Eighty-five per cent of reports that are made never reach a charge. A system that loses that many people is not under-resourced at the margins; it is failing at the point of contact. And the reform that addresses it is not speculative, not expensive, and not contested by the body that examined it. It has been recommended. It needs to be delivered.

With You We Can was created because survivors told us that what harmed them most was not only the assault, but the silence, confusion and powerlessness that followed. The title of our report, What No One Told Us, captures that experience. The Second Action Plan is the opportunity to ensure that every victim-survivor of sexual violence in Australia is told clearly: you have rights, you have a lawyer, and your voice will be heard.

We would welcome the opportunity to discuss this submission further, and to contribute to the design of the sexual violence stream we have proposed. If you would like any further information, please contact Executive Director, Sarah Rosenberg at info@withyouwecan.org.

Yours sincerely,

Sarah Rosenberg
Executive Director and Co-Founder
With You We Can