

Submission to the Inquiry into Current and Proposed Sexual Consent Laws in Australia

This submission is made on behalf of the University of Newcastle's Centre for Women's Health Research (CWHR), and the Australian Longitudinal Study on Women's Health (ALSWH).

Australian Longitudinal Study on Women's Health

ALSWH is a long-established national study that takes a comprehensive view of health, and the factors that affect health, across a woman's lifespan. Since 1996, ALSWH has collected data on over 57,000 women in four age cohorts using regular surveys and individual record linkage to administrative health databases, including Medicare (MBS, PBS), hospitals, and perinatal data. ALSWH provides evidence for the Department of Health and Aged Care to inform policy development and the provision of health services, and to support new and revised clinical guidelines for health professionals. In this submission, we present findings from women in the three youngest ALSWH cohorts (spanning ages 18 to 73) which are highly relevant to this inquiry.

Submission summary

This submission outlines findings from ALSWH and other studies in relation to experiences of sexual violence, as well as factors that assist women recovering from sexual violence. Recommendations to provide effective consent education and to improve women's experiences navigating the legal system after sexual violence are also presented.

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Submission contacts

Ms Natalie Townsend, Research Program Manager, Centre for Women's Health Research and Australian Longitudinal Study on Women's Health (Natalie.Townsend@newcastle.edu.au)

Professor Deborah Loxton, Director, Centre for Women's Health Research and Australian Longitudinal Study on Women's Health (Deborah.Loxton@newcastle.edu.au)

Women's experiences of sexual violence across the lifecourse

- Longitudinal findings from ALSWH have indicated a much higher prevalence of sexual violence among women than previously reported at the national level. The lifetime prevalence of experiencing sexual violence was [1]:
 - 51% of women in their twenties;
 - 34% of women in their forties; and
 - 26% of women aged 68-73.
- A history of sexual violence has been shown to be a risk factor for later experiences of violence. Compared with women who did not report experiencing sexual violence in childhood, women who had experienced childhood sexual violence were [1]:
 - twice as likely to have experienced recent sexual violence;
 - 33-59% more likely to have experienced recent domestic violence; and
 - ~60% more likely to have experienced recent physical violence.
- ALSWH data have also demonstrated inconsistent responding to survey items that ask about domestic violence over time, including self-reported experiences of sexual abuse. Quantitative and qualitative findings indicated that inconsistent responding predominantly reflected false negative responses, suggesting underreporting of sexual violence [2].
- Qualitative data from ALSWH participants have also highlighted that experiences of sexual violence often go unreported. Women have indicated potential barriers to engaging with the legal system following sexual violence, including a fear of victim-blaming and not being believed:

... Just over 2 and a half years ago I entered a sexually abusive relationship. I was emotionally manipulated into performing sexual acts that I was not comfortable with, my non-consent was ignored, and I was raped and sodomized in my sleep by my then-partner. I never reported him because I was terrified that no one would believe me, that I would be blamed for my situation...
– Tabatha, aged 23

... In my generation it [sexual violence] was not uncommon and mostly went unidentified due to the structure of the courts and the fact that women were seen to be the cause and affect of rape in particular due to provocative clothing, provocative movements which is just another way of saying, all women are responsible for sexual assault...
– Jenny, aged 65

Women's experiences navigating the legal system after sexual violence

Do women report experiences of sexual assault?

- In the last 5 years, 34,580 sexual assaults have been reported in NSW [3]. In 2022, the population of NSW was 8.24M people [4]. Assuming sexual assault was only reported once by each person, this means only 0.4% of people in NSW reported a sexual assault in the previous 5 years. Noting the above national prevalence of 26-51% of women who have experienced sexual violence [1], there is an obvious gap in the percentage of people who experience sexual assault and those who report it.

Why don't women report experiences of sexual assault?

- There are many barriers to women engaging with the legal system:
 - Women who have experienced sexual assault can be re-traumatised by the legal system and often face difficulties and obstacles while navigating court proceedings, including: inadequate support, information and court preparation; societal victim-blaming myths and attitudes; and frequent legal delays [5].
 - There is a misalignment of the needs of women who have experienced sexual assault and their experiences of the legal system, with women indicating a lack of information, validation, voice, and sense of control [6].
 - Qualitative data from ALSWH participants have revealed some additional barriers and negative experiences with navigating the legal system after sexual violence, including long trial periods, emotional distress, and a lack of support:

I am currently fighting numerous sexual abuse charges against several people. This is a long drain-out process which is preventing me from getting on with life and enjoying my life...

– Rochelle, aged 50

I was sexually, mentally & physically abused by mothers ex-boyfriend from the age of 11-16 years. That is all going through court now & alot of emotional problems are stemming from it.

– Siobhan, aged 18

... I experienced sexual abuse as a child (5-12 years of age) and went to court regarding this when I was 20. I thought court was the answer to dealing with all this and thought my issues were "solved". Last [year] I found myself standing in the place where some traumatic events occurred and had a breakdown. Since then I have had flashbacks -and discovered that I had only "remembered" certain events. Ones that were too painful (e.g rape) were buried. I have experienced anxiety, depression and flashbacks related to these events and have been seeing a psychologist weekly since last October...

– Meredith, aged 36

The legal system is lacking in assistance for women's issues. Violent to women is still not recognised as an important issue and there are little control or protective measures in place. Ongoing support is lacking... My daughter was raped and stalked frequently ... The offender was found not guilty on a "legal technicality". Victims and family members of the victim have little resources ot use for support during and after court appearances...

– Lauren, aged 45

The impact of sexual violence on women's health and wellbeing

- Sexual violence has a long-term effect on women's health and wellbeing. ALSWH data have shown that women who had experienced sexual violence reported worse health than those who had not experienced sexual violence.
- Women who experienced sexual violence had poorer physical health than those who had not experienced sexual violence [1], including:
 - poorer general health
 - increased risk of chronic conditions
 - increased risk of sexually transmitted infections
- Women who experienced sexual violence had poorer mental health than those who had not experienced sexual violence [1], including:
 - 50% increased risk of recent anxiety
 - 39-62% increased risk of recent depression
 - 34% increased risk of psychological distress
 - 29-51% increased risk of high stress

Recovery from sexual violence and interventions that assist women

- Formal mental health services can assist with recovery from experiences of sexual violence:
 - Mental health service use was associated with a 9-17% improvement in mental health in women who had experienced sexual violence [1].
- There is also some evidence supporting the potential for informal support-based interventions to assist women taking legal action in response to sexual violence.
 - Among women who had experienced sexual violence, social support (emotional support and guidance, and affection and social interaction) was associated with good mental health [1].
 - An eight-week group program conducted in NSW provided survivors of sexual assault with information on all aspects of the legal process and training on resilience, mindfulness, and emotional regulation. The program was shown to empower women and reduce feelings of social and emotional isolation while preparing for court proceedings [5].

Recommendations

- ALSWH used broad measures to capture a much higher lifetime prevalence of sexual violence among women than previously reported at the national level. This reflects the need for a broad, consistent legal definition of sexual violence across jurisdictions in Australia.
- Once a consistent legal definition of sexual violence is established, consent education strategies need to be developed to change societal attitudes and raise community awareness and understanding of consent.
- There is a lack of evidence on women who enter the legal system after reporting sexual violence and those who successfully navigate the criminal justice system, versus those who face challenges and withdraw claims or do not successfully reach an outcome. Further research and consultation directly involving those who have experienced sexual violence is essential to identify system shortfalls and mechanisms to respond to unmet needs.
- ALSWH data show that a history of experiencing sexual violence is associated with an increased risk of experiencing violence in later life. This highlights the importance of an integrated referral pathway from the justice system to formal external support to ensure the cycle of violence is broken.
- Affirmative consent laws will not necessarily improve reporting rates for sexual assault and conviction rates, as experiences of violence often go unreported due to fear and past negative experiences. Consent law reforms should be met with strategies to improve the interaction with the legal system for those who have experienced sexual violence:
 - Workforce development – police officers, judicial officers, and first responders should receive specialised trauma-informed training to increase knowledge and awareness of sexual violence, to enhance their responses and provide support to those who have experienced sexual violence.
 - Formal support services:
 - Mental health services should be promoted, and integrated referral pathways made available throughout the legal experience. For example, the NSW Department of Communities and Justice offers free counselling services to victims of crimes. Similar initiatives should be implemented nationwide, and these should be actively promoted and made accessible to those engaging with the legal system following reports of sexual violence.
 - Additionally, the accessibility of a court-appointed psychologist as a support person would be helpful for women at risk of re-traumatisation during legal proceedings.
 - Informal support services – investment into informal support groups designed to equip women with information about the legal system, mental and emotional preparation for the legal journey, and a support network would be beneficial.

References

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