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Victim/survivor-focused justice responses and reforms to criminal court practice

Implementation, current practice and future directions

Nicole Bluett-Boyd and Bianca Fileborn





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Executive summary

Many of the key narratives of sexual assault that have informed approaches to law reform highlight the unique disadvantage that victim/survivors face within the criminal justice process. Primarily, these concepts—including definitions of the “real” rape standard and the existence of an “ideal” victim/survivor—draw on problematic, gendered social constructs and requirements that are rarely met by the reality of sexual assault. When projected onto trial settings, these constructs are often exploited through the practices of legal actors and the flexibility of current legislation. This ensures that the process of a criminal trial, and of providing testimony in particular, is traumatising for victim/survivors of sexual assault. The past three decades have seen reform at numerous levels to address these issues, both within and outside of the criminal justice process. While reforms are variable across jurisdictions, key changes include:

- the expansion of counsellor/advocate services;
- increased specialisation of police and prosecutions;
- legislative amendments to the types of evidence that can be introduced at trial;
- alternative provisions for giving evidence at trial; and
- changes to the instructions given by the judiciary to the jury, including efforts to contextualise sexual assault.

Many of these reforms are based on an understanding of the needs of victim/survivors within the criminal justice process. Until relatively recently these needs have conceptually been aligned with those of the justice system; with a focus on increasing convictions and ensuring punitive measures are taken. Recent reforms, including those identified above, appear to reflect an expanded definition of “justice needs”, recognising that the criminal justice process intersects with therapeutic and social forms of redress.

Purpose of the research

Given this shift in understanding and the now extensive history of reform in this area, it is important to have an understanding of the effects of these reforms and the process of their implementation at the multi-jurisdictional level. This research sought to fill this information gap by mapping victim-focused reforms in addition to the barriers and enablers of reform implementation.

In order to explore this issue, the Australian Centre for the Study of Sexual Assault (ACSSA) received funding from the former Department of Families, Housing, Community Services and Indigenous Affairs (now the Department of Social Services). The key questions guiding the research were:

- To what extent has the last decade of law and policy reform enhanced the experience of adult victim/survivors of sexual assault in the criminal justice process?; and
- How are these reforms best built upon in the future?

These questions required an understanding of recent reforms to legislation and policy in the area of sexual assault, their implementation and perceived effectiveness, and identifying current

gaps in responses to victim/survivors by the criminal justice process. The research proceeded with the stated aims of:

- identifying which reforms and approaches are “victim/survivor-focused”;
- establishing which of these reforms are particularly promising in relation to improving the experiences of victim/survivors in the criminal justice process;
- understanding how such reforms have been taken up by legal actors; and
- mapping the cultural, organisational and institutional factors that enable or inhibit victim-focused reforms being embedded in court practices.

In addition to this mapping exercise, we sought to generate ideas in relation to possible future directions for reform.

Research design

We focused this research on barriers and enablers to the implementation of sexual assault law reforms across three Australian jurisdictions. We were concerned with documenting whether and how victim-focused reforms were being enacted in practice, and with identifying specific barriers to incorporating law reform into practice. The experiences of key professionals working within the legal system were of primary concern in this investigation. Given that there are cultural and legislative differences across Australian states and territories, we adopted a cross-jurisdictional approach. We used an inductive, qualitative approach to explore barriers to the implementation of sexual assault law reform, and employed a multiple-methods research design in this study. Specifically, a combination of semi-structured interviews, group interviews and court observation was employed to explore our research questions.

Data collection

Prior to undertaking the research we undertook a review of national and international literature concerning:

- the history of law reform relating to sexual assault;
- contemporary understandings of victim/survivor justice needs; and
- traditional enablers of and barriers to reform in the criminal justice process.

This literature assisted in the identification of knowledge gaps in current research and enabled us to focus on the barriers and enablers of law reform from the perspective of those tasked with enacting change. Further, in order to situate our research on the national stage, we undertook a series of informal consultations with relevant professionals in all states and territories. The consultations were aimed at determining the level of relevant law reforms that have occurred within each state and territory, at ascertaining the interest of jurisdictions in participating in the study, and to inform the scope and direction of the research.

Structured court observations of sexual assault trials were also conducted in the Victorian County Court located in Melbourne. The observations were focused around: complainant support, special provisions of the court, complainant testimony, actions of the magistrate or judge, and reactions of the public gallery.

In conducting this research we interviewed 81 key professionals in the criminal justice process regarding their experiences of how sexual assault law reforms have been enacted in practice. The range of professionals interviewed included sexual assault counsellor/advocates, prosecutors, defence practitioners, judges and witness support workers. We used semi-structured interviews in this research to examine key professionals’ understandings of law reforms in their jurisdiction relating to victim/survivors’ justice needs, and any barriers to implementing the reforms in practice. We also used group interviews as an efficient way to talk to larger numbers of key stakeholders within a short amount of time.

Data analysis

A thematic analysis of these interviews allowed us to identify key themes and issues raised across the different jurisdictions in relation to the barriers to and enablers of implementing law

reforms. This was achieved through a coding of the interview data and collation of data within evolving categories. Comparing the datasets across the jurisdictions allowed for unique issues, barriers and enablers to be identified. This provided insight into the role of each jurisdiction's culture in influencing the implementation of law reforms.

Key findings

The findings of our analysis were organised into key areas of interest. These were:

- participants' understanding of victim/survivor justice needs, including an assessment of the ability of the criminal justice process to respond to these;
- participants' knowledge of recent reforms and the enablers of and barriers to implementation; and
- participants' suggestions as to future directions with respect to the approach for law reform, and specific practical reforms to enhance victim/survivors' experiences of the criminal justice process.

Our analysis suggests that participants had extensive knowledge of victim/survivor justice needs and readily identified barriers to and enablers of the process of law reform. The insights afforded by participants' extensive and varied experience with victim/survivors provided critical suggestions as to how the current system could be improved upon in the future.

Mapping the justice needs of victim/survivors

Participants had a strong understanding of what victim/survivors' justice needs are, with responses largely reflecting current research on this area. They identified the following needs as being important for victim/survivors:

- receiving emotional support and counselling;
- having a voice and being heard;
- being believed;
- having their version of events vindicated;
- being informed about the status of their case;
- being educated as to how the criminal justice system works, the reason for processes such as cross-examination, what acquittals and convictions mean, and so forth;
- avoiding having to constantly retell their story;
- being able to give evidence remotely;
- confronting their perpetrator in a public setting;
- having their perpetrator brought to justice/convicted; and
- having closure and a sense of finality to their experience.

Further analysis suggested that participants' understandings of the justice-related needs of victim/survivors of sexual assault was nuanced and subject to a range of influences. Specifically, it was identified that:

- The needs of victim/survivors are individual and variable. Additionally, the needs of victim/survivors change across different stages of the criminal justice process. Participants recognised that the criminal justice process cannot have a "one-size-fits-all" approach when tending to the needs of victim/survivors.
- Some vulnerable groups (including people with a disability and Indigenous Australians) have specific needs that are tended to by the criminal justice process in an ad hoc fashion. The ability of professionals to respond to the needs of vulnerable groups is based on their prior professional experience rather than specific or consistent training.
- Participants' understandings of victim/survivors' justice needs are largely role-based, in that participants have better understandings of needs relevant to their own profession. Additionally, many participants align the needs of victim/survivors with the objectives of their own particular institution.

- The ability of the criminal justice process to respond to the individuality of victim/survivor justice needs may diminish as a case progresses. Participants recognised that the demands, requirements and tenets of the criminal justice process gradually overshadow the needs of victim/survivors, particularly at the point of trial.
- However, participants also stated that it is not necessarily the role of the criminal justice process to focus on the needs of victim/survivors. Specifically, participants felt that the adversarial nature of the criminal justice process would always be privileged above the therapeutic needs of victim/survivors.

In spite of these limitations, participants suggested that the criminal justice process was becoming more responsive to the needs of victim/survivors.

Reform and implementation

Indeed, participants' assessment of reform in relation to enhancing the experience of victim/survivors was generally positive. Key reforms across each jurisdiction over the past five years were seen as being inherently victim/survivor-focused. Further, participants felt that all states and territories had been uniform in their adoption of significant reforms.

The following summarises the participants' comments regarding reform implementation:

- Participants had varying levels of knowledge of recent reforms. Some participants were unable to identify any reforms or changes to their practice that had occurred, while others were able to provide an exhaustive overview of legislative and other reform. Areas of reform identified by participants were those related to their own role.
- Participants identified a number of key areas of reform:
 - *policy and protocol reforms*, including the expansion of extra-legal services and increased specialisation of legal actors across the criminal justice process;
 - *evidentiary reforms*., including those made to the definition of consent, the increased use of propensity evidence^a and the increased ability to conduct joint trials; and
 - *testimony-related reforms*., including the increased use of screens and closed-circuit television in the provision of evidence, and a minimisation of the number of times victim/survivors are required to give evidence (in some jurisdictions).
- Participants' assessment of the effects of these reforms on victim/survivor experiences of the criminal justice process was generally positive. However, participants consistently highlighted that these experiences remained traumatic.
- Participants identified enablers to effective implementation as consistent publicising of reforms and ongoing reform-related education, adequate resourcing, good relationships within and between agencies, and motivated individuals.
- Conversely, a lack of understanding of the purpose of reforms, legal actors deliberately undermining the intent of reform, change-resistant agencies and individuals, and a lack of reforms specific to vulnerable groups, were identified by participants as barriers to effective reform.

Future directions and reform

In addition to their generally positive assessments, participants had numerous suggestions for future reforms. An important feature of these suggestions is that they are made in the context of known barriers and enablers, and from the perspective of those tasked with implementation.

The perceived effectiveness of the law reform process, and the reality of implementation, guided participants' recommendations. In addition to cultural and individual-based limitations, many participants spoke about inherent limitations to the *process* of reform. In particular, participants consistently identified an implementation gap that exists between the intention of reformers and the specific concerns of various legal practitioners. Participants identified the need for

^a The term "propensity evidence" refers to evidence based on likelihood, similar to circumstantial evidence. This is a set of circumstances or facts, rather than direct evidence, *indicating* that a certain event has happened. This form of evidence is understood to increase the likelihood in the mind of the jury that the events being alleged have occurred, based on a prior history of similar behaviour by the accused.

cultural change at each stage of the criminal justice process in order to better embed existing reforms and ensure the success of ongoing reforms. In relation to the future direction of law and policy reform, participants commented on the following:

- Future law reform is likely to be more effective if it takes into account the *inherent limitations of the adversarial nature* of the criminal justice process. In particular, it was stated that the unique concerns of a range of legal and extra-legal actors necessarily shape and restrict the implementation process.
- Gaps in process that occur between institutions and agencies can potentially be addressed by the creation of a specific *liaison role*. The purpose of this position would be to respond to victim/survivor information needs, particularly during times of inactivity, as a case navigates its way along the criminal justice process. Importantly, this role would also provide connections after the court process is completed.
- The lengthy processes of committal and trial can be addressed by legislated timeframe restrictions and deferral to an *expedient committal process*. Restricting these timeframes is necessary to limit the trauma experienced by victim/survivors and maintain their engagement with the criminal justice process.
- Alternative provisions for giving evidence can be expanded through *audiovisual recording of initial statements* to police. Options for using this recording as the evidence-in-chief at both the committal and trial stages of the process would further address the trauma of providing evidence.
- Cultural change may be incorporated into reform attempts through the formalisation of *education of key legal personnel* concerning both sexual assault and the reform itself. Defence practitioners would perhaps benefit the most from this form of detailed and continued education.
- Finally, *alternative justice responses*, including inquisitorial systems and restorative justice practice, could be explored as options in particular circumstances. Specifically, intra-familial and culturally diverse contexts should be considered for the application of restorative justice.

From this analysis we identified a number of theoretical and practical implications for the future of victim/survivor-focused law reform.

Implications of the findings

From the perspective of participants in this research, there exists capacity within the criminal justice process to accommodate the needs of victim/survivors. Central to participants' suggestions was a concern with implementing effective reforms that considers the reality of the criminal justice process. In this way, the present research offers a unique perspective on the potential for future reform, including the theoretical considerations, educative requirements and practical legislative and policy-based changes.

Theoretical implications

The approach to future law reform by participants of this research is informed by the reality of the work that they perform. Based on the extensive collective experience of the 81 professionals interviewed for this research, a number of key theoretical approaches to future law reform emerged:

- *A reconsideration of "success" in law reform*: Despite the fact that an increase in conviction rates is seen by many as a measure of success in current law reform discourse, participants in this research did not focus on conviction as a key need for victim/survivors. Perhaps the realistic understanding of the likelihood of this outcome in the criminal justice process informs this view to some extent. It is evident from this research that a key measure of success for future reform should be the degree of flexibility demonstrated by the criminal justice process in responding to the individuality and changeability of victim/survivor needs. Indeed, enhancing the capacity of the criminal justice process to respond to victim/survivor needs should be a priority for future reforms.
- *Future reform as victim/survivor-informed*: A key task of future reform is to document reform progress and implementation with respect to victim/survivor needs and experience.

Participants consistently identified the need for further research documenting victim/survivors' experiences of the criminal justice system, including suggestions from victim/survivors as to what future reforms should look like. And for victim/survivors to be consulted on future directions as a matter of course.

- *Consideration of balancing adversarial systems and victim/survivor justice needs:* Given the nature of the law—an institution guided by tradition—strict adherence to due process rights of the accused has long been a frustration of reform implementation. The balancing act demanded by the adversarial process will continue to be a determining factor in the specific forms and functions of future reforms. However, the present research suggests a perspective of necessary flexibility in relation to sexual assault.

Future approaches to reform implementation

The existence of an “implementation gap” has long been identified as being problematic by law reform bodies. To address this gap, participants suggested that educative efforts be targeted at both systemic and individual levels. Participants suggested a number of policy reforms that would assist this endeavour, including comprehensive and ongoing education that provides information on recent reform to legal actors, and education of a range of professionals as to the social context of sexual assault and psychological aspects of victimisation. Effective training of legal actors in relation to sexual assault appears long overdue. Indeed, participants in this research stated that those involved in the criminal justice process, including prosecutors, defence practitioners and members of the judiciary, would benefit from further education concerning:

- the nature and extent of sexual assault in society;
- problematic misconceptions of sexual assault, particularly as they relate to law reform agendas;
- the contexts in which sexual assault occurs and the varying relationships between victim/survivors and offenders;
- the psychological and social effects of sexual assault on victim/survivors; and
- the ongoing effects of sexual assault on victim/survivors, specifically as this relates to their ability to engage with the criminal justice process.

A key finding of this research echoes previous assertions that cultural change requires general community education, and education of police officers, legal practitioners and judicial officers, in addition to alterations of policies and procedures.

Practical implications

It was evident from this research that the current criminal justice process has the capacity to better address the needs of victim/survivors. For participants, there were three key reforms that would ensure that the majority of these suggestions are met. The first is the development of a liaison role to ensure that victim/survivors are supported throughout and beyond their engagement with the criminal justice process. A person in this role would need to:

- commence engagement with the victim/survivor from the time of first report to police;
- be able to provide information at every stage of the criminal justice process;
- work with established connections to counsellors, police, prosecution and court support workers;
- have recognised standing as an advocate within the criminal justice process; and
- be able to assist victim/survivors with parallel civil forms of redress.

Secondly, participants suggested that further consideration of the provision of testimony that minimises the number of times victim/survivors retell their experience and the degree of harm experienced at the point of trial be undertaken. Participants identified two key practical options:

- The first option involves allowing the initial police statement to be audiovisually recorded and stand as evidence-in-chief at both the committal and trial stages. In addition to minimising the need for victim/survivors to repeatedly give evidence, this process was seen as means of capturing the reality of a victim/survivor's affect at the point of disclosure, thus avoiding the perceived sterility of testimony at trial.

- The second option advocated by many participants was for the provision of evidence-in-chief and cross-examination to occur prior to the trial stage. At the federal, state and territory level, there exists legislative provisions for the use of pre-recorded statements in criminal trials, including sexual assault trials.

Finally, participants advocated for the appropriate consideration of alternative justice responses, in particular restorative justice practices, selectively used in an independent, parallel process to the current system. In particular, participants consistently described a system that focused on therapeutic intervention while retaining the capacity to administer punishment where appropriate. A number of prosecutors and members of the judiciary emphasised that the ability for the court to issue prison sentences must be retained. Adopting a flexible approach in determining appropriate sanctions was also of key importance for participants. The engagement of offenders in restorative justice processes using integrated prevention measures was also identified as a clear benefit. Given the positive assessment of restorative justice made by our participants, the present research adds to the ongoing discussion that alternative justice responses have the potential to address the needs of victim/survivors in a range of circumstances.

Ultimately, from the perspective of the 81 professionals interviewed for this research, the criminal justice process has the capacity to recognise and assist with needs beyond those captured by traditional punitive-based notions of “justice”. While key advancements in relation to enhancing the experience of victim/survivors in the criminal justice process have been made in recent decades, issues of individual attitudes of legal actors and entrenched mechanisms of the adversarial system continue to act as barriers to law reform. In recognition of this, future reforms should be education-based and aimed at minimising the current reliance on problematic cultural scripts. Future reform should address the potential gaps in service for victim/survivors and expand the options by which their stories are told.

1

Introduction

In recent years, law and policy reform in relation to the offence of sexual assault has proceeded along two key axes. In response to a wealth of research highlighting the unique, difficult and often marginalised position of victim/survivors¹ in the criminal justice process, recent reforms have focused on both improving evidentiary requirements and enhancing the experiences of victim/survivors at the point of trial. In particular, contemporary law reforms have recognised a number of features of sexual offences at law that ensure the systemic disadvantage of victim/survivors of sexual assault. These include:

- the existence of problematic, gendered cultural scripts that serve to minimise sexual violence and implicate victim/survivors in their own victimisation (Heenan & Murray, 2006);
- evidentiary requirements (such as corroboration) that work against the nature of sexual violence as a crime typically committed by offenders known to the victim/survivor and in the absence of witnesses (Heath, 2005);
- the traditional focus on the credibility of the victim/survivor as central to the trial process; and
- tenets of due process (such as the right to cross-examine the accuser) that fail to recognise the traumatic nature of providing testimony about experiences of sexual violence (Fileborn, 2011).

In recognition of this, contemporary law reforms rely on a conceptualisation of victim/survivor justice needs that is expanded beyond traditional ideals of retribution and punishment. In addition to seeking legal modes of redress, the expanded idea of “justice” tends to social, therapeutic and support-based needs, some of which can be addressed by the criminal justice process. Each state and territory has progressed in addressing these issues to varying extents. Specific reforms at the state level are often subject to review and evaluation. However, given the now extensive history of reform it is important to have an understanding of their effects on the experiences of victim/survivors at a multi-jurisdictional level. This research sought to fill this information gap by mapping victim-focused reforms in addition to the barriers to and enablers of reform implementation.

In order to explore this issue, the Australian Centre for the Study of Sexual Assault (ACSSA) at the Australian Institute of Family Studies (AIFS) received funding from the former Department of Families, Housing, Community Services and Indigenous Affairs (now Department of Social Services). Two key questions guided the research. These were:

- To what extent has the last decade of law and policy reform enhanced the experience of adult victim/survivors of sexual assault in the criminal justice process?
- How are these reforms best built upon in the future?

Employing a combination of consultation-informed, interview-based and observational qualitative methodologies, we sought to access the experiences and expertise of relevant legal and non-legal

1 Throughout this report we use the term “victim/survivor” in reference to those individuals whose complaints enter the criminal justice process. The use of this term acknowledges that the determination of a case in the criminal justice process does not necessarily reflect the reality of the victim/survivors’ experience. Our participants employed a range of terms during the interviews, including “victim”, “alleged victim”, “complainant” and “witness”. The term selected by participants largely depended on each participant’s specific role in the criminal justice process.

professionals with a range of perspectives on the experience of victim/survivors in the court process. We acknowledge that the voices of victim/survivors themselves are absent from this research and we outline the reason for this limitation below. We also sought cross-jurisdictional interview data in order to examine the implementation of both Commonwealth and state legislation and explore the effects of state-specific policies. In identifying the views of a total of 81 relevant professionals across three jurisdictions, we fulfilled the multiple aims of mapping victim-focused reforms, exploring the effectiveness of implementation and canvassing future directions.

1.1 Scope of the project

In light of existing work highlighting the positioning of victim/survivors in the criminal justice process (Clark, 2010; Payne, 2009), and drawing on the many state-specific reforms and evaluations available (ACT Community Law Reform Committee, 1997; Bargen & Fishwick, 1995; Heenan & McKelvie, 1996; NSW Adult Sexual Assault Interagency Committee, 2004; NSW Criminal Justice Sexual Offences Taskforce, 2006; Task Force on Sexual Assault and Rape in Tasmania, 1998; Victorian Law Reform Commission, 2004), the present research was designed to provide a thematic description of current practice at a multi-jurisdictional level. The purpose of this mapping was to synthesise existing work and provide a clear picture of the issues and challenges of law and policy reforms across all Australian jurisdictions. As such, the research proceeded with the stated aims of:

- identifying which reforms and approaches are “victim/survivor-focused”;
- establishing which of these are particularly promising in relation to improving the experiences of victim/survivors in the criminal justice process;
- understanding how such reforms have been taken up by legal actors; and
- mapping the cultural, organisational, and institutional factors that enable or inhibit victim-focused reforms being embedded in court practices.

In addition to this mapping exercise, we sought to gather the views of relevant professionals in relation to possible future directions for reform. The professionals interviewed in this research included counsellor/advocates, police members, prosecutors, defence practitioners and members of the judiciary. Given the diversity of participants involved with respect to both role and jurisdiction, this research was used as an opportunity to identify gaps in current practice and provide a cross-perspective scope for future reforms.

1.2 Defining the parameters of inquiry

That experiences of victim/survivors of sexual assault within the criminal justice process are both diverse and evolving is a matter of record (Heath, 2005; Herman, 2005; Lievore, 2004). The experience of victim/survivors from the moment of first complaint through to the (possible) trial process has received much national and international attention. Situating the present research within previous studies necessitates defining the parameters of our inquiry. There were practical limitations to this study, including the 18-month timeframe and limited capacity to conduct in-depth research in all states and territories. In this section we identify the narrowed scope of the research.

Focus on experiences of court

In recognition of the uniqueness of sexual assault as a crime, the past two decades have seen an expansion of the therapeutic-based, non-legal services available to victim/survivors. The majority of states and territories now have dedicated counsellor/advocate services in addition to specialist medical practitioners. From the time of initial report to the potential finalisation of sentence, a victim/survivor will have had a diverse engagement with the criminal justice process, and indeed a variety of criminal justice actors, over a significant period of time. Previous research and evaluation concerning victim/survivor interaction with police has highlighted the varied experience of victim/survivors at this stage of the process (Frazier & Haney, 1996; Quilter, 2011). As a result of this work, many police forces across the nation have sought to improve practice through both specialisation and increased training. Specialisation has also occurred in prosecutorial bodies in a number of states and territories.

These alterations to practice have also occurred in the context of much legislative change designed to clarify definitions of sexual assault and key terms such as “consent”, the provision of evidence, and judicial directions at the point of trial. Much of this reform has occurred in recognition of the fact that the trial is often the most distressing part of the criminal justice process for the victim/survivor.

We chose to focus our research on the trial stage of the criminal justice process, given the numerous policy and legislative changes aimed at easing victim/survivors’ experiences in the courtroom. Extensive policy reforms relating to assistance at the point of trial and facilitation of contact with the court system has been made across each state and territory. In addition, each of the significant changes to key legislation detailed herein have had significant effects on what can be asked of a victim/survivor, and how this questioning can be conducted at the point of trial. A national review focused specifically on the effects of these changes is absent in the available literature. As such, this research aims to contribute to existing work within and across the various stages of the criminal justice process through an examination of the court process specifically.

Selection of jurisdictions

It was beyond the capacity of this research to conduct an analysis of each Australian state and territory. While this research is shaped by national-level consultations, only three key jurisdictions were selected for more in-depth analysis. The jurisdictions included for primary research in this project were selected on the basis of consultations undertaken with key stakeholders. The consultations sought to identify whether there was sufficient interest within the state/territory to conduct the research, identify the current climate within each state in relation to the extent of legislative reform, and gauge the extent to which these reforms were being implemented in practice. In selecting which jurisdictions to include we also gave consideration to the level of existing research that had been conducted across Australian states and territories. We strove to be inclusive of states that were currently under-researched in relation to sexual assault law reform. An additional jurisdiction was also included for analysis on the basis of having recently introduced significant and wide-reaching victim-focused legislative and policy reform. As such, our research represents a range of contexts with respect to the adoption of victim-focused law reforms and the phases of implementation. We do not, however, assess or evaluate each jurisdiction for the purpose of grading or ranking. Our analytic approach is described on page 9.

Timeframe of law reform considered

By request, the research considers the implementation and effects of the law reforms within the past ten years.² The reason for this limited timeframe is two fold. Firstly, significant national and state reform has occurred within this time period including alterations to the Evidence Act 1995 (Cth) (including the introduction of Uniform Evidence legislation), and changes to the state- and territory-based Criminal Procedures Acts and Crimes Acts. In addition, this timeframe has seen much alteration to long-standing case law and directions specific to sexual assault. The second practical reason for this timeframe relates to the stated aim of mapping institutional barriers and enablers to reform, in addition to the impact of reform, for key professionals. To meet this aim, the timeframe was limited to capture professionals likely to have been in the same role over a period of time and are thus able to report on noticeable changes to practice.

Focus on adult sexual assault

This research focuses on adult sexual assault, an offence in which both the victim/survivor and the accused³ are above the age of 18 years. The exclusion of child sexual assault from this analysis reflects our understanding that the experience, perpetration and criminal justice treatment of child sexual assault deserves different treatment within research (Cashmore &

² Useful resources relevant to recent reforms is presented in Appendix E of this report.

³ Throughout this report we use the term “accused” to refer to the subject of the complaint made by a victim/survivor. Our use of this term does not reflect a judgment of guilt, but rather it acknowledges that this research is focused at a point in the criminal justice system in which a determination of guilt has not yet been made. Our participants employed a range of terms, including “offender”, “perpetrator”, “accused” and “defendant”. Again, the use of terminology is largely dictated by each participant’s role in the criminal justice process.

Triboli, 2006; Eastwood & Patton, 2002). In addition, much legislation and practice policy recognises the need for differential accommodation of child sexual assault within the criminal justice process. The focus on adult sexual assault within this research therefore is a necessarily narrowed approach, given the limited timeframe available and legislative scope. Within the analysis that follows, applicability to cases of child sexual assault is noted. However, participants in this research were asked to reflect on their own work with adult victim/survivors.

Absence of victim/survivor voices

The voices and opinions of adult victim/survivors in this research are absent. Many participants raised the suggestion of speaking with victim/survivors concerning their own experiences in court. Indeed, the perspectives of victim/survivors on this issue are fundamental to a clear and holistic understanding of the impact of reforms. However, our research is focused on the aspect of implementation—both the barriers and enablers—in the context of professional practice. The professional perspectives of practitioners throughout the criminal justice process represent a noticeable gap in the research literature. An understanding of how practitioners approach reform has significant influence on the experiences of victim/survivors. In addition, an understanding of this implementation process has significant implications for the future practice of reform.

Given the narrow scope of this research, this report describes a professional and practice perspective of implementation and future reforms. A key aspect of this work is a mapping of professional perspectives on: the justice needs of victim/survivors, the efficacy of recent reforms, barriers to and enablers of reform, and future areas (both specific and general) for policy and law reform.

1.3 Structure of the report

As outlined above, this report presents the key findings of this 18-month, multi-jurisdictional work. In Chapter 2 we describe the multiple methods of data collection that contributed to our findings. In describing the research design, we detail the rationale of the approaches taken and the specific ethical considerations of the research. This is followed in Chapter 3 by a thematic literature review of current perspectives concerning the experiences of victim/survivors at the point of trial. This includes an historical mapping of key areas of law reform as they relate to the justice needs of victim/survivors, and an analysis of traditional barriers to and enablers of reform in this space. This review informs the structure of our three analysis chapters. These chapters identify key issues raised by our participants:

- Chapter 4 maps participants' understandings of the justice needs of victim/survivors, identifying the individuality and variability of these needs throughout the criminal justice process. This chapter also identifies participants' own perceptions of the capacity of the criminal justice process to met these needs.
- Chapter 5 provides a description of key recent reforms from the perspective of participants. Here, participants identify which reforms have had the most significant effects on their area of practice. Participants assess recent reform in the context of victim/survivor experience, noting both the benefits and unintended consequences. Further, this chapter discusses implementation issues at the organisational and institutional levels. The purpose of this discussion is to facilitate future reform.
- Chapter 6 discusses participants' suggestions for future areas of reform that they consider will further enhance the experiences of victim/survivors throughout the criminal justice process. These future directions are identified with respect to current gaps in practice, and possibilities for alternative justice responses. In addition, this chapter discusses the practical and culturally based resources required to implement these suggested changes.

In Chapter 7, we bring together this analysis and consider the implications in light of the original research questions. We identify what this research contributes to our understanding of the capacity of the criminal justice process to tend to the justice needs of victim/survivors, at both a conceptual and practical level.

2

Research design and methodology

This chapter describes in detail the research undertaken for this project. In order to demonstrate the scope and contribution of this research, this chapter addresses the:

- purpose of the research;
- research design;
- data collection (including key ethical considerations); and
- analytical approach.

The chapter also includes information on how the data generated are presented throughout this report.

2.1 Purpose of the research

In this research, we focused on barriers to and enablers of the implementation of sexual assault law reforms across three Australian jurisdictions. We were concerned with documenting whether and how victim-focused reforms were being enacted in practice, and with identifying specific barriers to incorporating law reforms into practice. The experiences of key stakeholders working within the legal system were of primary concern in this investigation. Given that there are cultural and legislative differences across Australian states and territories, we adopted a cross-jurisdictional approach. This allowed an assessment of the unique barriers to implementation across these jurisdictions. Further, as noted above, different states and territories have engaged in different levels of law and policy reforms in relation to sexual offences. As such, it could not be assumed that the experiences of implementing law reforms were the same across different jurisdictions.

The following aims underpinned this research:

- to investigate the extent to which sexual assault law reforms are being implemented in practice;
- to determine specific barriers to and enablers of the implementation of law reforms across different jurisdictions; and
- to consider what forms of cultural and legal change may need to occur in order to better promote and support the needs of victim/survivors in the courtroom.

The following questions guided this research:

- How has the last decade of reform across legislation, procedural justice and victim support worked to improve sexual assault victim/survivors' experiences of justice within the court arena?
- How do certain court practices enable or undermine the meeting of victim/survivors' justice needs?
- How do criminal justice workers understand the law reforms in their jurisdiction?
- How do criminal justice workers perceive victim/survivors' justice needs and participation within the justice process?

A range of research methods were used to explore these questions, and an overview and justification of this is contained in the ensuing sections.

2.2 Research design

We used an inductive, qualitative approach to exploring barriers to the implementation of sexual assault law reform, employing a multiple-methods research design. Specifically, we used a combination of semi-structured interviews, group interviews and court observation to explore the research questions identified above. Each research method is described in detail below, under “Data collection”. The use of multiple research methods allowed for triangulation of the research data. That is, the same research questions were explored through multiple avenues. This added to the robustness of the data collected, and allowed for the comparison of responses across the different data sources. Two key scoping exercises informed our data collection and analysis in this project: the literature review and national stakeholder consultations.

Literature review

Prior to undertaking the research we undertook a review of national and international literature relating to:

- historical issues that form the focus of law reform efforts;
- recent reforms relating to the trial process, on a national and state level;
- contemporary understandings of victim/survivor justice needs; and
- traditional barriers to and enablers of reform in the criminal justice process.

This literature review assisted in the identification of knowledge gaps in current research and enabled us to focus on the barriers to and enablers of law reform from the perspective of those tasked with enacting change. Absent from the current literature is a clear mapping of the consideration of legal and other actors in the adoption of wide-ranging reforms, and an assessment of recent reforms in the Australian context.

National stakeholder consultations

In order to situate our research on the national stage we undertook a series of informal consultations with relevant professionals in all states and territories. National consultations were undertaken prior to the fieldwork component of the research starting, and were also ongoing throughout the research process. The consultations were aimed at determining the level of relevant law reforms that had occurred within each state and territory, at ascertaining the interest of jurisdictions in participating in the study, and to inform the scope and direction of the research. Broadly, participants in these consultations were asked:

- *Key reforms*—What have been the key reforms in your jurisdiction in the past ten years?
- *Evaluation*—How well have these reforms been implemented? How have they affected victim/survivor experiences of court?
- *Implementation*—What has facilitated implementation of these reforms? What has hindered implementation of these reforms?
- *Gaps*—What are the remaining gaps in policy and/or legislation?

These consultations provided researchers with a sound understanding of the similarities and differences in key reform issues across the states and territories.

2.3 Data collection

Subsequent to securing all relevant ethics approvals, data collection proceeded over a period of six months. This included observational research at the Victorian County Court, which provided researchers with an understanding of the practical realities of the court process. The key methodology employed involved individual and group interviews with key professionals across the three jurisdictions.

Court observations

Structured court observations of sexual assault trials were conducted in the Victorian County Court located in Melbourne. Relevant trial cases were identified through contacts in the Office for Public Prosecutions. The purpose of the court observations was to provide the researchers with first-hand exposure to the way in which sexual assault trials are currently being run in a Victorian context, and to directly observe some of the issues and barriers raised by participants. An observation schedule was developed to guide the researchers' observation activity. The observation was focused around the following areas: complainant support, special provisions of the court, complainant on the witness stand, actions of the magistrate or judge, reactions of the public gallery, and any other observations that the researchers deemed relevant.

That observations were conducted in a single jurisdiction is a limitation of this research; however, there were practical reasons for this methodological decision. Court observation is time- and resource-intensive and trials are relatively unpredictable in nature; therefore, the observation component of the study was only conducted where the AIFS office is based, in Victoria.

Interviews with key professionals

We aimed to speak with a range of key professionals working in the criminal justice process regarding their experiences of how sexual assault law reforms have “played out” in practice. This included sexual assault counsellor/advocates, prosecutors, defence practitioners, judges and witness support workers. This key aspect of our methodology involved obtaining ethics approvals in each of the three chosen jurisdictions, prior to the commencement of interviews.

Ethical considerations

Approval for the research was granted by the AIFS Human Research Ethics Committee (HREC) in early September 2012. This approval allowed for the conduct of minimal fieldwork, including the completion of interviews and group interviews with counsellor/advocates and defence practitioners in all three jurisdictions. All other participants sought would be subject to additional HREC processes. Approval by the AIFS HREC also allowed for the conduct of courtroom observations. Subsequent to receiving AIFS HREC approval, a further six approvals were required across the three chosen jurisdictions. This number was reflective of the diversity of participants sought and the variations in jurisdictional requirements.

A number of key ethical issues were consistent across each jurisdiction. Given the proposed methodology, it was imperative for researchers to ensure voluntary participation that posed minimal risk to participants. The sensitive nature of the research area also dictated that researchers employ measures that protected the anonymity of participants. The following outlines how these measures were achieved.

Participants' free and informed consent

A participant information sheet written in plain language was made available to all potential participants and key informants.⁴ The statement explained the precise nature of the research, its purpose and what the research would be used for. The contact details of the project manager and lead researcher were included should anyone have questions or concerns about the research. Participants were informed that they could withdraw from the project at any time (up until the transcript de-identification and analysis process), stop the interview as needed, and refuse to answer any question. All participants and key informants signed a consent form,⁵ which repeated these points. Minor alterations to the wording of the information sheet were made upon request, based on the requirements of various jurisdictional approvals.

Participants' anonymity

Prior to the commencement of the interview, participants were asked not to identify themselves, or the area in which they worked, instead stating “this area” or “this institution” when discussing

⁴ Refer to Appendix C: Standard Plain Language Statement (on page 71).

⁵ Refer to Appendix D: Consent Form (on page 72).

issues relating to their professional role.⁶ Following the individual and group interviews, all participants' details were further de-identified in the transcription, analysis, writing up and dissemination of research results. De-identification involves the removal of information that could identify the individual participant, the specific unit or organisation in which they worked, or third parties referenced in the course of the individual or group interview. As is standard practice, where extracts are quoted in this report, a pseudonym is assigned. Any other information, such as jurisdictions, that could potentially identify the individuals involved (the participants and/or the accused, or any other person involved) have been removed or altered.

Recruiting and interviewing participants

Subsequent to securing ethics approval we commenced our recruitment of participants for the research, using a range of avenues. Flyers were developed and sent to key individuals (such as the Director of Public Prosecution) in each state to distribute to relevant colleagues.⁷ Interested individuals were then asked to contact the researchers directly to organise an interview time. These individuals were also asked to nominate any other colleagues whom they thought might be interested in participating. A small number of criminal justice and sexual assault workers with whom we had a pre-established relationship were extended a direct invitation to participate.

Semi-structured interviews

We used semi-structured interviews in this research to examine key stakeholders' understandings of law reforms in their jurisdiction relating to victim/survivors' justice needs, and any barriers to implementing these reforms in practice. Semi-structured interviews use a pre-formed interview question schedule to guide the discussion;⁸ however, there was also scope for participants to raise issues that were outside of the interview schedule, and for those to be explored by the researcher. Adopting a semi-structured approach allowed us to identify both similarities and points of departure in participant responses, both within and between jurisdictions.

Group interviews

We used group interviews in this research as an efficient way to talk to larger numbers of key stakeholders within a short amount of time. Given that participation involved disruption of participants' workplaces, using group interviews allowed us to minimise this disruption by interviewing a number of participants together. Further, given that we had a finite amount of time to conduct the fieldwork, group interviews allowed us to maximise the number of key stakeholders we were able to talk to in any given jurisdiction. Group interviews involve a group discussion on a specific topic, or set of related topics. The group interviews were also semi-structured, and used the same set of questions as the individual semi-structured interviews. This allowed for comparisons to be made across the two datasets.

Scope and structure of the interviews

The recruitment process resulted in the participation of a total of 81 key stakeholders across the three jurisdictions. As reflected in Table 1, participants represented a diversity of roles.

Table 1: Distribution of research participants across sectors

	Coun- sellor/ advocate	Police	Victim support	Prose- cution	Defense	Judiciary	Total
Individual interview	1	15	1	2	3	14	36
Group Interview	21	0	10	12	2	0	45
Total	22	15	11	14	5	14	81

The total number of participants was relatively evenly distributed across the three jurisdictions.

⁶ As an additional measure to ensure victim/survivors' confidentiality, participants were reminded not to refer to specific cases using names, dates or locations.

⁷ Refer to Appendix A: Recruitment Flyer (on page 69).

⁸ Refer to Appendix B: Interview Themes Provided to Participants (on page 70).

All interviews were audio-recorded with the consent of the participants. Interviews ranged from half an hour to two hours in duration. The semi-structured nature of the interviews allowed for this flexibility in duration, providing participants with the opportunity to direct the interview toward specific areas of interest and expertise. As noted above, all interview transcripts underwent a process of de-identification prior to analysis.

2.4 Analytic approach

We undertook a thematic and cross-jurisdictional analysis of the data. A thematic analysis allowed us to identify key themes and issues raised across the different jurisdictions in relation to the barriers to and enablers of law reform implementation. This was undertaken by coding and collating the interview data within evolving categories. Broadly, these themes related directly to the three analytical themes of: identifying victim/survivor justice needs, assessing barriers to and enablers of reform, and suggesting future directions. Comparing the datasets across the jurisdictions allowed for unique issues, barriers, and enablers to be identified. This provided insight into the role of each jurisdiction's culture in influencing the implementation of law reform. Thematic and cross-jurisdictional analysis was undertaken for the individual and group interviews, and was also considered in light of our court observations.

2.5 A note on reading the data

All data described above are incorporated into the analysis in chapters 4 to 6. The data generated by the interviews form the structural basis of our reporting. Data generated by the national-level consultations and courtroom observations are incorporated where appropriate. Where consultation and observational data appear, they are identified as such.

In performing a cross-jurisdictional analysis we have de-identified the jurisdictions, assigning a number to each. This is retained in the data for the purpose of comparison. All participants are identified with respect to their role in the criminal justice process. Participants are assigned a number to distinguish between individuals of the same role in each jurisdiction.

3

Literature review

This chapter reviews relevant national and international literature concerning the positioning of victim/survivors of sexual assault in the criminal justice process, and the history of reforms aimed at improving this experience. It identifies literature relating to:

- narratives of law reform;
- relevant victim-focused law reform in Australia;
- barriers to and enablers of reform; and
- identified victim/survivor justice needs.

This discussion begins by illuminating the landscape of victim/survivors' experiences of the criminal justice process. It is highlighted here that victim/survivors' experiences have frequently been negative and traumatic, to the point where going through the justice system is often referred to as the "second rape". These negative experiences have, at least in some instances, been the driving force behind many of the legislative and policy reforms of concern in this project. Secondly, we outline the nature and extent of legislative reforms that have occurred in Australia in relation to sexual assault. While there has been extensive reform across many Australian states and territories, how successfully these reforms have been implemented in practice is largely unknown. The third section of this literature review considers some of the identified barriers to and enablers of law reform implementation in the current research base. Finally, in order to introduce successful victim-focused reforms it is necessary to identify what it is that victim/survivors need from the justice system. The concluding discussion provides an overview of the existing research on victim/survivors' justice and support needs.

3.1 Narratives of law reform

Much law reform in both an Australian and international context has occurred in response to (largely) feminist critiques of how the legal system conceptualises sexual assault and its consequent treatment of victim/survivors, and the traumatic nature of the trial process. The following discussion provides an overview of each of these issues in turn in order to provide background context to the driving forces and aims of much victim-focused law reform. Here we identify concepts that have formed the basis of feminist analyses. We have termed these "narratives" of law reform as they reflect key stories of the nexus between sexual assault and the criminal justice process.

The "real rape" standard

The concept of "real rape" refers to rape that is perpetrated by a stranger, involves the use of force or violence, and is where the victim/survivor "fights back" and clearly articulates her lack of consent. "Real rape" typically takes place in a public location, such as an alleyway or park, or in the course of a home invasion. This narrow construct of rape is privileged as being more serious, more legitimate, and more worthy of the attention of the justice system than other "forms" of rape or sexual violence (Estrich, 1987). However, it does not reflect the forms of sexual violence most often experienced by victim/survivors. The majority of victim/survivors are perpetrated against by someone they know, in a familiar location, and physical force or violence is not typically used (Australian Bureau of Statistics [ABS], 1996, 2006). In privileging

atypical forms of rape as the “real” form or as more deserving of the attention of the justice system, this denies the experiences of many victim/survivors and prevents them from gaining access to justice.

The “ideal” victim/survivor

The “ideal victim” construct is one that dictates the particular personal qualities a victim/survivor should possess, and the manner in which she or he “should” have responded to being sexually assaulted. Larcombe (2002) described the ideal victim/survivor as “not only morally and sexually virtuous she is also cautious, unprovocative, and consistent” (p. 131). In responding to being sexually assaulted, the ideal victim/survivor should have fought her perpetrator, reported the incident immediately, and displayed an “appropriate” level of emotional distress. Similarly to the “real rape” construct, the notion of the “ideal victim/survivor” does not often match the lived experience and behaviours of many victim/survivors. Consequently, many victim/survivors are denied access to justice subsequent to reporting to police (Taylor, Muldoon, Norma, & Bradley, 2012). Constructs of the “ideal victim/survivor” are often drawn upon in court to discredit the victim/survivor, with the defence raising issues such as “her sexual experience, her previous relationship with the accused, her perceived provocation of the offence and her lack of injuries” (Adler, 1987, p. 129) as a matter of course in sexual assault trials (Larcombe, 2005).

The courtroom as the site of a “second rape”

Victim/survivors’ experiences of the criminal justice process have often been so negative as to warrant reference to the justice system as the site of a “second rape” (Burman, 2009; Fileborn, 2011). This term is used to describe a multitude of negative experiences throughout the criminal justice process, from interactions with police (Campbell, 1998; Jordan, 2004) to providing evidence at trial (Konradi, 2007). That victim/survivors of sexual assault have not been well served by the criminal justice process is evidenced by the number of reports and law reform recommendations released in the past two decades (ACT Community Law Reform Committee, 1997; Bagen & Fishwick, 1995; Heenan & McKelvie, 1996; NSW Adult Sexual Assault Interagency Committee, 2004; NSW Criminal Justice Sexual Offences Taskforce, 2006; Task Force on Sexual Assault and Rape in Tasmania, 1998; Victorian Law Reform Commission, 2004). That said, it should be noted that not all victim/survivors have had negative experiences of the justice system. Campbell (1998) found that social factors, victim/survivor characteristics and event characteristics also influence the likelihood of negative reactions from the justice system. This suggests that the three constructs of “real rape”, the “ideal victim/survivor”, and the “second rape” are likely to be inherently interlinked with one another.

In the proceeding section we move on to outline key areas of legislative reforms that have occurred, mapping their history, introduction, and effects on legal practice. Specifically, we consider changes to evidentiary requirements as they relate to trial practice.

3.2 Victim-focused law reform in Australia

The evidentiary requirements of the crime of sexual assault define the story that is able to be presented at the point of the trial. The unique privileging of the accused in the laws of sexual assault has been the site of much recent law reform. This section details the key themes of evidence, timing, testimony and credibility by mapping the history and progress of significant areas of Commonwealth law reforms.

Evidentiary requirements

The treatment of a victim/survivor’s story at trial starts from a place of doubt. In common law, a longstanding rule has required a trial judge in a sexual assault trial to warn the jury of the dangers of convicting an accused on the uncorroborated evidence of a victim/survivor (Cossins, 2010). The doctrine of corroboration establishes the story provided by the victim/survivor as inadequate and inherently untrustworthy. The words of Bollen J in relation to the assessment

of evidence in sexual assault cases demonstrate the continued perception of sexual assault as a relatively easy allegation to make, and a more difficult story to disprove:

I must warn you to be especially careful in considering evidence in a case where sexual assault allegations have been made. Experience has taught the judges that there have been cases where women have manufactured or invented false allegations of rape and sexual attack.⁹

Reform efforts have led to this warning requiring application by the defence and assessment by the judge.¹⁰ In spite of this reform, recent research at all levels of the criminal justice process demonstrate the continued importance of corroboration, both when assessing the legal merits of a case (Heenan & Murray, 2006) and throughout the trial process (Boniface, 2005). This suggests that law reform efforts regarding corroboration have not yet been fully adopted by legal actors.

Timing of complaint

In addition to the persisting notion of corroboration, there exist limitations in the form and manner in which the story of the victim/survivor can be constructed at the point of trial. Specifically, the law in practice continues to articulate an expectation concerning the consistency and timeliness of the narrative of the event provided by the victim/survivor. Historically, a warning was required concerning perceived risks of miscarriage of justice in cases where a complaint by the victim/survivor had been “delayed”. This included the risk of forensic disadvantage.¹¹ This full warning is now prohibited in circumstances of delayed complaint.¹² Nonetheless, defence practitioners continue to exploit social constructions that equate delay with deception (Higham, 2011). This represents one of many foci of insinuation employed by these practitioners to diminish the story of the victim/survivor at trial.

Testimony and cross-examination

In part, a criminal sexual assault trial is dependant on legal actors accessing the culturally founded beliefs of the jury in order to reach a desired outcome (Ehrlich, 2001; Frohmann, 1997; Taslitz, 1999). In particular, the typical tactics and narratives employed by defence counsel when cross-examining sexual assault victim/survivors, may centre on damaging the credibility of the victim/survivor. Strategies employed by defence practitioners that are common to sexual assault trials include asking leading questions, asking multiple questions at once using the linking “and” in order to disallow the selection of a single question, demanding “yes” or “no” answers to complex questions, and sustaining a constant barrage of accusations directed at the victim/survivor in which there is no space to answer (Taylor, 2004; Young, 1988).

Given the documented difficulty of providing evidence at trial, many reforms have been aimed at facilitating this process for victim/survivors of sexual assault. Recent reforms have enabled alternate methods by which victim/survivors can provide evidence in court. The majority of Australian states and territories now have provisions, including the use of screens to interrupt the vision between the victim/survivor and the accused at trial or the provision of a separate facility where a victim/survivor can testify using a close-circuit television (CCTV) link to the courtroom. While these provisions appear to minimise distress, additional research is required concerning their effects on both juror perceptions of the victim/survivor and the trial outcome. It has been suggested, for example, that CCTV testimony potentially constructs the victim/survivor as being removed from the process of the trial and can lead to implicit doubts about the veracity of her/his testimony (Taylor & Joudo, 2005). In this way, many reforms designed to facilitate the act of providing testimony may have an effect on the judicial assessment of the victim/survivor’s character and credibility.

9 *R v Johns* No SCCRM/91/452 (unreported, SASC, 26 August 1992).

10 The *Evidence Act 1995* (Cth) abolished corroboration requirements along with the requirement for a corroboration warning in s 164, but has preserved judicial discretion for corroboration warning to be given.

11 *Longman v R* (1989) 168 CLR 79. The term “forensic disadvantage” refers to the possible loss of physical evidence if a complaint is delayed. In practice the argument of forensic disadvantage was used to suggest that evidence that could exonerate the accused had been lost due to said delay.

12 *Evidence Act 1995* (Cth) s 165B.

Issues of credibility

Credibility, in part, draws on an assessment of the likelihood that a person is telling the truth in a particular instance. For this reason, Burnam (2009) stated that subtle and not so subtle criticism of the victim/survivor abounds at the point of trial, including factors such as sexual experience, a previous relationship with the accused, perceived provocation of the offence, and a lack of injuries. These cultural understandings have consequence for the degrees of responsibility and blame attributed to the victim/survivor. Goodman-Delahunty and Graham (2010) found that when the victim/survivor was “perceived to be more sexually provocative, she was attributed significantly more responsibility for the alleged sexual assault” (p. 36). The link between these cultural understandings and the blame attributed to the victim/survivor, was confirmed by Beichner and Spohn (2005), who found that:

questions about the victim’s moral character had substantially stronger effects on the probability of charging in cases where the evidence was weak and the assault less serious. In “weak” sexual assault cases, questions about the victim’s moral character decreased the probability of charging by 38% in acquaintance or relative cases and 22% in intimate partner cases. (p. 489)

Further, a 2005 survey conducted in the UK reported that a third of the public believe that a woman who flirts, consumes too much alcohol, or wears clothing considered to be “provocative” may be contributing to her sexual assault (ICM Research, 2005). A recent survey conducted by VicHealth (2006) found that 6% of respondents agreed with the statement “Women who are raped often ask for it”.

These cultural understandings directly affect the jury’s assessment of the victim/survivor’s story. As Cahill (2001) articulated, “the ethical question that courts must pursue becomes whether the victim sufficiently communicated her non consent, or whether that non consent was likely given the history of the victim” (p. 175). At the point of trial, it is the latter question that shapes defence practice. Indeed, Burnam (2009) found that evidence or questioning concerning the character of the victim/survivor was a common feature of applications made by the defence. This included the victim/survivor’s use of drugs or alcohol, her mental stability or depression, her (alleged) dishonesty as evidenced by previous arrests or lies made to government bodies.

Reforms have attempted to address this form of questioning; for instance through the introduction of “rape shield” laws to restrict the introduction of evidence relating to the sexual history of a victim/survivor at trial. Nonetheless, defence practitioners remain able to cross-examine the sexual assault victim/survivor on her sexual history provided leave is granted (Larcombe, 2005). Indeed, reforms that attempt to address attacks on a victim/survivors’ credibility tend to be met with much objection (Higham, 2011). As a staple of defence practice, such reforms are difficult to strictly enforce at trial and any attempt to constrain questions of credibility from the defence are vigorously fought against (Higham, 2011).

3.3 Barriers to and enablers of reform

The above discussion indicates that the implementation of recent law reforms has not been a straightforward process. In outlining the key areas of legislative reform and mapping their history, introduction and consequence, the disjuncture between legislative intent and practical consequence becomes clearer. In this section, we explore the institutional and organisational barriers to and enablers of law reform in greater detail.

As outlined earlier, the past few decades have borne witness to significant legislative and policy reforms for sexual offences, both internationally and across Australian states and territories. Much of this reform has resulted in significant changes in the way sexual violence and sexual consent are conceptualised within the legal field. For example, definitions of sexual assault have expanded in a number of jurisdictions to include acts committed with objects or body parts other than a penis, while definitions of sexual consent have shifted towards “positive”, communicative models of consent. However, while these changes seem promising in theory, it is less clear how well they have actually been implemented in practice (Bachman & Paternoster, 1993; Frank, Hardinge, & Wosick-Correa, 2009; Larcombe, 2011; Quilter, 2011; Randall, 2010). As

Van der Bijl and Rumney (2009) suggested, “there is a significant difference between enacting new laws and the effective enforcement of those laws” (p. 418). The Australian Law Reform Commission (2010) referred to this disjuncture between legislation and legal practice as an “implementation gap”.

While examples from various Australian and international jurisdictions will be drawn on to identify issues affecting the success or failure of reforms, it should be noted that each jurisdiction is likely to have a unique cultural atmosphere, and the experience of one jurisdiction does not automatically apply or translate to another. Attention should also be drawn to the fact that any failure of law reform should not be viewed as an inherently negative outcome. As Berman, Bowen, and Mansky (2007) noted, in other fields failure is viewed as an integral part of innovation; indeed, successful innovations are “typically built on the backs of numerous failures” (p. 7). Identifying how and why law reform has been unsuccessful (or, conversely, successful) allows us to engage in further reform and, ultimately, to construct more effective legislation and legal practices.

Four factors contributing to failure

Berman and colleagues (2007) identified four potential contributing factors to the failure of law reform:

- failure of premise or concept;
- failure of implementation;
- power dynamics; and
- an institution’s capacity for self-analysis.

A failure of premise or concept refers simply to a “bad idea”; that is, the legislative reforms put in place were simply inappropriate or did not adequately address the issues at hand from the outset.

Berman et al. (2007) identified a number of potential issues relating to failures of implementation, including a lack of necessary resources, a “lack of effective leadership ... failing to adapt to the challenges of the local context” (pp. 8–9), and ineffective or inadequate research and evaluation of the reforms.

Power dynamics and institutional capacity for reflexivity are viewed by Berman et al. as interconnected barriers to effective legislative reform. They noted that while “innovators must develop concerted strategies to inoculate reform from attack, criticism and political pressures”, these efforts may simultaneously promote “a culture that discourages transparency, self-reflection and self-criticism” (p. 7). Reforms can also be affected more generally by changes to funding allocations and “everyday dynamics within bureaucracies and between agencies” (Berman et al., 2007, p. 9). Thus, factors such as individual personalities or cultural differences between agencies can also play a fundamental role in the success or failure of a particular reform. This may be, for example, because cultural differences between agencies may impede information-sharing between different institutions (and even between different divisions of the same institution) (Bodor, Thompson, & Demircivi, 2004). Political pressure often dictates that reforms occur quickly, yet successful reform often requires ongoing evaluation and change over time (Berman et al., 2007).

Finally, the ability to engage in self-reflection is positioned as being imperative to a reform’s successful implementation. An inability “to be transparent, self-reflective and self-critical” (Berman et al., 2007, p. 10) means that the initial goals of the reform may be lost, and problems with implementation are likely to remain unnoticed.

The role of cultural values

The cultural values of key legal actors and institutions have been identified as playing a key role in whether (and how) legislative reforms are adopted in practice (Berman et al., 2007; Bodor et al., 2004; Kennedy & Easteal, 2011). In many instances, the pre-existing culture of a legal system exists in tension with the nature of legislative changes, and can work to counteract progressive reform efforts (Graycar, 2005). This is likely to be particularly pertinent for sexual assault law

reform, given the pervasive myths and misconceptions that surround sexual violence. Further, as Van der Bijl and Rumney (2009) intimated, a failure to take into account the “factors that impact on the enforcement of the criminal law” (p. 418) is a significant contributor to the failure of law reforms; that is, reforms should not only take into account the “black letter” law or content of legislation (Quilter, 2011), but also its interpretation and application.

Consideration of the cultural and social contexts within which this legislation will operate is crucial in order for reforms to be effective (Graycar, 2005; Van der Bijl & Rumney, 2009). Quilter (2011) suggested that “making law reforms ‘readable’ in the courtroom is intimately tied to how practitioners repeat or practice the law” (p. 26), and that this process is mediated by practitioners’ knowledge of sexual assault. Further, the broader operational environment of the justice system “and its values and justice-related priorities are understood as being male dominated ... this means that the ‘guidelines’ [and] ‘principles’ ... do not exist in a legal vacuum” (Kennedy & Eastal, 2011, p. 52). Thus, even the most progressive legislation can be lost in translation because of practice that is resistant or mired in attitudes reflecting misconceptions around sexual violence (Graycar, 2005; Quilter, 2011). This may especially be the case in jurisdictions where there is a greater degree of discretion in how reformed legislation is applied, as this provides greater scope for legislation to be read in a way that confirms rape myths or that work against the intent of the reform (Kennedy & Eastal, 2011). In the context of sexual assault law reform, the commonly held myths and misconceptions around sexual assault and “real” victim/survivors have the capacity to “undermine the enforcement of the criminal law” (Van der Bijl & Rumney, 2009, p. 422). Such beliefs about sexual assault permeate every level of the justice system, and influence the decision-making processes of a variety of criminal justice actors (Lin, 2010; Randall, 2010; Van der Bijl & Rumney, 2009). Law reforms that fail to address the broader social and cultural context within which legislation operates may be met with only limited success at best.

In considering barriers to the implementation of law reforms, it is important to acknowledge the limitations of the law and law reforms as vehicles for changing ingrained social attitudes and behaviours. Randall (2010) argued that “the assumption that law reform is itself able to effect social change overstates the power of the law and furthermore underestimates how deeply entrenched gender inequality remains” (p. 400). This is particularly so in relation to attitudes regarding sexual violence. However, this acknowledgement does not discount the role of law reform in responding to sexual violence. Rather, it is to suggest that legislative reform can only ever play one part of a multi-faceted response to sexual assault (Randall, 2010). Further, Randall claimed that law reform itself is inherently a form of success, regardless of how it is implemented and what barriers are faced in recognising the aims of the reform. Legislative reform, according to Randall, “must be understood in the context of years of intense and creative organising, lobbying, analyses, and advocacy of social movements” (p. 401), and the value of such an achievement should not be underestimated.

3.4 Victim/survivors’ justice needs

What are victim/survivors’ justice needs? While, as established earlier in this literature review, there has been a host of legislative and other justice reforms aimed at reducing the re-traumatising nature of the criminal justice process for victim/survivors, it has so far not been made clear exactly what victim/survivors hope to achieve from the justice system. That is, what needs to take place for victim/survivors to feel that justice has occurred? Or, indeed, what do victim/survivors think justice is and how do they understand this concept? According to Herman (2005), victim/survivors of sexual violence:

confront the most basic questions about the meaning of justice: How can the truth be made known? How should offenders be held accountable? What is appropriate punishment? Can the harm be repaired and, if so, what would be required to repair it? How can victims and offenders go on living in the same community? Is reconciliation possible? (p. 571)

It follows that awareness of how victim/survivors understand the concept of justice will provide insight into what victim/survivors actually require in order for their justice needs to be met. There is currently only a limited body of research available that explores these issues. Nonetheless, it

is clear from the work that has been done that victim/survivors' needs are variable and complex, and do not rest on simplistic understandings of what it means to achieve justice in any form.

Why should we be concerned with establishing what victim/survivors' justice needs are? Traditionally, the legal system has viewed the needs of victims/survivors as peripheral, with the trial process aimed at redressing the harm caused to the state by a criminal offence, rather than the harm caused to the individual victim/survivor. Yet the trial process is often a traumatic and negative experience for victim/survivors of sexual assault. There is a significant rate of attrition at every stage of the justice process, and this can at least in part be attributed to victim/survivors' reluctance to take part in a process that is likely to be detrimental to their wellbeing (Frazier & Haney, 1996). A justice system that is able to take victim/survivors' justice needs into account may go some way to reducing the harm caused by the trial process, may encourage victim/survivors to report their experiences and to go to trial, and increase the likelihood of successful prosecution (Konradi, 2001; Patterson & Campbell, 2010). As Clark (2010) noted, developing an appreciation of victim/survivors' "understandings, needs, and experiences provide[s] a starting point for developing policies aimed at improving responses to sexual assault" (p. 29).

According to recent research conducted by Clark (2010), victim/survivors hold diverse understandings of what justice is, or what achieving justice looks like. Clark interviewed 22 victim/survivors in relation to their understandings of justice and their justice needs, and found that "for some justice involved retribution, while others sought official acknowledgement of the crimes, and yet others felt that community safety was their primary goal" (p. 30). Clark's participants tended to suggest that justice could not be achieved on an individual level, as there was simply no way of completely undoing the harm caused to them by the sexual assault. These participants viewed justice as a multi-faceted concept that takes place at individual, community and societal levels:

- individual:
 - official acknowledgement of wrongdoing and harm;
 - perpetrators identified and made accountable for actions;
 - perpetrators receive consequences for their actions;
- community:
 - education on the wrong and harm of sexual assault;
 - resources and support made available;
- societal:
 - recognition of sexual assault as a serious issue; and
 - establishment of prevention mechanisms.

Similarly, victim/survivors of historical child sexual abuse in Julich's (2006) study also mentioned "the concepts of accountability and validation in relation to their understanding of justice" (p. 129), as well as the perpetrator taking responsibility and being held accountable for their actions. Further, for the victim/survivors interviewed by Julich, the concepts of "right" and "wrong" were central to how they understood justice, as was the requirement for the justice system to be seen as trying to address the underlying causes of the offending.

Together, these studies suggest that victim/survivors' understandings of what constitutes justice are complex and layered. Any reforms, whether legislative or policy-based, that aim to improve victim/survivors' experiences of the justice system need to be able to take these sophisticated and variable understandings of justice into account.

The discussion thus far has outlined what victim/survivors' think justice is, or how they understand justice conceptually. However, victim/survivors have a range of justice-related "needs"; that is, changes required to take place in the criminal justice system in order for victim/survivors to feel that justice has been achieved. Koss (2006) defined victim/survivors' justice needs as those caused by "a sense of transgression that triggers needs for acknowledgement of wrongdoing and repair of the damage caused" (p. 207). Koss suggested that it is the role of the "formal justice institutions" (p. 207) to respond to or fulfil these needs. More recent research

has provided a more complex and detailed insight into what victim/survivors' justice needs are. Clark (2010) identified four key justice needs, based on her participants' narratives:

1. *Information.* Victim/survivors desired information about:
 - the various stages of the system;
 - the key players;
 - their role in the procedures; and
 - the potential implications for them of the legal processes, and possible outcomes.

This information was valued as it allowed informed decision to be made “about engaging with the system, and to prepare for the criminal justice processes” (p. 31).
2. *Validation.* Victim/survivors needed:
 - to be believed by criminal justice officials; and
 - acknowledgement from the justice system of the sexual assault and the harm that it caused.
3. *Voice.* Clark's participants expressed the need for “a forum through which they could voice their experience” (p. 33). This may involve:
 - having their day in court (however, this experience rarely met victim/survivors' expectations); and
 - being able to share their experience in whole, and/or to “explain what the assault meant to them” (p. 34).
4. *Control.* Victim/survivors varied in the level of control they wanted over the justice process. Issues included:
 - access to advocacy and representation in individual decision-making;
 - criminal justice system processes being transparent and accountable, particularly in relation to decisions not to proceed with a case; and
 - being regularly updated and informed as to the status of the case.

Other studies have identified victim/survivors' justice needs in line with Clark's (2010) findings. For example, Payne (2009) conducted group interviews with United-Kingdom-based victim/survivors, whose needs were identified broadly as:

- to be believed;
- to be treated with dignity;
- to be reassured that it was not their fault;
- to feel safe and comforted;
- not to feel like a “victim”;
- services that support them and their family;
- to feel in control; [and]
- to be able to make informed choices. (p. 14)

Koss and Achilles (2008) identified the following victim/survivors' needs in an overview of published studies:

- to tell their stories;
- to obtain answers to questions;
- to be validated as a legitimate victim;
- for their offender to show remorse;
- to be supported; and
- to have a say in how their case is resolved. (p. 2)

In line with the findings of Clark (2010), and findings by Koss and Achilles (2008), victim/survivors in Julich's (2006) study also “sought to have their story heard by witnesses in a forum based on equality”, “to have their experience of victimisation validated” by both the perpetrator and other bystanders (such as friends and family members), and wanted their perpetrator “to take responsibility for his or her actions and to demonstrate accountability” (p. 131). A sense of validation was also important to victim/survivors of both sexual assault and domestic violence in Herman's (2005) study. This validation of experience was sought from family and friends, the community, or the justice system itself, with the particular source of

validation desired by the victim/survivor dependent upon the context of their experience. For example, Herman noted that for victim/survivors “who had been ostracized by their immediate families, what generally mattered was validation from those closest to them”, whereas for other victim/survivors who did not experience this exclusion the “most meaningful validation came from representatives of the wider community” (p. 585) or from the justice system. In contrast to Julich’s findings, participants in Herman’s study were divided as to whether they wanted the perpetrator to apologise, suggesting that validation of their experience from the perpetrator is not necessarily a universal justice need. This also highlights the fact that victim/survivors are not a homogeneous group, and that although there are many shared justice needs, there is also variation and diversity in terms of what victim/survivors need to achieve a sense of justice. Further, participants in Frazier and Haney’s (1996) study examining sexual assault victim/survivors’ experiences with the criminal justice system identified a lack of information in relation to their case and a lack of control over decision-making processes, both of which negatively affected them.

More broadly, the needs of victim/survivors identified above also overlap, to a certain extent, with the needs of other crime victims (Payne, 2009). For instance, the ACT Community Law Reform Committee (as cited in ACT Victims of Crime Coordinator, 2008) identified the general needs of victims of crime as: information, support, recognition of harm, reparation for harm and effective protection. There is clearly a degree of similarity here with the specific needs of sexual assault victim/survivors, although the actions required in order for these needs to be filled are likely to differ between sexual assault victim/survivors and other crime victims.

Unfortunately, many of Clark’s (2010) participants did not have their justice needs met by the criminal justice system in its current form. Likewise, Herman (2005) argued that victim/survivors’ justice needs are often in complete opposition to the manner in which the legal system operates. Herman stated:

Victims need social acknowledgment and support; the court requires them to endure a public challenge to their credibility. Victims need to establish a sense of power and control over their lives; the court requires them to submit to ... rules and ... procedures that they may not understand ... Victims need an opportunity to tell their stories in their own way, in a setting of their choice; the court requires them to respond to a set of yes–no questions ... Victims often need to control or limit their exposure to specific reminders of the trauma; the court requires them to relive the experience. [emphasis added] (p. 574)

The discussion thus far has viewed victim/survivors, and discussed their justice needs and understandings of justice, as a relatively coherent group. Do some groups of victim/survivors, however, have unique or additional justice needs to those identified in the prior discussion? In particular, do factors such as having a physical or cognitive impairment, or being from an Indigenous background alter a victim/survivors’ justice needs?

While the justice needs of domestic and family violence victims may differ to those of sexual assault victim/survivors, Nancarrow’s (2006) work on the justice needs of domestic and family violence victims is useful here to illustrate that there are differences in the perceived justice needs of Indigenous and non-Indigenous women. While these Indigenous and non-Indigenous women did share a range of justice needs and priorities, such as “stopping violence” and “supporting women by validating their stories”, they also disagreed on the importance of other needs such as “holding men accountable”. Indigenous participants viewed it as more important to restore relationships and to send “a message to the community that violence is wrong” (p. 96), than to hold individual perpetrators accountable. These justice needs were also related to the historical context between the state and Indigenous communities, with Indigenous women preferring avenues of justice “that did not collude with processes of domination and enforced separation, but which unified and empowered Indigenous communities to seek their own solutions” (p. 98). In contrast, non-Indigenous participants viewed “holding men accountable” as the priority out of these three particular justice goals.

This suggests that in reforming the criminal justice system to better account for victim/survivors’ justice needs, the unique needs of different social and cultural groups also need to be taken into account. While there is a great deal of similarity between the needs of victim/survivors from different demographic backgrounds, there are also significant points of divergence that can not and should not be ignored.

3.5 Summary

This examination of contemporary literature suggests that many recent reforms attempt to address historically acknowledged issues specific to the crime of sexual assault. Issues of the need for corroboration of a complaint and the centrality of victim/survivor credibility at the point of trial persist despite an abundance of research demonstrating the inequality of the trial process. Specifically, previous analyses suggest that the accused is privileged in sexual assault trials in a way not necessarily observable in other offences. Further, we see that law reform in Australia has proceeded along two key axes: that of evidentiary requirements and that of testimonial justice. Despite over a decade of major and wide-sweeping reforms along these two axes, the inefficacy with respect to enhancing victim/survivor experiences of the criminal justice process has not been subject to extensive empirical inquiry. Key measures of success for law reform, including conviction rates for sexual offences, are not evidenced in the available reviews. In addition, research into institutional and organisational barriers to reform occur at a largely conceptual level, suggesting that ineffective implementation can be attributed to cultural resistance and enduring misconceptions about sexual assault. Finally, the above literature demonstrates that the justice needs of victim/survivors are varied and individual. This suggests that a careful consideration of these needs may alter future measurement of the efficacy of law reform.

4

Mapping the justice needs of victim/survivors

This research sought to map the implementation of recent law and policy reforms in relation to victim/survivors' experiences in court. We report on this from the perspective of key professionals working within, and on the periphery of, the criminal justice process. Based on the literature reviewed in Chapter 3, we sought to map the understandings of professionals working in the system against the complex and sophisticated views of justice needs by victim/survivors. This provides an interesting and under-researched perspective to our understanding of victim/survivors justice needs.

Within the data it is apparent that participants held a relatively strong understanding of what victim/survivors' justice needs are, with responses largely reflecting current research on this area. Predominantly, participants viewed justice needs as being varied and individual. Nonetheless, participants were able to identify specific needs of vulnerable groups. The analysis offered in this chapter further suggests that key professionals may focus on the needs of victim/survivors that pertain most directly to their role in the justice system (or that they *perceive* as being most relevant to their role) at the expense of a more holistic understanding of victim/survivors' justice and support needs. Participants also recognised victim/survivors' justice needs as changing across the criminal justice process, which is to some extent mirrored by the changing role of the victim/survivor as the case progresses. We suggest that this has the potential to create gaps in service to the victim/survivor and we identify these potential gaps here. Finally, we discuss the implications of these varied understandings for service delivery to victim/survivors and their experiences at trial. In particular, we note that key professionals hold differing opinions concerning the capacity of the criminal justice process to respond to the needs identified here.

4.1 Identified victim/survivor justice needs

Participants in this research readily identified a number of victim/survivor justice needs. Typically, the identification of specific needs was prefaced with the caveat that each victim/survivor brought different circumstances, and therefore expectations, to the criminal justice process. Participants also demonstrated awareness that the needs of victim/survivors were subject to change over time. Some of the common needs of victim/survivors identified by participants included:

- receiving emotional support and counselling;
- having a voice and being heard;
- being believed;
- having their version of events vindicated;
- being informed about the status of their case;
- being educated as to how the criminal justice system works, the reason for processes such as cross-examination, what acquittals and convictions mean, and so forth;
- avoiding having to constantly retell their story;
- being able to give evidence remotely;
- confronting their perpetrator in a public setting;
- their perpetrator being brought to justice or being convicted; and
- having closure and a sense of finality to their experience.

These identified needs largely reflect those discussed in the literature review section of this report. Broadly, these needs map onto various stages of the criminal justice process. Participants related that key needs at the initial stage of reporting related to being heard and understood. This aspect is understood as being particularly important in cases of sexual assault, given the capacity of victim/survivors to feel some sense of fault or responsibility in relation to their experience:

I suppose the other thing, thinking [about] victims of sexual assault, [is] ... we provide validation. Most victims of crime in some way blame themselves for the offence having happened and that is just so much more so with many victims of sexual assault. And I suppose that's something that we try to do in our contact with them, and particularly if the, under the influence of drugs or alcohol, or um, you know, whatever—the whole societal messages people receive about that. So that's another huge hurdle for people that at some level they think they're responsible for the offence. So we spend a bit of time [talking] about that. (Victim Support Group 1, Jurisdiction 1)

Validation was identified as being particularly important for those reporting historical incidents of sexual assault. Participants related that for victim/survivors of historical sexual assault the initial report to a service provider or police member was often the first time the experience had been articulated to anyone. Validation of the report was viewed as critical at this stage. Importantly, validation was also viewed as the only identifiable justice need for some victim/survivors:

For some people, for some of our clients, the end result's not always the end result. Sometimes just starting the process and being heard might be good enough, and then they can withdraw from the process at any way along the line. (Counsellor/Advocate Group 1, Jurisdiction 1)

As the cases progressed, participants felt that information-related needs were of highest importance. More specifically, providing victim/survivors with accurate information about the process and their own case was seen as a mechanism for empowering victim/survivors to make decisions about their involvement:

It's also about acknowledging that these are often people with significant mental health histories and addiction issues as well, and that, with that thrown into the mix, it's about people's strength and capacity to actually go through that process. So I think it's really important to actually be quite realistic about, you know, how difficult and potentially protracted that process can be, so that people can make informed decisions about what they're going to have to go through. (Counsellor/Advocate Group1, Jurisdiction 1)

In addition, participants spoke of the “fine line” between providing accurate information and discouraging victim/survivors from proceeding with their complaint. This was particularly important at the reporting stage. Participants described having to address a number of misconceptions, gained from media and social understandings, in order to provide victim/survivors with an accurate understanding of the criminal justice process. For participants of this research, the provision of accurate information also assisted victim/survivors in understanding negative case outcomes:

I do get a lot of call back from victims, because I think I look after them quite well and that's just—it's easy. It's not hard to keep a victim happy, you know. When you do a thorough investigation and it doesn't go to court they can get upset, but I think if you explain the situation to them ... (Police 7, Jurisdiction 1)

In the event of cases progressing beyond the investigation stage, however, this focus shifted to the manner of giving evidence. It was of particular concern to participants that victim/survivors have a sound understanding of how the court experience was likely to unfold:

I mean, to my mind the victims' greatest need from start to finish is to be informed. I think they need to know before they walk into that court room exactly what to expect, what the outcomes are, what the realistic outcomes are, what it means if it's a conviction, what it means if it's an acquittal. Because to me that very much informs how they behave in a courtroom and what they're going to take away from the trial. I mean, although these are vast generalisations, my experience certainly as a [previous role], even if it's

an acquittal, and you have a complainant who's very disappointed, if they were fully informed from start to finish, they handle that a great deal better than if they don't spend much time with the prosecutor, don't really understand what the verdict means, and are left feeling they've been branded a liar by the jury. (Judicial 3, Jurisdiction 1)

Finally, participants felt that the conviction of the accused provided many victim/survivors with a sense of closure. Indeed, increased conviction rates are often understood as the ultimate goal of law and policy reforms in the area of sexual assault (Graycar & Morgan, 2005; Larcombe, 2011). Despite acknowledging that such an outcome was important for certain victim/survivors, many of the professionals interviewed related that the ultimate idea of “closure” was better served by alternative understandings of justice:

With law, they see [conviction] as “that's the end”. That's the end. That is what justice is. A conviction is justice and that is the only way you can have any sense of justice, but I think what we're hearing is that's not necessarily the case. Justice is different. (Counsellor/Advocate Group 1, Jurisdiction 1)

This research suggests that many professionals' understandings of justice needs are formed with reference to the totality of the victim/survivors' experience within the process. That is, justice is not defined by the *outcome* of the process, but rather the *experience* of the process.¹³ Indeed, for the majority of participants, addressing the justice needs of victim/survivors was a matter of providing validation, information and respect:

It's important in terms of that whole sort of procedural justice type area—that people are seen to be treated respectfully and seen as important. And I think sometimes, when you talk to people down the track, the outcome obviously is important at the time, but some people are managing really well after a not guilty verdict, other people aren't ... So it's not all about the verdict, and hopefully there is something about being treated as a person properly, because a lot of people feel they haven't been respected, believed, whatever else, beforehand, and it's an opportunity to at least, by treating them in the right way and showing that you've put some time and effort into their matter, that they might get a different view on it. (Victim Support Group 2, Jurisdiction 2)

While these perspectives taken together create an overall picture of victim/survivor justice needs, the majority of participants focused on one or two of the above. Indeed, as evidenced in the above excerpt, many participants had a tendency to focus on a narrow subset of these needs at the expense of others. Further, the ability of participants to identify victim/survivors' justice needs was also related to the level of contact that participants had with victim/survivors in their role. It is perhaps unsurprising that participants who had more extensive contact with victim/survivors were better able to identify a broader range of needs.

4.2 The needs of vulnerable groups

The issue of knowledge based on prior experience was also apparent in participants' discussion of the needs specific to vulnerable groups¹⁴ within the criminal justice process. The needs of vulnerable groups were only identified by participants who had experience with relevant cases. The specific needs of vulnerable groups were not discussed by participants as a matter of course. For instance, participants only rarely discussed the needs of victim/survivors with physical or mental impairment without prompting from the researchers. In general, it was suggested that needs pertaining to disability were addressed on an as-needed basis, rather than being built into the “mainstream” supports provided to victim/survivors in the justice system. Many participants who worked within the court system struggled to identify cases where disability was an issue for the victim/survivor, suggesting that victim/survivors with disabilities may face issues in accessing the justice system in the first place (Australian Human Rights Commission, 2013; Gray, Forell, & Clarke, 2009; Heenan & Murray, 2006).

¹³ This form of justice, termed “procedural justice”, focuses on the role of processes and the experiences of those processes by non-legal and legal actors. Reforms to procedural justice seek to enhance the experience of those involved in the system.

¹⁴ The term “vulnerable groups” used here refers to those cohorts who experience marginalisation within society as a result of their minority status—a marginalisation that is reflected in their experiences of the criminal justice process.

For participants of this research, the needs of victim/survivors with a physical disability were far more easily addressed than those with a cognitive impairment, when placed in the context of the criminal justice process:

I think physical disabilities—that's more easily handled. I mean, obviously this court being a relatively new building, we have wheelchair access, that sort of thing. Clearly if a person is sight impaired, then we can deal with that, although it might be difficult, for example, if they are being shown photographs and things ... So physical disabilities, hearing disabilities ... I think that can be gotten around. I think sometimes it needs a little bit of imagination and inventiveness but it can ... Complainants with mental disabilities, I think, present more of an issue. It depends of course on what the disability is and what the level is. Now, as a matter of logic, if it is a very, very significant disability then it may well be they wouldn't be giving evidence in the first place. But if it is just someone—and I have certainly had complainants who have had mild intellectual disability—there's no reason at all why that person can't give evidence. (Judicial 1, Jurisdiction 1)

Frequently this difference in the capacity of the criminal justice process to respond to people with disabilities was related directly to the nature of the trial itself, particularly in the context of cross-examination. A number of participants suggested that victim/survivors with a cognitive impairment required a lengthier process and more information throughout the criminal justice process. Again, these needs were seen as being defined on a case-by-case basis, with participants suggesting that it was beyond the capacity of the criminal justice process generally, and the court specifically, to have built in mechanisms to accommodate victim/survivors with a range of disabilities.

As with vulnerable groups with physical or cognitive impairment, participants tended not to identify Indigenous victim/survivors as having specific needs without prompting from the researchers. With the exception of the use of circuit courts in some jurisdictions, there was again a tendency for the unique needs of Indigenous people to be met on an ad-hoc, as-needed basis. This often involved the use of informal strategies such as adjusting the style of language or manner of posing questions to the complainant in court. Participants did, however, confirm that Indigenous victim/survivors have unique difficulties within the criminal justice process. In particular, it was expected that Indigenous victim/survivors were more likely to have social and personal problems occupying them concurrently with their experience of the criminal justice process:

They've got so much else on that they're dealing with ... They're losing the home, then they've got difficulties, they've got problems trying to get their kids out of care, or stuff like that. And that seems to be a higher priority than coming to see us and dealing with what's happened ... They can sort of push that to one side and there are more urgent things that they need to get on with. (Police 3, Jurisdiction 1)

In addition to these concurrent issues, there were a number of practical and cultural issues identified as barriers within the criminal justice process itself. Participants' articulations of cultural differences tended to focus on the practical consequences for the criminal justice process. Barriers such as distance of residence (from higher courts) and the manner in which Indigenous victim/survivors tended to give evidence were two of the key concerns raised:

It is more difficult [for Indigenous victim/survivors]. It's often clearly [more difficult] in a more remote location so there are practical matters of the person getting to court ... or where [their] accommodation [is] whilst they are giving their evidence. Clearly many Aboriginal people are very shy: they are feeling very ashamed of having to talk about these sorts of things, so they are often very soft in their voices. So there are a lot of practical issues that you have to consider when dealing with Indigenous complainants, be they children or adults. And, look, they are the sorts of things, I can't tell you what the answer is, you have to deal with it on an individual basis. I do think in fairness that prosecutors are alive to the particular problems and needs, and I think the same for defence counsel. (Judicial 1, Jurisdiction 1)

As reflected above, most participants felt that the unique needs of Indigenous people were understood by practitioners in the criminal justice process. However, issues arising from barriers such as distance, including the lack of witness assistance workers and the unreliability of

technology, were also seen by participants as entrenched and to some extent insurmountable issues.

4.3 Role-based understandings

It is evident from the above analysis that participants' understandings of the justice needs of victim/survivors were comprehensive. The majority of participants were able to identify a range of specific needs. When asked to speak to the needs of particular vulnerable groups, however, participants were generally only able to recall specific prior experience, rather than calling on specific or consistent training that they had received. Despite this variation in understandings, there were a number of key points of agreement among participants as to the nature of victim/survivor justice needs. One consistent theme in participants' understandings was that of individuality and variation:

I think it depends on the individual ... I don't think you can sort of categorise, you know, everyone in terms of what they need. (Police 2, Jurisdiction 1)

The practical consequence for participants of this variation is the need to tailor the services provided. This requires legal and extra-legal actors to be reflexive in their practice, particularly when assisting victim/survivors in their decisions to proceed:

I always call it the hurdle race really. So they sort of start the hurdle race and they could fall over at any hurdle, but they could jump hurdle. And so it's about what's going to be the right place for them to stop or start or continue all the way round. And it's a very individual race for each one of them. Some never start and some wish to go all the way round. So it's about having that conversation with each client individually and saying what's going to be suitable for you and what's going to be right. And we can't tell because every single client is different. (Counsellor/Advocate Group 1, Jurisdiction 1)

While the majority of participants identified the individuality and variation in victim/survivors' justice needs, many categorised and gave primacy to specific needs. These identified needs tended to relate to the specific professional role of the participant. For example, criminal justice workers often identified victim/survivors' need to be informed about the progress or status of their case, and their desire for conviction and to see the perpetrator brought to justice. Conversely, these participants were at times less likely or able to identify needs such as the need for voice or the need to be believed. In other instances, the participants identified or recognised that victim/survivors had a diverse range of justice needs, but only discussed in detail the particular needs that related to their particular role and the nature of their relationship with victim/survivors. This role-based understanding of victim/survivors' justice needs has, to some degree, a practical purpose; it allows professionals to focus on activities within their own capacity.

However, we found that role-based understandings often produces pre-emptive assumptions concerning what a victim/survivors needs will be. Further, attempts to categorise and narrowly define the needs of victim/survivors were more frequent among police and legal practitioners. For example, a number of police members suggested that the primary justice needs of victim/survivors were dictated by factors such as the manner of the offending and the relationship between the victim/survivor and the accused. The following excerpt demonstrates this form of categorical thinking from the perspective of one police officer:

Usually, if it's a stranger, a complete stranger attack, then they're a hundred per cent no problems usually. But having said that, we've had people who have maybe come from overseas, gone back overseas, and just say, "I want to get on with my life" ... I think one of the things is the length of time it takes for something to come to a trial as well ... If they have recovered and they've got on with their lives, then it's almost like taking a backward step to go through a trial. But most stranger ones, we do get full cooperation and right up [to the point of trial]. Then it varies with the ones where [the offender is] known. And I have one where it went up to trial but in the meantime [the victim/survivor] got pregnant to somebody else so the trial was put off and because it was supposed to be the day or the day after her baby was due. So we'd gone through 12 months he'd been in prison, but because she couldn't be there for the trial date

they let him out on bail, and when the trial came up two months later, they were back together. (Police 3, Jurisdiction 1)

As is evident in the above excerpt, the process of categorisation serves a number of purposes. Here, a police officer clearly aligns the notion of victim/survivors' needs with those of the policing organisation. By using categories of victimisation to assess the likelihood of conviction, this participant aligns their understanding of the primary need of victims/survivors with that of the policing institution. Further, deferral to these categorisations appeared to facilitate participants' practice and decision-making. The ability of professionals to pre-empt and limit understandings of the justice needs of victim/survivors appears to be based on a catalogue of previous experience. At the same time, it reflects a certain understanding of the ability of the criminal justice process to respond to needs that are both varied and variable.

We can see from these articulations that variation in victim/survivors' justice needs is differently addressed at different stages of the criminal justice process and by a range of actors. Participants demonstrated higher levels of understandings of justice needs that were by and large specific to their own individual role. However, a second key finding of this research is that professionals working within and outside of the criminal justice process recognise the complexity of justice needs. In particular, participants in this research noted that the needs of victim/survivors are often many and varied, in addition to being subject to change.

4.4 Changes across the criminal justice process

Importantly for the understanding of reform efficacy, participants acknowledged that the justice needs of victim/survivors were far from static in nature. Indeed, the needs of victim/survivors were identified as being multifaceted and fluid. In particular, these needs were seen to change across the course of the criminal justice process:

There's two sets of [needs] that interplay ... One of them is about what they want for themselves and then one of them is about what they want in terms of how the person, the offender, is dealt with ... I think the other thing is that that changes over time, as well. Because when people are sexually abused, they go through almost similar sorts of periods to grief and loss. You know, you go through that sort of shock, disorientation and then, you know, you come out of that and they go into anger and they want whatever. And then inevitably, if people can work through that and have a sense of congruence in terms of what happens, both in themselves and in terms of the offender, [then] in theory ... they can get closure and put it behind. (Counsellor/Advocate 1 and Legal 3, Jurisdiction 2)

In the above excerpt, the participant relates that victim/survivors can have multiple needs operating in tandem with each other. The first relates to the personal needs of the victim/survivor, the second to the "justice" that can be offered by the criminal justice process. Given their professional roles, many participants in this research tended to focus on the latter when assessing current responses to the justice needs of victim/survivors. Participants readily acknowledged that the role of the victim/survivor undergoes great change along the criminal justice process. Indeed, the title given to victim/survivors changes constantly along the process—typically from victim to complainant to witness. With these changes, the degree of centrality that the victim/survivor has to the process shifts. This is reflected in how various professionals approach the concept of victim/survivor justice needs, and indeed the degree to which these needs are prioritised in professionals' decision-making practices. As articulated in the following excerpt, the approach of legal professionals in particular to the justice needs of victim survivors can be eclipsed by the perceived needs of the criminal justice process itself:

One of the critical issues for prosecutors is how they're going to manage a person in the court process ... In fact, often they're perceived to be about managing that capacity to be a viable witness ... not necessarily what's going on with a person. And that's probably going back to your earlier question about sort of what our role is. We're much more about what's going on with a person and getting the justice outcome as a positive thing. But in fact it also might just simply [be] because of the cost, be just too high a cost to pay. Whereas once you're in the DPP [Director of Public Prosecutions] system, you know, there [are] all sorts of issues around the investment in the prosecution

and the successful outcomes and all the [key performance indicators] that go with the prosecution. (Counsellor/Advocate 1 and Legal 3, Jurisdiction 2)

A key finding of this research therefore, is that the ability to respond to the individuality of the victim/survivor and the variation of justice needs tends to diminish the further a case progresses along the criminal justice process. Specifically, as a case progresses (and the role of the victim/survivor shifts) the demands of the criminal justice process overshadow the individual needs of the victim/survivor. This understanding reflects differential prioritisation across the types of practitioners interviewed. Further, the understanding of the variation and individuality of victim/survivor needs demonstrated in this chapter did not translate into an assumed ability to respond.

4.5 Victim/survivor needs across the criminal justice process

Table 2 provides a summary of the key justice needs of victim/survivors as identified by our participants. It should be noted that such a table cannot capture the complexity or fluidity of victim/survivors' justice needs; rather, it maps the key thematic needs of victim/survivors as understood by our participants, prior to and throughout the criminal justice process. In order to identify the perceived effectiveness of these reforms at present, those reforms deemed "successful" by our participants have been shaded in pink.

Table 2: Victim/survivor justice needs across the criminal justice process					
Terminology:	Victim/survivor	Alleged victim	Complainant	Witness	
		→	→	→	
Dimensions of justice needs	Engagement with service	Report made to police	Police investigation	Committal	Trial
Validation	To be believed	For the report to be accepted and acted upon	For the investigation be thorough and the report taken seriously	For the case to be set for trial	Conviction of the accused
Information	To be provided with information about referral options	To receive information about the police process	Frequent updates about the status of the investigation	To be given a clear understanding of the criminal justice process	To be given an explanation of the outcome
Voice	To express their story	To be listened to and have the story accurately recorded		To have a positive experience of providing testimony	To be able to provide a victim impact statement
Control	To decide whether to engage with additional agencies and practitioners	To have the option of withdrawing their complaint	To have their statements followed up on	To have the option of providing evidence by remote facility	To be able to have input into sentencing
				To have the opportunity to confront the accused	
Therapeutic support	To be provided with access to counselling and receive emotional support	To receive continued support		To have access to court-based victim/survivor support services	To be provided with ongoing therapeutic services

Notes: This is not a comprehensive, nor exhaustive, list of the needs of victim/survivors. It summarises the most frequent needs identified by our participants. Grey shading identifies the role of actors prior to the criminal justice process. Participants identified those needs that appear shaded in pink as currently being met well by the criminal justice process.

Two key findings are evident from this table:

- The effectiveness of the criminal justice process in attending to victim/survivor needs does indeed diminish as the case approaches trial.
- There remains much room for improvement with respect to enhancing victim/survivors' experiences of the criminal justice process.

4.6 Perceived ability to respond

Throughout this research, participants readily admitted the lack of capacity of the court to tend to the wide variety of victim/survivors' needs. Indeed, participants believed that the needs of victim/survivors should primarily be met prior to the trial stage of the criminal justice process:

But to me the fundamental need of a victim is to be believed, to be vindicated in what they've said, to have people acknowledge it and to have the person who assaulted them acknowledge that he did that. All of that needs to happen before they walk into a courtroom. If they are walking into a courtroom and there's a trial going on, that means the accused denies that he did it. That means there's a war on, they in effect are on trial. (Judicial 3, Jurisdiction 1)

As this participant clearly articulates, the needs of victim/survivors do not map easily onto the needs of the criminal justice process. This, however, does not amount to a criticism of the court. Rather, the majority of participants felt that it was not an obligation of the court to address the majority of the needs identified in this chapter. Specifically, the majority of participants did not see the therapeutic needs of victim/survivors as the responsibility of the court. As is evident in the following excerpt, the criminal justice process has aims, processes and regulations that exist outside of consideration for the individual who has experienced the crime:

I think this is where and you'll see probably criticisms of our office and the justice system by people like victims of crime and sexual assault. We don't prosecute people to give complainants' voices. If we do prosecute, that might be a beneficial thing for that person [an outcome]. But we only prosecute. We're guided by the criminal code. We only prosecute if there's a reasonable prospective of a conviction. So if we don't think there's any prospect of conviction we wouldn't go ahead just to give the complainant a voice. That would be contrary to law. (Legal Group 2, Jurisdiction 2)

As articulated above, many participants felt that the most important or obvious identifiable justice needs were those that could be attended to by their own job. It is this guiding approach to the performance of the organisational role that is often seen as contradictory to the concept of victim/survivor justice needs. It appears from the above articulation that in the process of legal decision-making, the needs of the victim/survivor and the requirements of law are understood as either/or demands. This understanding extends to participants' assessments of the courtroom itself. In particular, the nature of the court itself was identified as being at odds with many of the therapeutic needs of victim/survivors:

And one of the issues of unresolved trauma is that you're coming off a higher emotional platform, so one of the things that I think happens is that all the issues around the sense of distrust, the sense of disengagement, the sense of anger, the sense of betrayal, the sense of personal abuse, kicks in and feeds off the back of that trauma. And ... one of the issues again with that that's really quite critical is that the court process itself is actually built on this whole idea of completely stripped out, emotionless, rational, reductionist process. (Counsellor/Advocate 1 and Legal 3, Jurisdiction 2)

Despite consistently noting the incompatibility of many victim/survivors' therapeutic and court-support-based needs with the demands and nature of the court process, the majority of participants did not advocate for reforms around the nature of the court process. Rather, the necessity of the adversarial system was typically recognised. In particular, the need for due process, and the "balancing act" between the needs of the victim/survivor at court and the rights of the accused, were often characterised as constant feature of law reform. However, the participants felt that the adversarial nature of the criminal justice process would always be a barrier to reform implementation in relation to victim/survivor needs. Many participants related that law reforms intended wholly to address the needs of victim/survivors would always

be limited in practice by those acting on behalf of the accused or the court. As the following participant articulates:

We do our best to ensure that all those things are used, but essentially coming back to the whole adversarial thing ... No matter what happens, ... those provisions don't take that away—the difficulty of it—I don't think. (Victim Support 2, Jurisdiction 2)

This understanding of the justice needs of victim/survivors when placed within the criminal justice process has implications for the participants' assessments of law reform development and implementation, explored in the following chapter. It is a key finding of this research that participants recognise the nature of the criminal justice process and the demands of courtroom as being barriers to the effective implementation of law reform.

Participants in this research had a sound knowledge of a range of victim/survivor justice needs. In addition, participants recognised these needs as being individual and varied. This research has demonstrated that participants' understandings of victim/survivor justice needs are developed largely with reference to their own roles in the system. As a result, participants had greater knowledge of the needs that they themselves were tasked with tending to. Indeed, counsellor/advocates and victim support staff were far more likely to identify the need for extra-legal support, such as counselling and medical assistance. In addition, police tended to focus on informational needs, while legal practitioners identified testimony- and conviction-related concerns. Participants further recognised that the needs of victim/survivors are subject to change as their case proceeds through the criminal justice process. A key finding of the above analysis is that the range of victim/survivors justice needs cannot be addressed by the criminal justice process generally, nor the court process specifically. However, participants in this research acknowledged that this is a permanent (and in some ways necessary) limitation of the adversarial system.

4.7 Summary

This chapter has detailed participants' understandings of the justice-related needs of victim/survivors of sexual assault. Specifically, the following issues were identified:

- The needs of victim/survivors are individual and variable. Additionally, the needs of victim/survivors change across different stages of the criminal justice process. Participants recognised that the criminal justice process cannot have a “one-size-fits-all” approach when tending to the needs of victim/survivors.
- A number of vulnerable groups have specific needs that are tended to by the criminal justice process in an ad hoc fashion. The ability of professionals to respond to the needs of vulnerable groups is based on prior experience rather than specific or consistent training.
- Participants' understandings of victim/survivors' justice needs are largely role-based, in that participants have better understandings of needs relevant to their own profession. Additionally, many participants align the needs of victim/survivors with the needs of the particular institution for which they work.
- The ability of the criminal justice process to respond to the individuality of victim/survivor justice needs may diminish as a case progresses. Participants identified that the demands, requirements and tenets of the criminal justice process gradually overshadow the needs of victim/survivors, particularly at the point of trial.
- However, participants also stated that it is not necessarily the role (or capacity) of the criminal justice process to focus on the needs of victim/survivors. Specifically, participants described that the adversarial nature of the criminal justice process will always be privileged above the therapeutic needs of victim/survivors.

In spite of these limitations, participants identified that the criminal justice process was becoming more responsive to the needs of victim/survivors.

5

Reform and implementation

This chapter identifies participants' knowledge and assessment of significant reforms in their respective jurisdictions. It focuses on the facilitators and limitations of these reforms through exploring participants' opinions of the implementation process. This requires an understanding of the consequences of reform, both for the practice of legal actors and for the victim/survivors themselves. Throughout this chapter we draw on interview and observational data. As outlined in Chapter 2, observation was undertaken as part of this research in order to provide the researchers with contextual, first-hand experience of sexual assault trials. This has allowed the researchers to observe how various reforms are being actualised in practice. The significant aspects of this observation are presented throughout this chapter.

This chapter begins with an overview of participants' knowledge of significant reforms, identifying the uniformity of many reforms. We then identify key areas of policy, evidentiary and testimony-related reforms in the context of participants' assessment of their efficacy. The purpose of this is to map the extent and manner of implementation across a number of jurisdictions. After summarising participants' assessments of the reforms we describe a number of key unintended consequences that may affect the experience of victim/survivors. In order to ground our analysis of future reform directions we identify both enablers of and barriers to implementation that were identified consistently across jurisdictions.

5.1 Participants' knowledge of key reforms

Participant knowledge of the reforms that had occurred in their jurisdiction was variable. Some participants were unable to identify any reforms or changes to their practice that had occurred, while others were able to provide an exhaustive overview of legislative and other reform. In general, participants felt that all states and territories had been uniform in their adoption of significant reforms, as articulated by the following participant:

My understanding is we're not that different from most other jurisdictions in terms of changes to consent laws to make them broader, um, vulnerable witness provisions and being able to have, um, you know, CCTV and that sort of stuff—support people. I think we're fairly similar to most other jurisdictions there at the moment. (Victim Support Group 2, Jurisdiction 2)

However, there was some variation between jurisdictions in terms of the scope of the reforms that participants were able to identify. Participants from geographically larger jurisdictions were often less able to identify a broader range of reforms, or to identify reforms that occurred outside of their immediate work area. In contrast, participants in smaller jurisdictions were often able to talk about a broader range of reforms. This may be a result of the increased communication and stronger individual relationships that appeared to occur within smaller jurisdictions.

To some extent participants' knowledge of reforms was related to their own role. As such, legislative and policy reforms affected the participants' roles to varying extents. This was particularly evident for counsellor/advocates and police. For the majority of counsellor/advocates interviewed, intricate knowledge of legislative change was not relevant to their role:

It was something about the perpetration, that the accused having to turn his mind to the fact that she wasn't consenting or might not be consenting, rather than the onus

being on the victim to say no. It was that stuff around consent, which is quite complex, but I don't know how it's played out in the court room. (Counsellor/Advocate Group 4, Jurisdiction 3)

Additionally, many police articulated limited understanding of intricate legislative changes that affect the experiences of victim/survivors at court:

To be perfectly honest I don't know a lot. I must say, I know what our role is. I know what the role is through the courts, I, I understand about witnesses being able to give their evidence from different rooms if they're, if they, you know. There's never been an issue with that, but I don't really know of any different reforms. (Police 8, Jurisdiction 2)

Other identifiable limitations to participants' knowledge of reforms included a number of participants who had simply not been in their current role long enough to have witnessed any legislative or policy reform. Additionally, the bulk of reform conducted in one jurisdiction occurred several decades ago, and it may simply be that participants had forgotten or no longer considered these changes to be "recent". Despite these limitations, participants generally displayed a sound knowledge of policy, legislative and testimony-related reforms. Prosecutors, defence practitioners and judges tended to have more knowledge of key legislative reform than other professionals.

5.2 Key areas of reform identified

Given the diversity of perspectives captured by our participants, this research was able to map a wide range of specific reforms. In this section we identify key policy, legislative and testimony reforms that participants identified as having a significant influence both on their day-to-day work and the experience of victim/survivors throughout the criminal justice process. We focus on reforms at the Commonwealth level (in particular, evidentiary reforms enabled by the uniform Evidence Act scheme), as well as describing a number of reforms enacted in the majority of states and territories. It is important to note that most of the reforms discussed herein remain at different stages of implementation across jurisdictions. We explore these reforms in terms of their perceived effectiveness. Participants were asked to identify those reforms that had had the strongest impact on practice. Many participants identified that there was frequently a gap between the intention of the reforms and their practical reality.

Policy and protocol reforms

At the level of policy and protocol,¹⁵ participants identified a number of key reforms at the "front end" of the criminal justice process. That is, participants spoke of a number of reforms relating to the role and profile of counsellor/advocates, coordination of medico-forensic practitioners and professionalism of police that were seen to have an effect on the experiences of victim/survivors. The expansion of the availability and role of counsellor/advocates in particular was seen as a significant reform, with far-reaching implications for the criminal justice process:

The [sexual assault service] are fantastic to deal with. The years have gone where you'd have a victim who would report a matter and you'd sit with them at the hospital for hours waiting for a doctor to turn up to do an examination and then, you know, you'd have exhausted victims who had been traumatised and there'd be hours of sitting around ... Obviously it's a police job to understand what the complaint is, but we need to investigate it as quickly as possible. So the good thing about it is, I understand the [sexual assault service] sit with victims now at the police station. At the hospital, ... there's doctors trained up to do these examinations and they're happening a lot faster than they ever would, and it allows us to be relieved ... so we can go and do our investigation so we don't lose evidence (Police 8, Jurisdiction 2)

As this excerpt demonstrates, participants prioritised the importance of supporting the victim/survivor through the requirements of the criminal justice process from the moment of first report. This reflects a key tenet of recent law reforms—that of ensuring a positive and respectful

¹⁵ Policies concern overarching concepts that guide the action of professionals. Protocols refer to explicit mandates that dictate specific acts and processes.

treatment of complaints. Participants identified a number of additional policy-related reforms designed to enhance victim/survivor experiences at this stage of the criminal justice process. Consistent themes included:

- the expansion of co-located services, including counsellor/advocates, medical practitioners and police;
- increased numbers of female police officers;
- increased training of police in relation to sexual assault matters;
- increased specialisation of police, including the expansion of sexual offence squads; and
- specialisation of prosecution services in some jurisdictions.

For participants, each of these reforms relate to a number of specific outcomes for both victim/survivors and practitioners. Participants identified an increase in reporting by victim/survivors in addition to an increased likelihood that victim/survivors would proceed with their complaints. This was attributed to the supportive and respectful approach of practitioners and police at each stage of the reporting process. Additionally, participants felt that the options available to victim/survivors were more transparent in current practice. Importantly, each of these reforms was facilitated by an increase in coordination between institutions and organisations. In particular, the specialisation of police and legal practitioners was seen to involve an enhanced understanding of, and reliance on, the practice of extra-legal organisations:

So we specialise. This is primarily all we do, is sexual assault. So there's a degree of expertise and knowledge within sort of the [police squad] which wasn't there before. There's a dedicated unit that obviously just specialises in this. So, um, I guess the benefits are that you, you know, you're little bit more familiar in how to deal with the offences. Your sort of networking systems, like [sexual assault service], obviously they know who you are and you know who they are and how each other work and what you need. So that's a positive thing. (Police 2, Jurisdiction 1)

Taken together at a practical level, this was seen to increase the likelihood of cases progressing through the criminal justice process, in turn increasing the workload of legal practitioners:

I think there's an increased chance that a brief will be authorised in circumstances where, um, it would not have been authorised in the past. And we notice that because the number of cases that are coming today, you know, increases exponentially all the time, whilst the number of solicitors remains fixed. So of course, we notice that. (Legal Group 3, Jurisdiction 3)

With a perceived increase in cases reaching the trial stage, the introduction of various witness support programs across a number of states and territories was seen as a necessary and highly effective reform:

They were very important—hugely important, in fact. They still are terrific in their involvement. They—I can't remember when they came in really—but they were part of the whole approach of improving things for victims, and they were worth their weight in gold as far as I'm concerned. (Judicial 3, Jurisdiction 1)

The work of witness assistance programs was understood by participants to have had a significant effect on both the continued engagement of the victim/survivor with the criminal justice process and their experiences at trial. Acting largely as a conduit between the prosecution and the victim/survivor, witness assistance workers are key in the provision of information and the preparation of the victim/survivor. In addition, from our participants' point of view, the presence of witness support either in the courtroom or by remote facility enhanced the experience of providing testimony. In one case observed in Victoria, the presence of the witness assistance worker in court appeared to facilitate in determining when breaks in testimony should occur, with the judge deferring to the worker's judgement on this matter. We saw the victim/survivor frequently making eye contact with the witness assistance worker. In addition, the worker was present to answer the questions of the victim/survivor during breaks. With respect to policy reforms, the introduction and expansion of the witness assistance program was identified as the most integral reform in enhancing victim/survivors' experiences of the court process.

Evidentiary reforms

Overall, participants of this research assessed the effects of evidentiary reforms on the experiences of victim/survivors positively.¹⁶ Many participants indicated that changes to definitional elements, the timing and process of the trial, limitations on evidence able to be introduced concerning the character of the victim/survivor, and the contextualisation of complaints served to enhance the experiences of victim/survivors in a number of ways. At an experiential level, participants felt that cross-examination in particular was no longer as traumatising for victim/survivors as it once had been. It is acknowledged here that this understanding would benefit from future research with victim/survivors themselves. Some participants also indicated a correlative relationship between evidentiary reforms and an increase in convictions, although this is not born out by the most recent available statistics (ABS, 2010; Lievore, 2004). In this section, we describe the most prominent evidentiary reforms identified by our participants. Evident throughout this is a clear disjuncture between prosecutorial and defence perspectives in relation to the effects of these reforms.

Definition of consent

Many participants identified alterations to the definition of consent as having wide-ranging effects on the victim/survivor in the criminal justice process:

The provisions here were changed [in relation to] consent. So the absence of, you know, saying “no” isn’t sufficient ... It actually changed the onus to say that the, you know, alleged offender had to show before the court how they had sought the consent of the victim ... So we managed to change the legislation to actually get that. (Counsellor/ Advocate 1 and Legal 3, Jurisdiction 2)

The importance of this reform, as articulated by the participant above, is a shifting of the burden in relation to a cornerstone concept in sexual assault cases: consent. For participants in this research, alterations to this key definitional element have resulted in changes in the form and functioning of cross-examinations, a centralising of the offenders’ state of mind and, perhaps most importantly, the erasure of a longstanding cultural myth concerning victim/survivor responsibility. It was evident to participants that alterations to definitional elements such as this have the potential to change the experiences of victim/survivors in court.

Propensity evidence

In relation to procedural reform, participants identified two key alterations as having the greatest effects on the trial process. The first relates to the introduction of propensity evidence at the point of trial.¹⁷ Indeed, it was anticipated that this provision, ostensibly allowing for the introduction of similar fact evidence at the point of trial, would both reduce the limitations on victim/survivor testimony and increase the likelihood of conviction. In practice, however, participants related that this reform is often restricted by judicial discretion:

The thing we did have here, which was helpful to us legislatively, was a thing called propensity evidence under the *Evidence Act*. That had been helpful for us, but now that’s been flaunted a little bit and we’ll make out our application for propensity evidence. [Magistrates] then say, “Look, I don’t think that is propensity evidence and so I’m not going to let it be admitted”. (Legal Group 1, Jurisdiction 1)

In spite of this restriction, participants related that the introduction of propensity evidence had a positive effect on the progress of trials.

¹⁶ In this context, the term “evidentiary reform” refers to changes to the types of evidence able to be presented to the court and the manner in which evidence can be elicited or provided.

¹⁷ The term “propensity evidence” refers to evidence based on likelihood, similar to circumstantial evidence. This is a set of circumstances or facts, rather than direct evidence, *indicating* that a certain event has happened. This form of evidence is understood to increase the likelihood in the mind of the jury that the events being alleged have occurred, based on a prior history of similar behaviour by the accused.

Severing trials

A second procedural reform identified by participants was the increased difficulty experienced with respect to severing trials.¹⁸ This area of law traditionally held that trials involving multiple complainants were to be run separately so as not to prejudice the jury. In recognition of the nature of sexual offending, reformers have established greater restrictions on this process. As the following participant states, this reform has created difficulties for defence practitioners:

So you've got two complainants making allegations in the one trial against the one person. That's very difficult to overcome ... I think rates of acquittal on those cases ... And we've had trials with three and four complainants and your client may say, "Well look, this didn't happen, this concoction". You can't use that as a basis to split each complainant into a separate trial and specifically exclude it. And I think the jury—it's very difficult to overcome the concept of where there's smoke there's fire. I mean that's perhaps getting off the impact on the victim but I think that's had [an] impact. (Legal 1, Jurisdiction 1)

Given the variability of conviction rates and the aforementioned gap in research concerning jury decision-making, it is difficult to gauge the effects of these evidentiary reforms on trial outcomes. However, it was clear to our participants that procedural reforms had benefited victim/survivors. This claim, although positive, would require validation through research with victim/survivors who had proceeded through the criminal justice system.

Character and credibility evidence

An additional category of evidentiary reform identified by participants relates to the introduction of testimony regarding the character of the victim/survivor. As identified in Chapter 3 of this report, many sexual assault trials centre on the credibility of the victim/survivor. From a defence perspective this often involves questioning both the history and behaviour of the victim/survivor. A number of reforms have been enacted to limit this aspect of defence; however there are limitations to these reforms in practice. For example, this research found that although reforms have been introduced to limit the introduction of evidence relating to the sexual history of the complainant, this evidence was introduced (or sought to be introduced) by both prosecution and defence:

That's kind of, more in the breach than the practice, so in theory that somebody's previous sexual history can't be part of a process, but it's clearly allowed in, even though it's not supposed to be. (Counsellor/Advocate 1 and Legal 3, Jurisdiction 2)

Indeed, participants related that defence practitioners consistently apply to introduce evidence relating to matters regarding the sexual, mental health and criminal histories of victim/survivors. Many participants particularly identified the continued ability of defence practitioners to subpoena the counselling and therapy files of victim/survivors as being inherently problematic. As such, participants from all areas of the criminal justice process assessed these reforms as being limited in their effectiveness.

Longman warning

A further evidentiary reform that was assessed as being more effective than the rape shield laws discussed above was the abolition of the Longman warning (see Chapter 3, footnote 11). In addition to this, providing juries with an understanding of victim/survivor reporting behaviour was understood to have a positive effect on jury decision-making:

The amendments to the legislation in relation to the absence of complaint ... The juries are directed to the fact that there is no complaint or no recent complaint ... Some complainants may for good reason not complain, ... whether through embarrassment ... for fear of not being believed, for fear of having to go through a process [or that] we

¹⁸ Severing, or separating, trials is an historical practice based on the key tenets of due process. This practice has traditionally occurred to ensure that the accused is not unfairly disadvantaged by having to face the claims of multiple complainants in the same trial. Conducting separate trials for each complainant was seen to remove the risk of the jury assuming that multiple complainants making similar accusations increased the likelihood of guilt.

would subject them to fear of retaliation ... They don't complain or complain much later. In some instances it might be you know, 15, 20 years. (Judicial 4, Jurisdiction 1)

As this participant states, for victim/survivors, this reform may serve to remove the fear of being disbelieved by the jury.

It is evident from this exploration of evidentiary reform that the effects on victim/survivors are far from direct. Many evidentiary reforms have been enacted to limit or overcome cultural myths surrounding the nature of sexual assault. It is assumed by participants in this research that ostensible changes to the onus of proof, limitations on questioning and better contextualisation of sexual assault have resulted in easier experiences in court for victim/survivors.

Testimony-related reforms

Testimony-related reforms are a key concern of this research. With respect to implementation, this suite of reforms has had the most variability across states and territories. As is made clear in this section, this variability is partially attributable to differences in resourcing (particularly of technology in the courtroom) and the limitations of pre-existing infrastructure (including court buildings). One commonality across jurisdictions was the interactions between court staff and victim/survivors. Participants in this research consistently related that victim/survivors were treated with respect by the judiciary, prosecutions and court staff in general. This was related to an expanded understanding of the unique position of the victim/survivor within the court, and specialist training of court staff in some jurisdictions. In the cases observed as part of this research, it was noted that the judge was friendly and caring towards the complainant after the lunch break and prior to the jury coming in. In addition, the prosecution was formal but "gentle" in interactions with the complainant. While neither a legislative nor policy-based change, participants in this research identified this approach to the treatment of the victim/survivor as a clear and important cultural shift.

In addition to this, participants identified two key areas of reform that could have significant effects on the experience of providing testimony in court. The first relates to the use of special hearings in certain circumstances.¹⁹ This method of providing pre-recorded evidence is designed to alleviate the trauma of giving evidence in court. Victim/survivors in special hearings are not required to provide evidence at committal hearings, reducing the number of times victim/survivors need to repeat their story. In the following excerpt, a participant details the procedural effects of these hearings:

It's probably changed the timing in relation to how long these type of trials take. [Prior] to last year, we had a situation where we would prerecord our special hearings prior to trial, so you'd be tacking on a couple of days sometimes as well as a trial. So, you know, you're recording it and then you'll start the trial and have to watch all of that again in front of the jury ... Those [year] amendments have certainly allowed us to get our cases on, particularly with child and cognitively impaired complainants, a lot quicker. (Legal Group 3, Jurisdiction 3)

As is evident in the above excerpt, law reforms designed to tend to one aspect of the trial process (namely the trauma associated with repeated retellings of victimisation and having to provide evidence in court) can have procedural effects, such as changing the duration and timing of other court processes. In this case, the use of a special hearing reduces the trauma experienced by victim/survivors in a number of ways.

The second key area of reform identified by participants has been developed to tend to the same recognised trauma of providing evidence in court noted above. This relates to a series of reforms that nominate alternative provisions for giving evidence. Such provisions have been progressively introduced in all jurisdictions for complainants in sexual assault trials. Each jurisdiction in this study demonstrated different stages of implementation and use of these reforms. In the following excerpt, the participant mapped the progression of these provisions:

¹⁹ In a number of jurisdictions, special hearings can be used for child victim/survivors and adult victim/survivors with a cognitive impairment. In a special hearing, the victim/survivor's evidence is pre-recorded in a remote room via closed-circuit television. The evidence is then played at the trial. Additionally, these victim/survivors do not give evidence at committal hearings.

Formerly, [child victim/survivors would] be giving their evidence in open court in front of the jury, but things would be informalised by sometimes the judge taking his robes off, and without the wig and gown, to make it so it's a little less rigid. That evolved to a stage where screens were being used so that the [child or adult] witness would be screened from viewing the accused, but could still be viewed by the jury and they could still see the accused. So, effectively, a screen would be placed between the complainant and the accused. We have now gone to a system where the complainants give their evidence in a remote location by way of CCTV, and that is streamed into the courts (Judicial 4, Jurisdiction 1)

In addition to speaking with participants about the use of alternative provisions, researchers were able to observe the practicalities of the provisions in practice. The option of using a screen was employed in one case observed. In this case a whiteboard was used as a screen. The positioning of the whiteboard was “tested” by the tipstaff²⁰ prior to the victim/survivor entering the courtroom. Nevertheless, the screen had to be re-positioned, as the complainant could still see the defendant at one point. In addition, the complainant had to walk past the accused to enter and leave the courtroom. When asked if she was comfortable walking past the accused, she stated, “Yes. I will just look away”. The complainant entered the courtroom from the public entrance, escorted by the tipstaff, who then placed himself between the complainant and the accused as the complainant approached the stand.

In our observations, we noted that court staff paid attention to the provision of equipment (such as television screens) that allowed for evidence to be given remotely. A number of limitations in using this equipment were observed. In the cases observed, CCTV facilities were positioned on the opposite wall to the jury, which meant that only a very small image would be displayed. Two video screens were used in the courtroom: one large and one smaller screen to the right of the room, behind the witness box. Participants expressed mixed assessments of this form of testimony in relation to its effectiveness and implementation. Generally, the majority of counsellor/advocates, victim support personnel and prosecutors stated that the alternative provisions were effective in addressing the trauma associated with testifying in court:

If you put that witness in the court and then put him up before a good, hard lawyer (or her), and that person crumbles, ... you might see your whole case go down the tube with it. I think the CCTV's an excellent idea and that's only an extension of the days when we used to have those boards where they used to sit behind a partition and give their evidence so they didn't have to look at the accused. I think it's been a fantastic idea. (Legal Group 1, Jurisdiction 1)

Use of CCTV in particular was seen by participants to enable the presence of a support person, afford frequent breaks where necessary and generally result in “stronger” testimony. From a prosecutorial perspective, however, this was a double-edged sword. Indeed, a number of prosecutors and members of the judiciary interviewed in this research suggested that victim/survivors could appear “too strong” during testimony:

They shouldn't be comfortable. They're giving evidence about a serious matter. The accused isn't comfortable, no one else is comfortable and I think sometimes they're a bit relaxed, and it's very easy to not have any empathy with the complainant and [not] afford greater weight, well not greater weight but proper weight, to her testimony, because she's not there. (Judicial 4, Jurisdiction1)

This perspective was confirmed by many defence practitioners, who stated that the provision of evidence by CCTV often helped their case. Specifically, these participants stated that CCTV had the effect of “distancing” the jury from the victim/survivor, as noted above. In addition, practitioners reported frequent issues with the technology in the form of a lag between the visual and audio aspects, resulting in the jury being distracted from the testimony. As a result of these issues, defence practitioners indicated that objections to the use of alternative provisions were rare.

Overall, participants in this research stated that the introduction of reforms minimising the number of times victim/survivors are required to give evidence and providing options to

²⁰ Tipstaff are court employees who support the processes of the court and ensure the orders given by judges in court are carried out.

provide evidence from outside of the courtroom have had a positive effect on victim/survivors. In particular, these measures were identified as reducing the trauma associated with having to provide testimony in front of both a jury and the accused.

5.3 Assessing the reforms: An overview

We can see from participants' assessments of law reforms in the preceding section that the majority of recent reforms are regarded positively. Areas of advancement afforded by these reforms relate to both an increase in the ease of practice and an enhancement of the experiences of victim/survivors at the point of trial. A key aspect to participants' positive assessment of these reforms is a clear understanding of previous practice. As can be seen from the following excerpt, when placed in the context of historical practices that emphasised the rights of the accused, the progress of the law reforms is evident. Here, a participant uses a number of key reforms to demonstrate the differences between traditional procedural requirements and current practices in relation to the experiences of victim/survivors:

Well it's all good. There's no doubt in my mind that the reforms have all been positive. The situation is much improved. As I say, when I think back to the 90s when you might do four trials in a row, all sisters from the one family, all complaining. No one's allowed to mention each other. You might end up with four acquittals and the jury have no clue that this is just [an] endemic problem in this family. Girls having to enter the court room when the accused and other members of the family are sitting there at the back of the court all staring at them and they're feeling intimidated. Trials aborting because they get angry and upset and they blurt something out and then they have to give evidence again ... Nowadays she'd give evidence once and be recorded and that tape would just be played again and again and again. I mean, I think it's all good, and I don't doubt that it has very much assisted victims, but of course for the victims themselves, they didn't experience any of that. They come to it as is and they probably don't know how fortunate they are now compared to what it used to be ... All the reforms in the world will not alter the fact that if we're in a criminal trial situation, somewhere in there someone's going to be accusing them probably of fabricating or of being fanciful and confused, and that remains offensive and upsetting. It always will be. There's no getting away from that, even with all the best intentions in the world, with the [victim support service], with a great prosecutor who prepares them for trial, with defence counsel who does his job professionally and doesn't sneer at them, but if he's still doing his job, he has to test their evidence and he is trying to discredit them. That's the trial process, and unless we do away with the presumption of innocence at trials, and that's not going to happen. [But] I think we've come a long way. (Judicial 3, Jurisdiction 1)

Participants consistently highlighted that despite these advancements, the process of testifying in court remained highly traumatic for victim/survivors. The nature of the offence and requirement to retell the story of victimisation cannot be diminished by law reforms. Additionally, many participants stated that while the recent suite of reforms had largely fulfilled their purpose of facilitating victim/survivor experiences in court, a number of unintended consequences could be observed. A further key consequence noted by participants, however, was the effect of focusing on the provision of testimony at the expense of introducing reform efforts to increase conviction rates. A number of participants suggested that a lack of sustained focus on increasing conviction rates may have resulted in a decline:

In [this state], there's been a number of reforms which I think we'd agree that they've been intended to make the trial process easier on a complainant. My feeling is that in some ways they do that but they have probably lowered the conviction rate. (Legal 1, Jurisdiction 1)

It is important to note that the observation that conviction rates have fallen in recent years has not yet been confirmed as no recent research has yet been conducted in the Australian jurisdiction. Further, this possible limitation to recent reforms can possibly be understood through an examination of the implementation process.

5.4 The process of implementation

Large-scale research and specific reviews have consistently identified varying degrees of disjuncture between the intent of law reforms and their practical outcomes (Australian Law Reform Commission, 2010; Lonsway & Archambault, 2012; Temkin & Krahe, 2008). Indeed, the unintended consequences of reform noted in the preceding section (including changes to the timing and nature of court practices, and the countermeasures made by legal actors) demonstrate that the process of law reform is far from straightforward. It is in the process of implementation that the intent of law reform can be obfuscated or limited. In this section, we describe participants' understandings of the enablers of and barriers to reform implementation. This is integral to our subsequent identification of future directions for law reform.

Enablers of reform implementation

On the whole, participants struggled to identify specific enablers to enacting law reform. That is, successful reform was seen as “just working”. Many participants related that adapting to changes to legislation and practice is merely a requirement of their jobs:

You just do it. I don't know. Has anything enabled me to do it? Yeah, probably there has been if I really think this through, but I'm not conscious of that. You put the reforms into practice because they're there and you have to. (Judicial 3, Jurisdiction 1)

It may be the case that there is less cause for reflection of successful efforts at implementation in comparison to unsuccessful efforts (where there may be a need to consider or identify “what went wrong”). When asked to reflect on historical enablers to changes in practice, however, participants identified a number of key facilitators at the system, institution and individual levels. In summary, these included:

- publicising the reforms widely, ensuring cross-institutional awareness;
- receiving increased and specialised training in relation to the reform, where appropriate;
- having excellent access to resources to support the reforms;
- having good relationships and communication between agency staff; and
- individuals within the system being motivated to implement change.

Among these enablers, there were two prominent and consistent themes. The first relates to the resourcing of the reforms, which here refers not only to the funding of practical resources required to carry out the reforms (such as the installation of technology or the provision of additional facilities), but also providing additional funding to the institutions whose practices would be affected by the reforms. For example, many participants suggested that there is little use in creating infrastructure within courtrooms to display new forms of evidence if police were not adequately resourced to collect those forms of evidence.

Further, participants highlighted that the enablers of specific reforms varied based on the type of reform being implemented. Generally, participants differentiated between reforms requiring funding investment and those solely dependent on the investment of legal and extra-legal actors. In the following excerpt the participant notes a clear distinction between infrastructure-based reforms and attitude-based (or “cultural”) reforms:

In terms of practical things, obviously going way back to the CCTV rooms, you know, the building, the rooms have to be built. The equipment had to be provided. This building has been built as a sort of a smart building, you know, we have a lot of equipment and security equipment to enable these things to happen more smoothly to enable the recording of witnesses, to not malfunction, because there has been the odd time where a witness has given all of their evidence and it's not been recorded and it has to be given again. So we've had the odd disaster. This building has been built to really minimise the risk of that so that systems can be checked. So I suppose in a practical sense, you need the infrastructure to be able to implement these reforms, but in terms of the [specific change in legislation], the leading of propensity evidence, no really that's just about an attitude and a willingness to embrace the reforms. That might be neglecting people and

things that were put in place that did in fact assist me, but I'm just not conscious of it. As I say, it was just: the reform came in, you do it. (Judicial 3, Jurisdiction 1)

This indicates that reforms are dependent to a degree on the individual responses of legal actors in particular. Indeed, the influence of the individual was consistently raised by participants in this research, suggesting that there is a degree of flexibility in the decision to adopt changes to policy and legislation. At that level, the relationship between individuals, and indeed institutions, was identified as a key enabler to implementation. Positive working relationships within and across institutions was understood to enhance the implementation process, resulting in more widely adopted changes to practice. The flipside of this aspect of implementation was that poor relationships at the individual level could potentially limit the process of implementation:

It's just the person really. It's so individual, isn't it? Like, you know, with some prosecutors, you have an amazing relationship all the way along, and our role becomes really invaluable because of the way they involve you from the start; [however] others have older views about things. (Victim/Support Group 2, Jurisdiction 2)

Barriers to reform implementation

According to participants, enablers of law reform must be present at the individual, institutional and system levels to guarantee effective and easy implementation of reform. It follows that deficiencies at any of these levels inhibit effective reform. This was confirmed by participants' understandings of barriers to reform implementation.

In contrast to the initial difficulties participants had in identifying enablers of reform, barriers to implementation were readily identified. A range of barriers were described, although the most common issues raised by participants centred around a lack of sufficient resources, and resistance from individuals working within the justice system to putting the reforms into action. These barriers clearly represent an absence of the enablers discussed in the preceding section. Participants noted that the action of law reform could be diminished or even ended by individual legal actors, particularly those charged with progressing cases through the criminal justice process. More importantly for this research, however, participants indicated that individuals had a significant influence on the experiences of victim/survivors:

Simply to say that regardless of the reforms, the nature and the running of a matter depends so much on the people involved. You talk about culture shift and that sort of thing but it just depends entirely on who's involved how the matter will run. And it's a huge impact on the complainant, and an entirely different experience with this one different party change. [Sometimes services can't] overcome the nature of people. (Legal Group 3, Jurisdiction 3)

As such, the suite of recent reforms aimed at improving the experience of victim/survivors in the criminal justice process can be seen to be dependent on the actions and attitudes of individuals. In particular, participants spoke about individual negative attitudes to the implementation of reform (a "resistance to change") and historically poor relationships between specific agencies (suggesting a culture of non-cooperation) as limiting the effectiveness of contemporary law reform.

Participants were able to expand on these areas of limitation, nominating barriers to reform both within and outside of the criminal justice process itself. The range of barriers to implementation identified by participants included issues at the individual, institutional and systemic level, in addition to gaps in the law reform process itself.

Key barriers in relation to the actions of *individuals* included:

- lack of understanding of victim/survivors' needs by some criminal justice actors;
- limited understanding of the purpose or need for reform;
- individual attitudes towards the reforms;
- constant staff turnover resulting in a loss of specialisation in sexual offences;
- lack of willingness to enforce policy reforms (e.g., judges not intervening during inappropriate defence questioning); and
- inconsistency in enforcement of reforms across the judiciary.

The inconsistencies noted in the practices of the judiciary were seen as having the most serious effect on the victim/survivor. Importantly, participants noted that inconsistency was present at all levels of the judiciary:

And there's no consistency between, in our case, the magistrates; but there's no consistency among the judiciary. One person will do things one way, another person will do things another way. But if there's the clear cut guidelines that they had to adhere to, it would bring more consistency. (Legal 1, Jurisdiction 1)

The practical consequence of this inconsistency is that the inclusion of evidence and the experience of providing testimony can vary greatly on a case-by-case basis. Inconsistency also often originates in a lack of understanding of the reforms, as the following participant states:

There's also a tendency for counselling records, [departmental] files, that sort of thing, to be sought quite a lot these days and, although there are legislative protections, there are some judges who simply are not on top of them. (Legal Group 3, Jurisdiction 3)

This particular barrier may be an issue of inadequate education about and promotion of areas of reform. It also indicates a lack of systemic adoption of reforms. With respect to this issue, the relationship between individuals within and across organisations was seen as an area of limitation, with participants identifying issues of:

- poor relationships between individuals in different agencies, limiting cooperation and communication; and
- conversely, close social relationships between individuals from different agencies occasionally appearing to hinder supporting victims.

The nature of the relationship between individuals across various institutions was identified as having an effect at a systemic level. In particular, negative relationships between individuals across two or more institutions or agencies (such as counsellor/advocates and police) have the potential to have flow-on effects for the progress of a case.

Further, participants identified barriers to implementation that were consistent across the criminal justice process. With respect to *institutional* and *system-based* barriers, participants identified:

- a lack of adequate resourcing;
- difficulty in providing mandated support to victims living in remote or rural areas; and
- defence practitioners finding ways to circumvent reform as matter of course.

The response of defence practitioners to reform attempts was identified as a systemic issue due to the presumptive nature of investigation and prosecution. That is, the practices of investigation and prosecution require police and prosecutors to make (educated) guesses about the future actions of others (including the defence and jurors). Indeed, many participants stated that the practical reality of law reform was based on how defence practitioners would attempt to limit the effectiveness of the reform. A key example of this process is evident in the following excerpt:

One of the things that I've noticed [is that] defence counsel will object [to the use of alternative provisions for giving evidence] because they would like the victim actually being in court. The other issue that normally comes up is that if there's lots of documents to tender, whether they might be journals or who knows what they are, or photographs ... the technology at the moment hasn't allowed for the victim to be able to look at these documents easily. There is the means where the court orderly or the court staff could go from the courtroom and then walk that document all the way over to where the victim is currently sitting with the camera in the CCTV room. However that is very impractical and doesn't normally happen, and so when that arises from defence counsel the courts say, "OK, well we're not going to grant the video". (Legal Group 1, Jurisdiction 1)

The actions and strategies of defence practitioners are difficult to pre-empt in the process of law reform. As such, taking these strategies into account at the drafting stage is a difficult task for

reformers. Participants identified a number of broader, systemic issues that limited the action of reforms from the outset. These included:

- reforms being at odds with the culture and operation of the criminal justice system;
- media reporting on cases in a manner that contravened the aim of recent reforms;
- absence of evaluation of the majority of reforms;
- lack of specific reforms for vulnerable groups; and
- cultural and language barriers, particularly in relation to Indigenous and culturally and linguistically diverse victim/survivors.

A prominent concern raised in relation to the broader nature of law reform was the delicate balancing act between enhancing the victim/survivors' experiences and the entrenched rights of the accused. This highlights the inherent tension between victim/survivor-focused reform and traditional tenets of the criminal justice process, including the right of due process. In the following excerpt, one defence practitioner clearly identified this tension with respect to special hearings:

My main concern with it is that the way that the legislation seems to be drafted, the proposal is that they will give evidence quite some time before the trial. That presupposes that defence counsel have all the evidence they need and all the statements from all the other witnesses at the time that they cross-examine. Here that doesn't happen. Quite often we'll get proofs during a trial, just before a trial, so obviously that material wouldn't be available to you when you're cross-examining. The way you build your cross-examination and what you do with your cross examination might be totally different, depending on what information you have. So if you cross-examine very early, on very limited information, and all this other stuff comes up later, you might have cross-examined totally differently [but] you're stuck with it. The other thing is during the course of a trial, if there's something that comes up that no one expected, where the witness would need to normally be recalled, well we're stuck with it. And also in terms of if a trial goes bad for whatever reason and there's the need for a re-trial because of what happened at the trial, you might want to cross-examine in a totally different manner the second time round. And again, you're stuck with the original version, which you might not really want, or you're not happy with the way that you've cross-examined because of something that you didn't know. (Legal 2, Jurisdiction 2)

Here, this practitioner highlights the perceived zero-sum nature of many victim/survivor-focused law reforms; that is, reforms seen to benefit victim/survivors are necessarily to the detriment of the accused. This inherent tension is a consistent feature of law reform and requires careful attention from reformers and legal actors alike.

The multi-faceted nature of these barriers suggests that there are multiple sites and activities in which the implementation of law reform can become limited. In addition to the unintended consequences of reform noted in the preceding section, these potential limitations demonstrate the complicated process of reform. A clear understanding of this is necessary to any assessment of future reform. Ideally, future reform will be developed in a way that minimises the barriers and facilitates the enablers identified here.

5.5 Summary

This chapter has mapped participants' understandings of key areas of reform, describing assessments of their effectiveness and charting the unintended consequences of implementation. Here, we have highlighted that reforms in relation to the experiences of victim/survivors in the criminal justice process over the past decade are generally understood as effective, providing a more positive and less traumatising process for victim/survivors. However, participants noted that the second traditional purpose of sexual-assault-related law reforms, which are aimed at increasing the traditionally low conviction rate, has not been met by recent reforms. To explain this disparity, participants identified key barriers to the implementation of reform at the individual, institutional and system-wide levels. The overarching theoretical and practical dichotomy between the rights of the victim/survivor and of the accused was identified as an eternal and unavoidable limitation to future reform.

Key reforms understood by participants to have affected the experiences of victim/survivors in the criminal justice process included the following:

- Participants had varying levels of knowledge of recent reforms. Areas of reform identified by participants were those related to their own role.
- There were three key areas of reform:
 - *policy and protocol reforms*: including the expansion of extra-legal services and the increased specialisation of legal actors across the criminal justice process;
 - *evidentiary reforms*: including those made to the definition of consent, the increased use of propensity evidence and the increased ability to conduct joint trials; and
 - *testimony-related reforms*: including the increased use of screens and CCTV in the provision of evidence and a minimisation of the number of times victim/survivors are required to give evidence (in some jurisdictions).
- Participants' assessments of the effects of these reforms on victim/survivor experiences were generally positive. However, participants consistently highlighted that these experiences remained traumatic.
- Participants identified the enablers of implementation as being consistent publicising of reforms and ongoing reform-related education, adequate resourcing, good relationships within and between agencies, and motivated individuals.
- Conversely, a lack of understanding of the purpose of reforms, legal actors deliberately undermining the intent of the reforms, change-resistant agencies and individuals, and a lack of reforms specific to vulnerable groups, were identified as barriers to effective reform by participants.

6

Future directions and reform

This chapter identifies possible future directions for law reform as articulated by our participants. Following on from the discussion of gaps in current reforms, participants provided a wide range of suggestions as to how the criminal justice process could better accommodate the needs of victim/survivors of sexual assault. These are described in the context of the barriers to and enablers of reform identified in the Chapter 5.

In general, participants indicated that there was little more that could be implemented in terms of substantive legislative change and other policy reform. According to participants, the need was not for more reform, but rather to ensure that the reforms that have occurred are being properly enacted in practice. It was suggested that cultural change and education are central to this process. Further, participants suggested possible changes at each stage of the criminal justice process. In this chapter we describe reforms relating to:

- pre-court practices, including the provision of consistent information and support;
- limits to the timing of court practices, including committal and trial;
- evidentiary requirements, including further alternatives to how victim/survivor testimony is provided in court; and
- the possibility of using alternative justice processes in appropriate cases.

Throughout this chapter participants identify the need for cultural change at each stage of the criminal justice process in order to better embed existing reforms and ensure the success of future reforms. The suggestions considered here further demonstrate participants' understandings of the limitations of the criminal justice process in addressing the variety and changing nature of victim/survivors justice needs that were identified in Chapter 4.

6.1 Contextualising change

Before detailing specific future reforms, it is important to describe how participants understand the law reform process. Indeed, the perceived effectiveness of the law reform process, and the reality of implementation, guided participants' recommendations. In addition to the cultural and individual-level limitations described in the preceding chapter, many participants spoke about inherent limitations to the *process* of reform. In particular, participants consistently identified an implementation gap that exists between the intention of reformers and specific interpretations applied by prosecutors, defence practitioners and the judiciary. For instance, the concern of members of the judiciary with having decisions appealed was understood to cause cautious and ineffective implementation of reforms relating to evidence and warnings provided to the jury. Additionally, the practice of defence in court was identified as deliberately undermining the intent of many reforms. Further, many participants described the trial process in particular as being counter-productive to the practice of reform. In the following excerpt, a participant described the systemic nature of barriers to reform at the point of trial:

I think there is a bit of gap between the intention of the reformers and the way that it pans out in due course. So you've got to go through so many barriers in order to get to an outcome. Firstly, you have to have judges that are willing to take the legislation at face value and accept what was the intention of parliament. Then if you are successful with the trial, you then face the barrier of the Court of Appeal, who have a particular

slant in terms of upholding the rights of the accused and will strike down anything that they believe is unfair, even if that was the intent in the parliament to make a particular change. So there are lots of systemic barriers over and above what the reforms can achieve through merely implementing the reforms. I mean, the outcomes are affected by so many other things and so much of it is to do with the cultural change or the lack thereof. (Legal Group 3, Jurisdiction 3)

As this participant states, the differing roles and concerns of legal actors demanded by the criminal justice process can act against implementation. This also points to the fact that the criminal justice process is not a homogenous system. In the above example, it is evident that the workings of some sections of the process can undo the work of other sections. In this sense, many of the cultural barriers identified above are unavoidable within the current system. Given this understanding, the majority of reforms suggested by participants of this research aim to improve practices before and after the point of trial.

6.2 Support gaps in the criminal justice process

Participants readily identified a gap in the support received by victim/survivors at two crucial stages of the criminal justice process. Specifically, participants articulated a gap with respect to who has carriage of victim/survivors' welfare between stages of charge and committal, and ultimately between the stages of committal and trial. At these two stages, many participants identified a lack of clarity around the resources available to victim/survivors. In addition, limited resourcing of both counsellor/advocates and police has meant that more recent reports are necessarily prioritised. Many police members interviewed for this research expressed the concern that a constant case load and, indeed, an increase in reporting, severely constrained their ability to perform active follow-up with victim/survivors after charges had been filed. The period of time between committal and trial was identified as being particularly problematic. As this stage can be lengthy (up to two years in some jurisdictions), many practitioners stated that victim/survivors understandably disengage from the process. For this reason, a number of participants in each jurisdiction suggested the creation of a specific role to attend to the informational and therapeutic needs of victim/survivors over the course of the criminal justice process. Participants suggested that the purpose of this role was to act as a conduit between a range of legal actors and the victim/survivor:

I would actually like to see something almost like a victim liaison ... I say that rather selfishly because it would free the police up from a fair bit of that sort of stuff, but it would also give them an opportunity to have a sounding board that's not a police officer, that's not someone from the court per se. It's someone sort of independent from all of that that would still liaise with the police officer and liaise with the court, prosecutors, defence counsel, whatever the case may be, who's away from that and is purely looking after the complainant's concerns and issues. (Police 1, Jurisdiction 1)

Participants felt that such a reform, while resource-intensive, would address a number of gaps in the current process. As stated above, this reform also would attend to the increase in workload experienced by professionals throughout the criminal justice process. A further aspect of this reform is the alleviation of confusion about who is to update and support victim/survivors at these two stages. Ultimately, participants felt that the creation of such a role would increase the engagement of victim/survivors to the point of trial.

An important aspect of this role would be to follow up with the victim/survivor once the case has passed through the criminal justice process. As identified in Chapter 3 of this report, attrition rates for sexual offences remain high across each stage of the process. Many participants in this research expressed concern that no structured support exists should cases be discontinued either after investigation, at the committal stage or in the lead-up to trial. As the following participant stated, professionals working within and alongside the criminal justice process disengage with victim/survivors once a case has been discontinued:

Well, a lot of the services that we provide are around their interaction with the court system and making sure that they're aware of the different types of hearings and how to best help to interact with that system. The [sexual assault service] are the [state agency] that provide the forensic and therapeutic support for victims of sexual assault,

so between the two of us, there isn't a lot else. Well, if it doesn't go to trial, we may have already provided some form of assistance but, yes, probably our contact would cease then. (Victim Support Group 1, Jurisdiction 1)

At this point, there exists an assumption that pre-existing therapeutic services will continue to support the victim/survivor. However, given potential gaps in coordination between services and limited resourcing of these services, the reliance on counsellor/advocates to perform all follow-up was seen as problematic by some participants. In addition, many participants highlighted the lack of follow-up with the victim/survivor at the conclusion of the court process:

Nine times out of ten the offender will be found not guilty due to lack of evidence because it's one person's word against another and then they're just abandoned, feeling that they've just been let down by this whole group of people. I try and make it clear that it's not necessarily that they haven't been believed, but I'm sure that that's how it's perceived ... And then they would just feel completely abandoned and let down by this person that's done this horrible thing to them and completely gets away with ... So some degree of aftercare I think needs to be undertaken with respect to the [victim support service] that we already have. (Legal Group 1, Jurisdiction 1)

The absence of formal after-care for a victim/survivor who has gone through the criminal justice process to some degree reflects the individual concerns of the multiple institutions involved in the process. Further, the current system in most states and territories clearly requires that a series of institutions and agencies take carriage of a victim/survivor's welfare at different stages of the criminal justice process. This not only relies on a high degree of coordination between these agencies in order to be effective, it creates the potential for victim/survivors to disengage from the process. The creation of a specific independent liaison role, as identified by participants, could attend to many of these gaps.

6.3 Timing of process

A further issue affecting the withdrawal of victim/survivors from the criminal justice process was the length of time it currently takes for matters to reach court. Participants consistently identified the current backlog of cases waiting to reach trial and deliberate defence tactics aimed at delaying the trial process. One common effect of this is that the victim/survivor decides to withdraw from giving evidence, which means the prosecution must discontinue the case. Participants in this research demonstrated strong understanding of the need of many victim/survivors to disengage from the process in order to continue with their day-to-day lives. As such, participants advocated for measures designed to shorten the length of time between authorisation of the brief of evidence and committal, and between the committal and trial processes:

I think expediting [the process]. You know, they're always taking years and years. (Police 6, Jurisdiction 1)

Given the nature of the criminal justice process, the application of strict and short timeframes to specific stages is not easily achieved. Despite this, participants in this research felt that further boundaries to the timeframes of a number of processes were viable. Suggestions made by participants included the following:

- *Place time restrictions* on the process between brief authorisation and the commencement of committal proceedings. It was noted that steps have been made toward this in a number of jurisdictions, with success. This reform would need to be balanced against the due process rights of the accused²¹ and the needs of the defence with respect to having adequate case preparation time.

21 "Due process rights" encompass procedural fairness and civil rights, including the presumption of innocence, the right to silence, the right to a fair trial, the right to be judged by one's peers (in the form of a jury), the right to confront one's accuser, a prosecutorial burden of proof and a standard of proof that is "beyond a reasonable doubt".

- *Institute an expeditious committal process* by having magistrates review a hand-up brief²² (as is the practice in a number of Australian jurisdictions). This particular reform, whereby magistrates are able to commit a case to trial on the basis of the strength of a brief of evidence and submissions by prosecution or defence, does not require the victim/survivor to provide testimony at committal. It was noted that in states where this process currently exists, committal proceedings can take as little as fifteen minutes and that victim/survivors are spared being called into court.
- *Limit the timeframe between committal and trial* by introducing legislation that provides deadlines for the necessary pre-trial processes. Participants further suggested that trials should proceed without reasonable delay. A number of members of the judiciary suggested that judges having greater capacity to impose sanctions (such as awarding the costs of delay) against defence practitioners would assist this type of reform.

In making the above suggestions, participants noted that overcoming the current backlog of cases and the limited capacity of the criminal justice process to attend to an increase in the volume of cases being heard would be difficult. Further, participants identified that the need to expedite the court process to address the needs of victim/survivors must be balanced against the due process rights of the accused. It was noted, however, that steps towards the above reforms have been made to varying degrees in a number of jurisdictions and have been successful in relation to victim/survivor engagement and achieving better therapeutic outcomes for victim/survivors.

6.4 Testimony-related reforms

Participants noted that recent reforms relating to the provision of testimony have been the most significant in addressing the needs of victim/survivors. As stated in the preceding chapter, reforms relating to the use of screens or CCTV were identified as having a positive effect on the experiences of victim/survivors. Many of the suggestions for improvement made by participants centred on expanding the scope of these recent provisions to further limit the trauma of providing testimony in court.

There are two key aims that inform these suggestions. The first relates to a desire to limit the number of times that victim/survivors are required to retell their story. For participants there were clear therapeutic bases for limiting this. In addition, many practitioners from the policing and prosecutorial institutions suggested that repeated retellings provided defence practitioners with increased opportunities to exploit contradictions or changes in statements. The second key aim is to reduce the trauma of the act of testifying. Recognising that providing testimony in court is often an intimidating and frightening experience for victim/survivors, participants sought to expand on already existing provisions.

In order to attend to the issue of victim/survivors having to retell their story multiple times throughout the criminal justice process, it was suggested that audiovisual recordings of victim/survivor statements at the time of reporting could replace the process of providing evidence-in-chief:²³

An oral statement—so having some form of device for the officers to record victims. I suppose you could elaborate that for, you know, victims of sexual assault if there was somebody who's trained, that understands the ins and outs of how victims are traumatised, how they feel and from a psychological perspective. And they have that sort of training rather than your run-of-the-mill sort of policeman who has to be a jack of all trades. Then that evidence is then just played straight away. There's no other recording so to speak. It's done, fresh. I think that would be a great asset. It means the victim doesn't necessarily have to relive it all the time ... Because when you look at it, for any witness, but especially for victims of any sort of offence where they're traumatised ...

²² A "hand-up brief" is a collection of documents tendered by the prosecution to the court in a committal hearing that contains a detailing of the charges and a summary of the evidence upon which the prosecution proposes to rely.

²³ In the context of the trial, the evidence-in-chief is the first part of testimony in which the witness answers questions asked by the prosecutor. Typically, the witness is taken sequentially through their statement as provided to the police.

you could take a really 50-page statement if you wanted to give us everything, or the video. You then play the video to the court or they read their statement in. There's all your nervousness over. We can ask the questions we want to clarify things and then they get cross-examined to their heart's content. The advantage of doing a video, is that by nature when statements are done, the statement is taken by the police officers. It's put in a format that's required by the court. (Legal Group 1, Jurisdiction 1)

As the above participant articulated, audiovisual recordings of statements offer a possible solution to many of the current issues facing victim/survivors making statements to police. This includes the lack of consistency and specialisation of police in relation to recording video statements in some jurisdictions. Additionally, the required written format of the statement used at present can remove potentially crucial facts and, indeed, the emotional state of the victim/survivor from the official record. Many participants identified the effect of this by drawing comparisons with circumstances in which a statement can currently be audiovisually recorded. It was noted that each jurisdiction currently places varying restrictions on the use of these provisions:

In [another state], as I understand it, and in the rest of Australia for sex offences, basically the complainant, if they're classified as a special victim, they basically give evidence once, and that's taped, that's it. And that can be used again in a re-trial. Whereas [here], the evidence isn't taped. If you're not classed as a special witness, then they walk into court, give their evidence in court. If they're classed as a special witness then they give evidence from a remote room. So everyone's in the courtroom and they're beamed into the courtroom on a TV screen. But that's it. If there's a re-trial, the whole thing happens again. So the reform legislation that they want to bring in at the moment, especially in terms of children and sex offences, is intended that they give their evidence once. It's recorded. We cross-examine. That's recorded and then it just gets played to a jury. (Legal 2, Jurisdiction 2)

What is being suggested here then is an expansion of provisions to tape the original statement beyond those cases that involve victim/survivors with a cognitive impairment or child victim/survivors. Participants noted a number of advantages to this approach, including the removal of the current demand that victim/survivors accurately recall statements that were made often years in the past:

I would be very interested to see video/audio recordings of statements. I don't think you could go wrong with that. Probably could, but then it's not such a memory test, and I can't see a down side with that really. I think that that would be very interesting. (Judicial 6, Jurisdiction 3)

The presentation of this evidence as evidence-in-chief was understood to further limit the time spent in court. This was seen as an important therapeutic aspect of this suggested reform. To this end, a series of additional suggestions were made, including the reading of written statements or affidavits as an alternative to providing evidence-in-chief. However, these measures were seen as potentially less effective than the playing of an audiovisual statement to the court. Participants related that in spite of this suggested reform, two key issues would remain for victim/survivors.

The first issue identified was that even with the introduction of audiovisual statements, victim/survivors would still be subjected to (often vigorous) cross-examination in front of a jury. In order to address this, a number of participants suggested that victim/survivors could be deposed out of court,²⁴ with the questions of the defence being provided to them prior to trial:

I personally feel that in some instances it may be more appropriate for them to be deposed in a similar nature as would occur in a civil proceedings: with the defence counsel—or at least the questions they have to be prepared to put to them—if they're recorded and then played in court proceedings, but in particularly serious [cases] or matters where they've been particularly traumatised. Because I don't think that CCTV really gets over very many hurdles from a victim's perspective. (Legal Group 1, Jurisdiction 1)

²⁴ The process of deposition involves the provision of evidence prior to trial. Evidence is provided orally and recorded. The format of the testimony is typically a series of answers to questions asked by legal practitioners.

As this participant suggested, the act of pre-recording cross-examination may reduce the trauma of testifying for victim/survivors, by removing the audience of the jury.

The second remaining issue for participants was the possible disadvantage to victim/survivors of providing all evidence through the use of technology. Many participants suggested that current alternative provisions for providing evidence unfairly removed the victim/survivor from the process. To address this, participants suggested an expansion of the use of CCTV and/or screens to provide greater protection for victim/survivors giving evidence in court. Given that many victim/survivors elect to provide testimony by remote facility in order to avoid seeing the accused, participants also suggested that *the accused* could be removed from court for the testimony, provided that a CCTV link was available. Ensuring that the accused watches the testimony is a necessary requirement of due process rights. However, as the following participant stated, current legislation could potentially accommodate this suggested reform:

It may be an extension of that to have the accused not in court when the complainant gives evidence. Obviously he must be present throughout the trial, but maybe his presence could be in a different way ... I actually have suggested to some (with no success) that perhaps the accused should be viewing the proceedings via CCTV. And there is a power in the *Criminal Procedure Act* to exclude the accused [from the courtroom]. (Judicial 4, Jurisdiction 1)

Each of the reforms suggested above aim to expand on recent improvements to the provision of testimony. In the previous section we outlined our participants' suggestions for future reform that limit the requirements of victim/survivors to retell their stories and reduce the amount of time spent in the courtroom. Further, participants have made suggestions toward addressing the trauma of cross-examination and having to face the accused in court. The balancing act between the justice needs of the victim/survivor and the due process rights of the accused are evident here, and it is this that will need to guide future testimony-related reforms.

6.5 Cultural change within and across institutions

As identified in the beginning of this chapter, participants identified a lag between the introduction of reforms and associated cultural shifts in the practices of many legal and extra-legal practitioners.²⁵ To some degree this is an expected phenomenon; however, participants noted that the process of reform was often limited by both active resistance to implementation and a lack of education and training for legal actors. For instance, participants frequently highlighted the lack of knowledge of defence practitioners in relation to the wealth of recent research and subsequent reform efforts:

I wouldn't mind seeing an accreditation system for barristers, I must say, in sex offence cases, because we have coming into our court, from time to time, um, barristers who have absolutely no idea about sex offences. They might be people who normally do .05 cases, and someone's just tapped them on the shoulder to do a sex trial. And they have no judgement, and what's more they can be arrogant about the fact that they have no judgement. They don't know the difference and it's frightening to think that they are going to be cross-examining the complainant, because they don't know what the approach should be. The ones that are more seasoned in doing sex offences are aware, in the main, that they should treat complainants with respect and in a sensitive fashion, if for no other reason that a jury is not going to like the way that they deal with them. (Judicial 6, Jurisdiction 3)

The above statement suggests an educational gap for some defence practitioners in relation to relatively recent cultural shifts. Specifically, the disadvantages of vigorous cross-examination by defence practitioners are clearly not uniformly understood. Participants suggested that this represented a lack of knowledge in relation to recent reforms and a misunderstanding by defence practitioners of the effects on jurors of vigorous cross-examination of the complainant. Further evidence of this was noted by participants in relation to defence objections to the use of CCTV:

²⁵ The term "culture" as it applies here refers to institutional approaches to specific phenomena. In the context of law reform, this refers to an institution's approach to change—whether change is adopted or resisted.

Working on the ground, it appears to me that there's not many conversations with defence lawyers about their ethics and their behaviour in court ... That lack of conversation is a real barrier to the court experience being bearable for some victims of crime. I mean, personally, I can't work out the advantage to a defence case of having the person in open court as opposed to closed-circuit TV. And someone can be totally traumatised because a defence lawyer is objecting to them giving evidence by closed-circuit TV. (Victim Support Group 1, Jurisdiction 1)

This suggests that attempts at reform implementation require holistic education of legal and extra-legal actors concerning the nature and intent of the reforms, in order to better inform future practices. Indeed, participants identified the need for further education of judges, defence, prosecution and other criminal justice workers, in relation to both the nature of victim/survivors' needs, and the importance of implementing reforms. It was suggested that the knowledge embedded in specialist sections of institutions should be expanded to provide all prosecution, defence and members of the judiciary with a better social understanding of the nature of sexual assault. As the following participant articulated, an increased understanding of the unique social and cultural positioning of sexual assault and victim/survivors is essential to the process of future reform:

Some of the working parties having a specialised court that deal with this sort of thing and dealing with the victims, and having a magistrate who is more educated in psychological issues, and how we can understand the psychology to be able to better assess someone based on whether they cried or whether they are believable or whether they remember what's happened. [They] have a greater understanding of basic human behaviour. And then having a court that's probably just a little bit more lax on the rules of evidence. (Legal Group 1, Jurisdiction 1)

As evident above, the education suggested by participants would need to be aimed at breaking down cultural barriers within organisations and problematic individual and organisational attitudes towards sexual assault victim/survivors. Participants identified this form of education as an essential component of future reform. Specifically, participants suggested that training and/or information sessions at the point of introduction, and ongoing circulation of updates to law reform, would ensure a more systematic and uniform adoption of reforms throughout the criminal justice process. As such, systematic and ongoing training and specialisation of legal actors in relation to both sexual assault and new reforms should therefore be taken into consideration at when drafting legislative changes.

6.6 Alternative justice options

As identified throughout this report, the adversarial nature of the criminal justice process acts as both a barrier and change agent in relation to intended reforms. The necessary privileging of the rights of the accused and the precedent-based nature of the current legal system can limit the effectiveness of victim/survivor-focused law reforms. Within the current criminal justice process, the balancing act between victim/survivor needs and due process right can be hard to achieve. For this reason, many participants in this research suggested the exploration of alternative justice models:

I think one of the essential problems is the adversarial nature of our criminal justice system. So whether or not there's some alternate model that we could be implementing. I'm sure there have been discussions about this in the past but, looking at overseas models, I think the adversarial model, particularly for sexual assault is just incredibly flawed. So, you know, I think that's probably part of the essence of your problem. (Counsellor/Advocate Group 4, Jurisdiction 3)

Suggestions of alternative justice responses such as that made above, occur in the context of the limitations of the criminal justice process and in recognition of sexual assault as a unique crime. Ongoing critiques of criminal justice reform suggest that the underpinning cultural scaffolding of sexual assault, shaped by misunderstandings of gender and sexuality, serves to limit the effectiveness of criminal justice (Daly, 2011). In addition, as identified in Chapter 4, the rigid structure of the criminal justice process itself has difficulty with responding to the unique and variable needs of victim/survivors. In recognition of this, and from observations in their own

professional experience, participants in this research were generally supportive of an alternative model of justice in appropriate circumstances.

Two key models were repeatedly suggested by participants as potentially having value for victim/survivors of sexual assault. The first model draws on the system of justice already used in a number of European and other international jurisdictions. This inquisitorial model of justice frames the court process as a practice of investigation. Unlike the adversarial system used in Australia, which aims to mediate argument between prosecution and defence, the primary role of the inquisitorial court is to determine the likely facts of a case. For participants in this research, an inquisitorial process has the potential to heavily curtail aggressive cross-examination and reliance on damaging cultural scripts (as discussed in Chapter 3). There are clear limitations of this system, however. As a system concerned with criminal procedure (rather than substantive law), there is no ability to impose sanction, as the following participant states:

If you had some kind of inquisitorial process rather than a trial process I think that would be more likely to be able to reveal the truth of a situation, but I don't think that you could, for example, sentence somebody to gaol on the strength of that kind of process. So if you're talking about imposing imprisonment as a punishment or whatever, you're really probably stuck with the current process, in my view. (Judicial 10, Jurisdiction 3)

Nevertheless, participants identified the inquisitorial system as specifically addressing the needs of victim/survivor in relation to being heard and validated, noting that conviction and sentencing was not a specific need of many victim/survivors. As such, the inquisitorial system was seen as being valuable in circumstances where the primary need of the victim/survivor was a public statement of their story and recognition of their experience. However, although participants suggested that elements of this system had merit in some circumstances, they did not advocate for the introduction of an inquisitorial system.

Similarly, participants suggested that restorative justice-based practices would enhance the capacity of victim/survivors to publicly express their experience. Increasingly, restorative justice is being presented as an answer to many of the failings of the criminal justice system (Stubbs, 2004). However, the term "restorative justice" is a rather capacious concept, encompassing a wide range of ideologies and practices (Daly & Immarigeon, 1998). Generally, participants described restorative justice as a less formal alternative to the criminal justice process, aimed primarily at addressing recidivism and providing therapeutic responses in specific contexts:

It's a different process, if we were looking at some sort of reform ... Some of the things that they've looked at is whether imprisoning someone is the best way to go, whether there's some other way of dealing with this person which actually resolves the situation better than the current situation ... restorative justice ... because there are times where a family member is involved. All we're trying to do is stop it happening again ... It might be a young person. Really, the issue is that there might be some issues there with their understanding of what's right and wrong, they may need some therapeutic resolution to their situation. Placing them in custody doesn't necessarily solve the problem. (Police 9, Jurisdiction 2)

As is evident in the above excerpt, participants did not feel that restorative justice practices were appropriate for all sexual assault cases. Indeed, participants consistently defined specific circumstances in which such practices should be an option. The first key context identified by participants related to sexual assault or abuse that occurs within family units:

Obviously they're different cases, so you might not want some restorative justice situation where you've got a stranger. But where these sort of things happen inside the family unit. Because that has struck me often that the terrible things that often children do not want to tell their mother, because they don't want to break up the family unit. And then the mothers are in a very difficult position because obviously often they are attached to their partners and financially attached to their partners too. So you often have the situation that either the poor complainant finds that she or he has broken up the whole family unit and feels extra guilty about that, or perhaps worse, the mother then takes the father's or the de facto's side and, you know, the complainant is totally isolated. So that is all part of the system that is happening isn't it? (Judicial 2, Jurisdiction 1)

In addition to circumstances involving complex familial and social relationships, many participants identified restorative justice as having particular relevance for Indigenous peoples. Indeed, decades of research suggest that restorative justice has specific relevance to the Indigenous Australian communities. In particular, claims exist that restorative justice:

- provides greater ground for self-determination practices;
- demonstrates a greater capacity to deal with the effects of colonisation;
- better reflects an Indigenous view of justice; and
- uses cultural elements not usually found in a gender-based analysis (Bluett-Boyd 2005, p. 15).

The incorporation of restorative justice elements into court practices more broadly occurs in a number of Australian jurisdictions with consistent degrees of success. These include Koori courts (McAsey, 2005), drug courts (Hughes & Ritter, 2008) and Murri courts (Nancarrow, 2003). Participants viewed an expansion of current models to include sexual offences as a promising option for future law reform.

The issue of adopting alternative justice practices with respect to sexual assault has received growing attention within legal and criminological fields (Daly, 2011). A key tenet of arguments for applying restorative justice principles to the crime of sexual assault is the inherently problematic traditional understanding of sexual assault as being a crime against the state. Commentators have suggested that this focus places the interpersonal nature of sexual assault and indeed the trauma experienced by victim/survivors as secondary. In this way, restorative justice practices have the capacity to privilege the personal nature of harms suffered by victim/survivors by giving primacy to their articulation of the experience. In addition, restorative justice practices are seen as offering a more tailored and individual response to both victim/survivors and offenders. In this view, the justice needs of both of these parties can be met without forsaking the societal need for “justice”. However, proponents of traditional justice approaches question whether restorative practices attend to the seriousness of sexual offences, suggesting that alternative practices lack the retributive and punitive focus demanded by a crime as serious as sexual assault.

Debates continue concerning the balancing act between traditional notions of punishment and deterrence and therapeutic-based responses. However, the present research suggests that professionals working within and alongside the criminal justice process identify value in alternative justice responses in a range of circumstances. For participants of this research, alternative responses should exist as an option available to the victim/survivor.

6.7 Summary

This chapter has detailed the key suggestions of participants in relation to the future direction of law and policy reform. Specifically:

- Future law reform is likely to be more effective if it takes into account the inherent limitations of the adversarial nature of the criminal justice process. In particular, it was stated that the unique concerns of a range of legal and extra-legal actors necessarily shape and restrict the implementation process.
- Gaps in processes that occur between institutions and agencies can potentially be addressed by the creation of a specific liaison role. The purpose of this position would be to respond to victim/survivor information needs, particularly during times of inactivity as a case makes its way along the criminal justice process. Importantly, this role would also provide liaison *after* the court process.
- The lengthy processes of committal and trial can be addressed by imposing legislated timeframe restrictions and deferring to an expedient committal process. Restricting these timeframes is necessary to limit the trauma experienced by victim/survivors and maintain their engagement with the criminal justice process.
- Alternative provisions for giving evidence can be expanded through audiovisual recordings of initial statements to police. Options for using this recording as the evidence-in-chief at both the committal and trial stages of the process would further address the trauma of providing evidence.

- In order for reforms to be successful, participants emphasised that cultural change may be incorporated into reform attempts through the formalisation of education concerning both sexual assault and the reforms themselves. Defence practitioners would perhaps benefit the most from this form of detailed and continued education.
- Finally, alternative justice responses, including inquisitorial systems and restorative justice practices, could be explored as options in particular circumstances. Specifically, intra-familial and culturally diverse contexts should be considered for the application of restorative justice.

The past three decades have seen significant changes to the laws relating to sexual offences in every state and territory in Australia. Many of these changes reflect an alteration in how sexual offences are understood in Australian society. Greater contextualisation of sexual offences is evidenced throughout the criminal justice process, and advancements in research continue to inform law reforms. This report has provided an overview of recent reforms as articulated by 81 professionals working with victim/survivors in the criminal justice process in a range of capacities. Chapters 4, 5 and 6 have presented the key themes identified by our participants in relation to the needs of victim/survivors within the criminal justice process, the implementation of recent reforms and suggestions for the future direction of reforms. This chapter provides an analysis of these perspectives and insights in order to suggest practical implications for future victim/survivor-focused law reform. Specifically, the foci of this synthesis are:

- the theoretical implications of participants' understandings of victim/survivor justice needs, particularly in the context of how success is measured in law reform;
- suggestions as to how to approach the balancing of victim/survivors' needs with entrenched traditions of the adversarial system;
- future education-based approaches to law reform that address the intricate and inextricable relationship between social and legal understandings of the nature of sexual assault; and
- practical reform options to assist with filling current gaps and exploring alternative justice responses to the crime of sexual assault.

In order to ensure successful implementation of future reforms, there is evidence from our research participants that there is a need to re-evaluate the current approach to law reform. Given the barriers to and enablers of reforms identified by our participants in Chapter 5, it is important that future directions reflect a clear understanding of the multi-level and ongoing process of implementation.

7.1 Theoretical implications

In Chapter 3, we provided a theoretical grounding of contemporary approaches to law reform. Many of the key narratives of sexual assault that have informed (largely feminist) approaches to reforms highlight the unique disadvantage that victim/survivors face within the criminal justice process. Primarily, these concepts—including definitions of “real rape” and the “ideal” victim/survivor—draw on problematic, gendered social constructs and requirements that are rarely met by the reality of sexual assault. When projected onto the setting of the trial, these constructs are often exploited through the practices of legal actors and the flexibility of current legislation. This ensures that the process of trial, and of providing testimony in particular, is traumatising for victim/survivors of sexual assault. Many of the reforms discussed in this report are aimed at addressing these unique constructs and reducing the likelihood that trials are experienced by victim/survivors as a “second rape”. However, given the diversity of reforms and problems of implementation, measures of success are often ad hoc, and the availability of necessary data (including charge and conviction rates) inconsistent.

7.2 (Re)defining success in law reform

Indeed, returning to the two key axes of law reform identified in Chapter 1 of this report, we see the two disparate, and in many ways disconnected, measures of success in sexual assault law reform: (a) increased conviction rates, and (b) enhanced victim/survivor experiences. Traditionally, a sole focus on increasing convictions, which arise from attrition-based analyses, has sought an increase in: charges, matters being presented for trial, and guilty verdicts. This has reflected a simplistic understanding of the criminal justice process. In more recent analyses, the relatively low conviction rate for sexual assault has historically been attributed to a range of legal and extra-legal characteristics of the offence, including:

- attrition of sexual assault cases at various stages of the criminal justice process based on the decision-making of legal actors;
- the treatment of victim/survivors throughout the criminal justice process and the marginalisation of their role at trial; and
- social and institutional beliefs in sexual assault myths and stereotypes (Fileborn, 2011).

Recent reforms, such as those identified by our participants in Chapter 5, appear to address these unique characteristics to some degree. However, an increase in conviction as a measure of success is maintained in current law reform discourse (Daly & Bouhours, 2010). Participants in this research did not identify conviction as a key need for victim/survivors. Perhaps the realistic understanding of the likelihood of conviction informs this view to some extent. Further, participants in this research consistently highlighted the variability and fluidity of victim/survivor justice needs. It is evident from the preceding chapters that a key measure of success for future reform should be the degree of flexibility demonstrated by the criminal justice process in responding to the individuality and changeability of victim/survivor needs. Indeed, as discussed in greater detail later in this chapter, enhancing the capacity of the criminal justice process to reflexively respond to victim/survivor needs should be a priority for future reforms.

7.3 Victim/survivor-informed reform

A key task of future reform then is to document reform progress and implementation with respect to victim/survivor needs and experience. Indeed, participants consistently identified the need for:

- further research documenting victim/survivors' experiences of the criminal justice system, including suggestions from victim/survivors as to what future reforms should look like; and
- victim/survivors being consulted on future directions as a matter of course.

Traditional law reform has relied heavily on research and anecdotal evidence from professionals working within the criminal justice process to assess the effectiveness of implementation (see, for instance, Australian Law Reform Commission, 2010; Victorian Law Reform Commission, 2004). As such, reviews of the experiences of victim/survivors, particularly post-trial, are scarce. In this way, reform based on assessments of experiential outcome would mark a departure from the ways in which reform is typically assessed. Specifically, this endeavour would require a systematic and formal approach to the documentation of victim/survivor experiences. Additionally, measuring the positivity of victim/survivor experiences requires further conceptual thinking. For instance, the task of providing testimony at trial is unlikely to be a positive experience for victim/survivors. However, this research suggests that measures of respect and safety in the experience would provide a good indication of the success of testimony-related reform.

Further, participants suggested extensive consultation with victim/survivors should occur when reforms are in the development stage. This reflects the individuality of victim/survivor justice needs and that assumptions of uniform expectations of the criminal justice process should be disregarded. Participants recognised that each experience of the criminal justice process is unique and victim/survivors are best placed to identify gaps in service provision and potential improvements. The limitations on the understanding of participants in this research in relation to the experiences of victim/survivors—restricted by their role and by a knowledge base built largely on previous experience—support a victim/survivor-informed approach to future law reform.

7.4 Balancing adversarial systems and victim/survivor justice needs

An additional key issue examined by this research related to the balancing act between the cornerstones of the adversarial system and the unique needs of victim/survivors of sexual assault. It is clear from the preceding analysis that adherence to stereotypical beliefs about sexual assault by legal actors not only disadvantages the position of the victim/survivor in the criminal justice process, but also benefits the accused (McDonald, 2009). As jurisdictions struggle to address the issue of low conviction rates for sexual offences in cases that do not adhere to these stereotypes, a balancing act is performed to preserve the due process rights for the accused. Indeed, the analysis provided in this report demonstrates that overemphasis on due process rights can limit reform implementation. Given the nature of law—an institution guided by tradition—strict adherence to due process rights has long been a frustration to reform implementation.

Thus, the dominant culture of the legal system emphasises the rights of the accused (Arensen, 2012). Indeed, as previously outlined, within the trial context, the *state* is imagined as the “victim”, with victim/survivors relegated to the role of “witness”. Legal actors, and particularly judges, are necessarily influenced by this culture. With specific reference to sexual assault, this represents a failure to recognise developing knowledge concerning the nature and uniqueness of the offence. Participants in this research offered many practical suggestions that work within the current rights afforded to accused persons. However, participants suggested that the unique nature and cultural understanding of sexual assault that is brought to bear on the trial process should be taken into account when assessing the appropriateness of any given reform. An example of this is the possibility of having the accused watch victim/survivor testimony from a remote location. In recognition of the unique difficulty of providing testimony in cases of sexual assault, many participants felt that the right of the accused to confront their accuser could be reimagined in future reforms.

The balancing act demanded by the adversarial process will continue to be a determining factor in the specific form and function of future reforms. However, the present research offers a perspective of necessary flexibility in relation to sexual assault.

7.5 Future approaches to reform implementation

In their assessment of current reform efforts, participants suggested that the majority of recent reforms had the potential to greatly enhance victim/survivors’ experiences of the criminal justice process. However, participants consistently identified a disjuncture between reforms as they are written, and as they occur in practice, in addition to a lack of uniformity in the adoption of reforms across various institutions. Specifically, participants suggested that a number of factors frustrated the process of implementation, including:

- a lack of awareness of reforms across the criminal justice process at the jurisdictional level;
- a reluctance by legal actors to engage with the process of reform for fear of being sanctioned or subject to appeal; and
- continued misconceptions about sexual assault among decision-makers and practitioners.

This “implementation gap” has long been identified as being problematic by law reform bodies. As stated by the Australian Law Reform Commission (2010):

Despite extensive changes to law and procedure, research continues to highlight a gap between written law and its practice—referred to as an “implementation gap”. This gap highlights the resistance to change evident in the legal system through its legal players who may still hold views about sexual assault characterised by myths and misconceptions. Some commentators question the over-reliance on, or confidence in, legislative change alone to bring about substantive changes for women and children as complainants in sexual offences. (p. 1125)

Key suggestions made by participants in relation to the practice of implementation focused on the need for extensive and ongoing education of legal actors. Importantly, participants

identified two key aspects of education that were essential to successful implementation of victim/survivor-focused reforms. These were:

- comprehensive and ongoing education that provides information on recent reforms to legal actors; and
- extensive education of a range of professionals as to the social context of sexual assault and psychological aspects of victimisation.

The nature of the trial process has meant that many legal practitioners need not be up-to-date with reform. In particular, a lack of specialisation in the field of sexual assault law reform among defence practitioners and members of the judiciary is problematic. There is no requirement for these legal actors to have up-to-date knowledge of the legislation or its interpretation, as incorrect understandings are corrected in the trial process. Indeed, there is no sanction for practitioners who display a lack of current knowledge. Inconsistent and ad hoc measures to educate legal practitioners about changes to legislation increase the likelihood that practitioners are not up-to-date with the legislation. In relation to education concerning specific reforms, current processes tend to be “one-off” and largely informal. Further, participants highlighted that this lack of knowledge is in part due to the fact that new reforms are announced briefly and no continued education as to implementation is offered. As a result, implementation is often not uniform and remains dependent on the actions of individual legal practitioners. A suggested solution to this issue offered in this research is for a “briefing” function to be built into future reform efforts. Specifically, participants suggested that training and/or information sessions at the point of introduction, and ongoing circulation of updates to law reform, would ensure a more systematic and uniform adoption of reform throughout the criminal justice process. It was hoped that continued education would guide, and further bind, discretionary action by legal actors. It is important that this education be targeted at practitioners across the system—prosecutions, defence practitioners and members of the judiciary—and not simply to those practitioners currently specialising in sexual offences.

For participants of this research, a crucial aspect of education in relation to law reform is the contextualisation of sexual offences for all legal actors. Indeed, a lack of social and cultural understanding of sexual offences leads to ineffective and uneven implementation. Scholars have suggested that the implementation gap reflects an inability of criminal justice decision-makers to change their attitudes to keep pace with statutory reform (Siedman & Vickers, 2005). To address this gap, participants suggested that educative efforts be targeted at the system and individual levels. The practical reforms suggested by participants in this research and iterated below cannot be effective unless they are accompanied by changes in the culture of the criminal justice process.

Addressing the culture of the criminal justice process

The nexus between community and legal attitudes toward sexual assault must be acknowledged in the context of the culture of the criminal justice process. Legal actors are not immune to the misconceptions found in the broader community regarding sexual assault, including problematic gendered scripts and victim-blaming attitudes. However, given the role of the jury in the determination of guilt in these cases, many legal actors see deferral to these attitudes as a necessary component of decision-making. Both prosecution and defence practitioners make misguided assumptions about juror attitudes and allow these to guide decisions to prosecute and the questioning put forward in trial. In this way, practitioners reify assumed community attitudes. As a result, many of the advancements in community attitudes and awareness of violence against women, including sexual assault, are not necessarily reflected in the trial process. Recent reforms have attempted to address this issue at the point of trial. Indeed, expanded provisions in a number of Australian jurisdictions have seen a recent increased use of expert evidence to contextualise sexual offences and specifically address common misconceptions. In addition, a number of jurisdictions have adapted the charge to the jury to include information on the nature and extent of sexual assault in society.

Participants in this research articulated that further education of prosecutors, defence practitioners, and members of the judiciary would build upon these efforts. Reflecting on the positive effects of increased police (and in some jurisdictions, prosecutorial) specialisation, participants suggested a number of policy reforms that would assist this endeavour, including:

- ongoing and cross-profession information sessions concerning recent trial practices and outcomes, reform efforts and future directions;
- resource sheets aimed at contextualising sexual assault for legal actors; and
- research updates being made available to all legal actors.

Given the wealth of research concerning the problematic nature of sexual assault in the criminal justice process, the distribution of information through the system is imperative. Participants advocated these reforms as a method of bridging the knowledge gap between legal actors and those working outside of the criminal justice process. However, they also cautioned that such measures would require the engagement of enthusiastic individuals.

Addressing the individual

The effective training of legal actors in relation to sexual assault appears long overdue. With reference to the influence of individuals, the focus of the majority of participants was on members of the judiciary, particularly those whose actions and decisions have powerful consequences for the experiences of victim/survivors and the outcome of cases. An analysis of understandings concerning the roles and actions of judges revealed a diversity of perceptions. Indeed, participants suggested that a range of factors external to the law influence judges' decisions. However, none of the members of the judiciary interviewed in this research suggested that their own understandings of sexual assault may be problematic or negatively affect the experiences of victim/survivors in court. In addition, judges interviewed for this research did not raise the possibility of having their judgments appealed as being a factor in their decision-making. Rather, this perceived influence on judicial decision-making was consistently articulated by prosecutors and defence practitioners. Coupled with the frequent expression by members of the judiciary that law reform is simple and straightforward, this suggests that a strict adherence to law obfuscates judges' understandings of the effects of societal and cultural understandings on their own work and decision-making. The effect of judges' attitudes on the "implementation gap" of law reform has been noted previously in literature. Temkin and Krahe (2008) stated:

Interviews with judges and barristers raise issues about the extent to which the law laid down by Parliament and the higher courts for rape and sexual assault cases is being judicially observed. It is the gap between law and the law in action which is an essential component of the justice chasm in sex cases. It seems that the law itself, which must ultimately be interpreted and applied by judges, cannot entirely withstand an attitude problem which, in some cases, is too entrenched to budge. (p. 158)

It has previously been suggested that consideration for judicial training should include "social context" aspects of sexual assault and a focus on self-reflection (McDonald, 2009). This issue of judicial discretion is, however, used here as an example. Problematic reliance on harmful cultural scripts can affect the work and decision-making of all legal actors. Indeed, participants in this research stated that those involved in the criminal justice process, including prosecutors, defence practitioners and members of the judiciary, would benefit from further education concerning:

- the nature and extent of sexual assault in society;
- the reality of "false allegations", including that withdrawn complaints are not necessarily "false" and that there are many social and trauma-related reasons for making false allegations;
- problematic misconceptions of sexual assault, particularly as they relate to law reform agendas;
- the contexts in which sexual assault occurs and the varying relationships between victim/survivors and offenders;
- the psychological and social effects of sexual assault on victim/survivors; and
- the ongoing trauma-related effects of sexual assault on victim/survivors, specifically as this relates to their ability to engage with the criminal justice process.

A number of jurisdictions have made attempts to implement this formalised individual education to varying degrees (Australian Law Reform Commission, 2010). The Judicial College of Victoria (2008), for example, has developed a bench book (manual) that provides social context analysis to the law (see also the Judicial Commission of New South Wales (2009) *Sexual Assault Trial*

Handbook). However, participants highlighted that education programs tend to focus on particular groups of professionals. Participants in this research advocated uniform education for legal actors at the jurisdictional level, though this form of education would be resource-intensive. In addition to seminars and training sessions, participants advocated electronic and/or hard copy materials pertaining to reform introduction and the socio-legal context of sexual assault being made available to legal actors.

Addressing problematic attitudes and a lack of contextual knowledge in the criminal justice process requires ongoing education at both systemic and individual levels. A key finding of this research echoes previous assertions that “cultural change requires general community education, education of police officers, lawyers and judicial officers, *as well as* changes to policies and procedures” [emphasis added] (Australian Law Reform Commission, 2010, p. 1126). Indeed, participants recognised that practical reforms must work in conjunction with and parallel to the education-based suggestions outlined above.

7.6 Practical reform suggestions

In the context of the above, future reforms should be holistic in order to avoid one-off changes that give rise to “ceremony without substance” (for instance, procedural law reforms without a subsequent increase in reporting) or “substance without ceremony” (for instance, increased police reporting without antecedent reforms) (Frank, Hardinge, & Wosick-Correa, 2009, p. 272). Given the focus of this research on the needs of victim/survivors within the criminal justice process, it is important to relate the practical suggestions made here to the specific needs identified in Chapter 4. To this end, Table 3 (on page 61) maps key practical reform suggestions both across the criminal justice process and with reference to the dimensions of victim/survivor justice needs. This table describes the most frequent suggestions made by our participants with respect to future reforms and as such is not an exhaustive list of the suggestions that they provided.

It is evident from Table 3 that the current criminal justice process has capacity to better address the needs of victim/survivors. Many of the suggestions from participants demonstrated an awareness that the needs of victim/survivors go beyond the idea of “justice” advanced by the criminal justice process. Further the vast majority of victim/survivor’s basic needs “for economic stability, emotional security, and physical safety take precedence over criminal justice remedies” (Siedman & Vickers, 2005, p. 473). Professionals working in this process understand that the criminal justice system has a role in ensuring that these most basic needs are met first. While Table 3 outlines a series of reforms, mapped onto the various stages of the criminal justice process, there are three key reforms that would ensure that the majority of these suggestions are met. These are:

- the development of a liaison role to ensure that victim/survivors are supported throughout and beyond their engagement with the criminal justice process;
- further consideration of the provision of testimony that minimises the number of times victim/survivors retell their experience and the degree of harm experienced at the point of trial; and
- the appropriate consideration of alternative justice responses, in particular restorative justice practices, as a parallel process to the current system.

To further clarify these suggestions and advance discussion on their implementation we now detail these in turn.

Filling the gaps: The victim/survivor liaison role

One of the key criticisms offered by participants concerned the potential gaps in service to victim/survivors, due to the varying degrees of disconnect between agencies and the strict definitions of roles and responsibilities by individuals. As identified in Chapter 6, participants

Table 3: Suggestions to improve victim/survivor experiences with the criminal justice process

Dimension of needs	Report made to police	Police investigation	Committal	Trial	Post-trial
Validation To be believed	Standardised treatment of initial disclosure	Increase in authorisation of briefs	Committal to proceed, by way of hand-up brief	Further limitations on aggressive cross-examination and attacks on credibility	
Information To be provided with consistent and clear information	State- and territory-specific electronic and hard-copy resources about the investigation process and options	Liaison role to provide frequent updates about the status of the investigation	Liaison role to explain the outcome of committal	Liaison and court support to ensure that all questions are addressed prior to and during trial	Where applicable, liaison and court support to explain sentence Options for further updates fully explained
Voice To express their story	Increased police training for interviewing processes Audiovisual recording of statements	Standardised recording by police of subsequent contact with victim/survivor	Victim/survivor not required to provide testimony at committal Victim/survivor evidence to be tendered as audiovisual recording or full written statement	Trial evidence provided by way of deposition Audiovisual recording or full written statement to stand as evidence-in-chief Expansion to all sexual offences of eligibility to use alternative provisions for giving evidence	Provision of victim impact statements in all cases
Control To decide whether to engage with the process	Standardised complaint withdrawal process	Victim/survivor to be offered alternative justice options at the point of charge	Limitations in delay in committal Early setting of trial date	All of the above options available to the victim/survivor	
Therapeutic support To be provided with access to counselling and receive emotional support	Police and counsellor/advocates to ensure access to counselling through formalised coordination process		Access to court-based victim/survivor support services from the point of committal	Counsellor/advocates, liaison and court support to coordinate the provision of therapeutic intervention	Court support workers to ensure handover to liaison and/or counsellor/advocates Liaison role and counsellor/advocates to follow up with victim/survivor

Note: Pink shading represents those suggestions that would be most resource-intensive, as determined by the resourcing and staffing required, and the estimated timeframe of implementation.

advocated minimising these current gaps through the development of a liaison role, which would need to:

- commence engagement with the victim/survivor from the time of first report to police;
- be able to provide quality information about options and procedures at every stage of the criminal justice process;
- establish connections to counsellors, police, prosecution and court support workers;
- be formally recognised as an advocate within the criminal justice process;
- be able to assist victim/survivors with parallel civil form of redress and, potentially alternative justice remedies; and
- organise structured follow-up with victim/survivors after the committal or trial process.

Participants identified a number of additional benefits to the creation of this role, including the enhancement and strengthening of networks between professionals across different institutions and agencies through the coordination of victim/survivors needs. This role should be adjacent to criminal courts and based at relevant departments of justice. It is acknowledged that the demands of this role require both legal and therapeutic knowledge; however, the professional fulfilling this role would require a legal practising certificate. Based on the preceding analysis, the primary role of the victim/survivor liaison would be to attend to the individual and the changing information, therapeutic and advocacy-related needs of the victim/survivor. This is a potential future consideration for reformers seeking to reduce the current gaps in service provided to victim/survivors.

Reform at trial: Expanding options for the provision of testimony

In addition to identifying reforms that address gaps across the criminal justice process, it is evident from the preceding analysis that participants saw potential for future improvement in the trial process. Participants in this research consistently suggested the potential use of pre-recorded evidence as a method of attending to the victim/survivors needs for safety and respect, by:

- increasing the likelihood of victim/survivor engagement with the trial process;
- allowing the victim/survivor to avoid having to confront the accused;
- minimising unnecessarily aggressive cross-examination by defence practitioners;
- facilitating the scheduling of trials; and
- ensuring that the victim/survivor is not subject to repeated retelling of testimony.

In spite of these benefits, participants acknowledged that the pre-recording of evidence did not sit easily within traditional notions of due process. A number of defence practitioners articulated their concerns that pre-recorded evidence would not allow appropriate preparation time for cross-examination. In addition, the potential for delays between cross-examination and the commencement of trial was seen as a disadvantage for the defence. In spite of these critiques, the majority of participants felt that a number of options for the use of pre-recorded evidence should be explored in the future.

The first of these options involves allowing the initial police statement to be audiovisually recorded and to stand as evidence-in-chief at both the committal and trial stages. In addition to minimising the need for victim/survivors to repeatedly give evidence, this process was seen as a means of capturing the reality of a victim/survivor's affect at the point of disclosure, thus avoiding the perceived sterility of testimony at trial. The introduction of reforms allowing pre-recorded police statements to stand as evidence-in-chief would require a focus on, and review of, police recording practices. Indeed, historically, a number of poor justice outcomes for sexual assault have been due in large part to limitations in the quality, detail and coherence of statements recorded by both the victim/survivors and the accused (Tidmarsh, Powell, & Darwinkel, 2012). Poor-quality interviews are a concern for both prosecution and defence at the point of trial. As such, the resourcing and ongoing training of police should be taken into account if this direction is taken in the future.

A further option advocated by many participants in this research was for evidence-in-chief and cross-examination to occur prior to the trial stage. At the federal, state and territory level, there exists legislative provisions for the use of pre-recorded statements in criminal trials, including sexual assault trials. This is typically used where the witness is a child or cognitively impaired. However, as a number of participants stated throughout this research, the application of “special witness” status could easily include all victim/survivors of sexual offences in the majority of states and territories. The introduction of reforms to allow for the provision of evidence prior to trial and in the absence of the accused, such as the use of “special hearings” in Victoria,²⁶ were seen to be highly beneficial for victim/survivors. The option of using pre-recorded evidence to avoid the need for victim/survivors to appear at trial has been advocated in the past (Australian Law Reform Commission, 2010). This research contributes to and extends this discussion, suggesting that due consideration be given to the above options in future reform efforts.

Alternative justice responses

A further key area for possible future reform is the adoption of alternative justice systems. Participants in this research focused on restorative justice in particular. The application of restorative justice to sexual offences has been the subject of ongoing debate. There has been a longstanding resistance to applying the tenets of restorative justice to indictable offences, including violent crimes in general, and crimes involving violence against women in particular. A key reason provided for this is the traditional inability for restorative justice courts to administer lengthy sentences. Recently, much research has suggested a shift away from the punitive focus of the criminal justice process, with specific reference to sexual offences (Daly, 2011). Indeed, Backhouse (2012) suggested that reformists should be interrogating forms of redress other than prison; that is, focusing on the “front end” of remedies offered by the justice system to address the needs of the offender, which would have greater potential for behaviour change. In addition, the application of restorative justice principles for indictable offences is no longer unprecedented in Australian jurisdictions (for instance, Victoria currently operates a County Koori Court that is based on restorative justice principles and processes).

In the context of the ongoing debate, this research suggests that professionals working with victim/survivors in the criminal justice process find potential benefit in piloting restorative justice practices for sexual offences. As detailed in Chapter 6, participants identified a number of circumstances in which the use of restorative justice could be appropriate, including offending that has occurred within a family or specific communities. In these contexts, effective use of restorative justice requires the involvement of victim/survivors and those associated with them who have suffered distress, community members who have a vested interest in facilitating agreement as to how the offending should be addressed, and offenders who experience guilt and shame as a result of their offending (Koss & Achilles, 2008). Participants also advocated that the choice to engage with alternative justice processes such as restorative justice should be made by the victim/survivor, as this was seen as being integral to tending to victim/survivors’ needs for greater influence and control in the form of redress offered by the justice process. It was suggested that the option of pursuing restorative or therapeutic processes be offered to victim/survivors in a similar manner to the present options of alternative provision of evidence.

Participants also made suggestions as to the form and function of a restorative justice process. In general, participants described a restorative justice system that works both independently of, and parallel to, the current criminal justice process. In particular, participants consistently described a system that focuses on therapeutic intervention while retaining the capacity to administer punishment where appropriate. A number of prosecutors and members of the judiciary emphasised that the ability of the court to issue prison sentences must be retained. The focus on flexibility in setting appropriate sanctions was of key importance for participants of this research. Indeed, with reference to the engagement of offenders in restorative justice processes, some commentators have suggested there are clear benefits in using integrated prevention

²⁶ At a special hearing, the accused and his or her legal practitioner are to be present in the courtroom, but the accused is not to be in the same room as the complainant when the complainant’s evidence is being taken. Rather, the accused is entitled to see and hear the complainant while the complainant is giving evidence (using CCTV or other facilities) and to have at all times the means of communicating with his or her legal practitioner (Australian Law Reform Commission, 2010, p. 1227).

measures such as publicly fostering accountability, expressing community disapproval and providing individual therapeutic responses to offenders (Koss & Achilles, 2008).

Given the positive assessment of restorative justice made by our participants, the present research adds to the ongoing discussion that alternative justice responses have the potential to address the needs of victim/survivors in a range of circumstances. Indeed, recent research has suggested that victim/survivors who wish to pursue restorative approaches may indeed receive some measure of justice (McGlynn, Westmarland & Godden, 2012).

7.7 Conclusion

Siedman and Vickers (2005) suggested that “the failure of rape law reform is in part a result of an almost exclusive focus on the criminal justice process. Rape victims deserve more from the legal system than just a prosecution” (p. 471). The analysis offered in this research suggests that those working within and alongside the criminal justice process recognise the need to go beyond minor legislative amendments to meet the individual and varied needs of victim/survivors of sexual assault. Further, the insights offered from professional experience demonstrate a degree of self-reflection as to the limitations of recent reform implementation. There exists a clear need for ongoing education of legal and non-legal actors with respect to the social context(s) of sexual assault. Further a careful consideration of the unique positioning of victim/survivors of sexual offences within the criminal process, particularly with respect to long-held tenets of due process, is a requirement of future reform development. From the perspective of the 81 professionals interviewed for this research, the criminal justice process has the capacity to recognise and assist with needs beyond those captured by traditional notions of “justice”.

8

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Appendix A: Recruitment flyer


ACSSA

Australian Government
Australian Institute of Family Studies
 Australian Centre for the Study of Sexual Assault

Seeking participants

Research is now being undertaken for ACSSA's project

Victim-focused justice responses and reforms to court practice in adult sexual assault cases

The Australian Centre for the Study of Sexual Assault is seeking participants to contribute knowledge concerning their experiences and perceptions of victim-focused justice responses and court processes in adult sexual assault cases. This research will contribute to the identification of organisational and institutional victim-focused justice responses in order to inform future practice and policy.

We would like to hear from you by Friday 12 April 2013 if:

- are a judicial officer, police officer, prosecutor, witness assistance worker, victim advocate or sexual assault worker; and
- work in the criminal justice system with victim/survivors of sexual violence.

For more information on the project, including how to participate, contact Liz Wall of the Australian Centre for the Study of Sexual Assault at the Australian Institute of Family Studies

Phone: (03) 9214 7888 or 1800 352 275 (Toll Free)
Email: victimfocused@aifs.gov.au

All enquiries will be treated privately and confidentially

Australian Centre for the Study of Sexual Assault at the Australian Institute of Family Studies
Level 20, 485 La Trobe Street, Melbourne VIC 3000, Australia | Tel (03) 9214 7888 | Fax (03) 9214 7839

Appendix B: Interview themes provided to participants

Victim Focused Court Practice Project interview themes and questions

Role

1. What is your current role?
2. What is your relationship/what interaction do you have with victims in your current role?

Victim focus

3. What do you think victims' justice needs are (prompt if any experience with victim/survivors with a disability)?
4. What is their investment in the justice process?
5. What are victims hoping to get out of it?

Current practice

6. What do you understand the recent changes/reforms, in relation to victim-focused practice, in your jurisdiction to be?
7. How has your practice changed in response to the changes/reforms?

Implementation

8. What has enabled you to implement the reforms?
9. What have the barriers been in implementing the reforms?
10. What do you think the overall impact of the reforms on victims have been (prompt for experience with victim/survivors with a disability)?

Evaluation

11. How well do the reforms address victims' needs (victim/survivors with a disability)?
12. Are there any gaps in these reforms?

Future focus

13. What measures do you think would assist victims in the court process in the future?
14. What would be needed to implement these suggestions?

Appendix C: Standard plain language statement

Plain Language Statement for key professionals participating in Australian Centre for the Study of Sexual Assault (ACSSA) Research Project “Victim-focused justice responses and reforms to court practice in adult sexual assault cases”

The Australian Centre for the Study of Sexual Assault (ACSSA) is currently seeking participants for a research project concerning victim focused court practices. We would like to speak to professionals who work in the area of sexual assault crime in the court system in [Relevant State]. This includes: prosecutors, judiciary, victim support agencies, witness assistance and victim support staff.

The purpose of the research is to draw on the experience and knowledge of professionals who engage with sexual assault victims through the criminal justice process in order to identify organisational and institutional “victim-focused” justice responses. Underpinning the research are the significant reforms to sexual assault laws and evidence that have been implemented in most Australian jurisdictions since 2000. We are interested in:

- How you perceive the impact of these reforms on victims’ experiences of the court process, and;
- The ways in which you think the reforms have or have not enabled the justice needs of victim/survivors to be better met.

Further, areas of challenge in reforming court practices will be identified and the implications for reform within the court system and alternative justice responses will then be assessed.

Participants are sought who are:

- Aged 18 and over
- Work in a professional capacity with victims/survivors of sexual offences through the court process
- Work in this capacity in [Relevant State/Territory]

Participation in this research will involve taking part in an audio-recorded interview with a researcher from ACSSA. You will have control over the interview and you are able to decide what you would and would not like to discuss. You can also stop it at any time. If you do not wish to continue, all information related to you will be destroyed. If you chose to participate you will be assigned a pseudonym in any public documentation arising from the research and you will not be identified in any way.

This research will draw on your particular expertise in relation to victims of sexual violence and/or current court practices. The aim of the research is to gain the perspectives of legal and other professionals and improve the response of the legal system to victims. Your insights will contribute to a growing knowledge base concerning how the criminal justice system responds to victims in light of recent reforms and future strategies to enhance victim experience. Please note that the project is not asking you to disclose information of a confidential nature and that such disclosures could result in legal liability and/or professional disciplinary action.

If you would like to take part in this project, please contact:

Mary Stathopoulos or Nicole Bluett-Boyd of the Australian Centre for the Study of Sexual Assault (ACSSA), based at the Australian Institute of Family Studies (AIFS) by [DATE].

Phone: (03) 9214 7888/Toll Free on 1800352275

Email: victimfocused@aifs.gov.au

If you have any questions about the research, you can contact ACSSA coordinator Dr Antonia Quadara on (03) 9214 7876 or the AIFS Ethics Committee Secretariat on (03) 9214 7888 (Project 12/13).

Should you have any concerns regarding this research please contact the [Relevant HREC/ Research Coordination Committee Contact Details]

If you have experienced sexual assault, or vicarious trauma and you want to talk to someone about your experience, you can contact the National Sexual Assault, Family & Domestic Violence Counselling Line on 1800 019 116.

Alternatively, contact the employment assistance program on 02 9882 2688 or visit www.eapaa.org.au to find your nearest provider.

Appendix D: Consent form

Consent form for key professionals participating in Australian Centre for the Study of Sexual Assault (ACSSA) Research Project “Victim-focused justice responses and reforms to court practice in adult sexual assault cases”

I, _____

Hereby consent to be a subject of the aforementioned research study to be undertaken by researchers from the Australian Centre for the Study of Sexual Assault (ACSSA) at the Australian Institute of Family Studies (AIFS).

I understand that the purpose of the research is to identify the legal and organisational approaches to victim focused justice responses and court practices as they relate to victims of sexual violence.

I understand that the key aims of the research are to map current victim focused practices and identify barriers and enablers to reform in this area.

I acknowledge

1. That the aims, methods, and anticipated benefits, and possible risks/hazards of the research study, have been explained to me.
2. That I voluntarily and freely give my consent to my participation in such research study by way of audio recorded interview.
3. I understand that aggregated results will be used for research purposes and may be reported in academic and professional journals.
4. I understand that quotes and accounts (given in the context of my participation in the research) may be attributed to me under a pseudonym (i.e., a false name), and any other potentially identifying information removed or modified to protect my identity.
5. The material from my interview will be held securely and will not be able to be connected to me.
6. That I am free to withdraw my consent at any time up to the writing up of the results of the study, in which event my participation in the research study will immediately cease and any information obtained from me will not be used.

Signature: _____ Date:

Researchers: Mary Stathopoulos and Nicole Bluett-Boyd (Project 12/13)

Phone: (03) 9214 7888/Toll Free on 1800352275

Email: Mary.Stathopoulos@aifs.gov.au or Nicole.Bluett-Boyd@aifs.gov.au

Appendix E: Useful resources

The following guide includes recent reports and manuals from a number of states and territories. The parameters for inclusion were: relevance to reforms and legislations drawn upon in the report; timeframe (produced in the past 15 years) and online availability (a working link to the document). Any omission does not reflect an assessment of the omitted work.

History of sexual offences law reform in Australia

The following online resources provide state- and territory-based law reform papers. These present both thematic and legislative-based descriptions of the progression of law reform in relation to sexual offences in Australia.

Table E1: State- and territory-based sexual offences law reform papers			
State/territory	Title and author of resource	Year	Website link
All	<i>Family violence: A national legal response</i> (Report No. 114) / Australian Law Reform Commission	2010	< www.alrc.gov.au/publications/24_Sexual_Assault_and_Family_Violence/history-activism-and-legal-change >
ACT	<i>Responding to sexual assault: The challenge of change</i> / Office of the Director of Public Prosecutions (ACT) and Australian Federal Police	2005	< www.justice.act.gov.au/resources/attachments/RespondingtoSexualAssault_report_DPP_20051.pdf >
NSW	<i>Responding to sexual assault: The way forward</i> / Attorney-General's Department	2006	< pclr.d.lawlink.nsw.gov.au/agdbasev7wr/lpclr/d/documents/pdf/cjsot_report.pdf >
NT	<i>Report on the laws relating to the investigation and prosecution of sexual assault in the Northern Territory</i> / Northern Territory Law Reform Committee	1999	< www.nt.gov.au/justice/policycoord/documents/lawmake/SexualAssaultInvestigation.pdf >
SA	<i>Review of South Australian rape and sexual assault law: Discussion paper</i> / Attorney-General's Office	2006	< test.agd.sa.gov.au/pdfs/rape_law_reform_dp.pdf >
Vic.	<i>Sexual offences: Final report</i> / Victorian Law Reform Commission	2004	< www.lawreform.vic.gov.au/sites/default/files/FinalReport_0.pdf >
WA	<i>Inquiry into the Prosecution of Assaults and Sexual Offences</i> / Community Development and Justice Standing Committee	2008	< www.parliament.wa.gov.au/Parliament/commit.nsf/%28Report+Lookup+by+Com+ID%29/5EAF7A750B8E38AF48257831003E9742/\$file/Final+Report.pdf >

Sexual offence trial manuals and information

The following searchable online resources are used by the judiciary and members of the legal profession to source information regarding current trial practice and the effects of reforms relevant to sexual offences in Australia.

Table E2: Sexual offence trial manuals and information			
State/territory	Title and author of resource	Year	Website link
NSW	<i>Sexual assault trials handbook</i> / Judicial Commission of New South Wales	2013	< jirs.judcom.nsw.gov.au/public/wservice/benchbooks/docs/Sexual_Assault_Trials_Handbook-Update_11-June_2013.pdf >
Qld	<i>Supreme and District Courts benchbook</i> / Queensland Courts	2012	< www.courts.qld.gov.au/information-for-lawyers/benchbooks-and-ucpr-bulletin/supreme-and-district-courts-benchbook >
Vic.	<i>Sexual assault manual</i> / Judicial College of Victoria	2013	< www.judicialcollege.vic.edu.au/eManuals/SAM/index.htm - 38317.htm>
	<i>Victoria criminal charge book</i> / Judicial College of Victoria	2013	< www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm - 19193.htm>

Uniform Evidence Act

The following online resources provide information concerning the effects of changes made by the *Uniform Evidence Act* to trial practice in a number of Australian jurisdictions

State/ territory	Title and author of resource	Year	Website link
All	<i>Evidence Amendment Act</i>	2008	< www.comlaw.gov.au/Details/C2008A00135 >
	<i>Uniform evidence law: Summary</i> / Australian Law Reform Commission	2006	< www.alrc.gov.au/inquiries/uniform-evidence-law >
Vic.	<i>Uniform evidence manual</i> / Judicial College of Victoria	2013	< www.judicialcollege.vic.edu.au/eManuals/UEM/index.htm - 26880.htm>
	<i>Introduction to the Uniform Evidence Act in Victoria: Significant changes</i> / Judicial College of Victoria	2009	< www.lawreform.vic.gov.au/sites/default/files/IntroductiontotheUEA.pdf >