



**WESNET**  
The Women's Services Network

## **SUBMISSIONS ON THE REVIEW OF THE CLOSING LOOPHOLES ACTS**

*2 March 2026*

*29 May 2026*

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## **WHEN REGULATIONS UNDERMINE GOOD PRACTICE IN WORKING WITH VICTIM SURVIVORS OF SEXUAL ASSAULT AND OTHER FORMS OF GENDER-BASED VIOLENCE**

Recently, the Fairwork Commission ruled that Uber had to reinstate two Drivers who had been deactivated following allegations of sexual misconduct, including non-consensual kissing and masturbating while a passenger was in the car.

The Commission noted that the female passenger was not "called to testify" and concluded that Uber had "provided insufficient evidence" to meet the evidentiary burden to prove that the alleged conduct occurred, citing the Briginshaw Standard.

Wesnet finds it very concerning that a sexual assault victim would be required to testify to the FWC to prove the alleged conduct took place.

In the two recent cases, FWC3111 and FWC 3176 it appears that only the direct testimony of the victim would have met the probative evidence threshold for the Commissioner.

However, Wesnet questions whether given the detrimental and retraumatising impacts of testifying, whether there needs to be a review and consideration of alternative methods to reach the thresholds needed to satisfy the FWC in such cases.

Sexual violence is at epidemic proportions. Research indicates at least one in five women in Australia has experienced sexual violence since the age of 15, and 90 per cent of women have experienced sexual harassment at some point in their lifetime<sup>i</sup>.

Victim-survivors of sexual violence face devastating and potentially life-long physical, emotional, social, and financial harm as a result. These adverse impacts of sexual violence are often compounded by barriers to disclosing their experience and poor justice responses.

The barriers experienced by victim survivors in relation to disclosing sexual violence are complex and varied. Victim-survivors may be discouraged from discussing their experiences if they believe disclosing could affect their safety, in addition to uncertainty around whether others will disbelieve, judge or criticise them.<sup>ii</sup>

There are also myths and misconceptions about sexual violence and there is evidence that this can influence how people who work in the justice system make decisions<sup>iii</sup>. One other prevalent misconception is that false reporting rates are high. In fact this is not a common occurrence and only a very small percentage of reports could be considered false. Some

research suggests that less than 5% of reports are false, which conversely indicates that overwhelmingly, reports are likely to be genuine.

The reality is that sexual violence remains vastly underreported. The latest ABS data on sexual violence shows that only 8% of women who sexually assaulted by a male perpetrator ever reported to police<sup>iv</sup>. Even if they do report, convictions for sexual violence are extremely rare—meaning the overwhelming majority of perpetrators of these serious crimes are never held to account.

Victim-survivors of sexual violence feel disempowered and retraumatised by the justice system. Victim-survivors told a recent inquiry by the Australian Law Reform Commission that they lacked agency, choice and support, and were made to feel like they were the ones on trial.

### **Conclusions:**

WESNET advocates for best practice survivor-centred approaches to dealing with incidents of sexual assault and misconduct both in Australia and around the world. In the United States, RAINN (Rape, Abuse & Incest National Network) has stated that 'survivors of sexual violence deserve the right to determine when, how, and with whom they share their personal information.' To fail to prioritise the rights of sexual assault survivors risks secondary trauma at the hands of institutions.

Wesnet urges the Fairwork Commission to consult with the Sexual Violence Sector and other practice experts in violence against women to ensure that processes requiring employers to call victims to testify are in line with best practice, trauma informed approaches in working with victim-survivors and that these approaches prioritise safety and survivor autonomy and choice.

According to the most recent National Community Attitudes Towards Violence Against Women Survey, many Australians still hold harmful attitudes that minimise, excuse, or normalise sexual offending.

We need all levels of government and institutions to play their part in ending gender based violence and holding perpetrators accountable.

### About Wesnet

The Women's Service Network (WESNET) is the national peak body for specialist women's domestic and family violence services. We are also the leading industry experts in the intersection between technology and violence against women.

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<sup>i</sup> Australian Bureau of Statistics. (2021-22). *Sexual violence*. ABS. <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22>.

<sup>ii</sup> Australian Institute of Health and Welfare. How do people respond to FDSV? : Australian Institute of Health and Welfare; 2024 <https://www.aihw.gov.au/family-domestic-and-sexual-violence/responses-and-outcomes/how-do-people-respond-to-fdsv>

<sup>iii</sup> Christopher Dowling et al, National Review of Child Sexual Abuse and Sexual Assault Legislation in Australia (Consultancy Report, Australian Institute of Criminology, 2024) 11; Hamilton and Tidmarsh (n 21) 9.

<sup>iv</sup> Australian Bureau of Statistics. (2021, August 24). *Sexual Violence - Victimization*. ABS. <https://www.abs.gov.au/articles/sexual-violence-victimisation>.

29th May 2026

**Closing Loopholes Acts draft report**

Wesnet welcomes the opportunity to submit feedback on the draft report on the Closing Loopholes Acts.

As the national peak body for specialist women's domestic and family violence services, we appreciate that the draft report recognises the impact of current unfair deactivation processes on victim-survivors of sexual harassment and assault. We agree with the finding that the use of evidentiary standards in the unfair deactivation framework in cases of sexual misconduct raises issues of 'acute safety, welfare and trauma-informed practice considerations and warrant prioritised attention'.<sup>1</sup> We welcome Recommendation 10, which asks that the 'government urgently address the management of unfair deactivation matters involving serious misconduct allegations, including legislative clarification on the evidentiary threshold'.<sup>2</sup>

The draft report expressly requests views on if the *Fair Work Act* should be amended to clarify that a deactivation is not unfair where the operator considered on reasonable grounds that a valid reason existed, rather than requiring proof to a judicial standard that the incident occurred. We reiterate our position that requiring sexual assault victims to testify to meet the burden of proof for serious misconduct under the *Briginshaw* standard can have detrimental and retraumatising impacts.

Under the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* (UN Victims of Crime Declaration), victims' right to privacy is to be respected and protected. This right is reflected in victims' charters across all Australian states and territories.<sup>3</sup> Requiring victim-survivors to breach their privacy and retell their experiences in a forum they did not choose, so that a platform can defend a deactivation is not a trauma-informed process and goes against their right to privacy. It also places the burden of safety for other platform users on the very people who have already been harmed. This is why ***Wesnet recommends the amendment of subsection 536LF(b) of the Fair Work Act to clarify that a deactivation is not unfair where the operator considered on reasonable grounds that a valid reason existed, rather than requiring proof to a judicial standard that the incident occurred.***

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<sup>1</sup> <https://www.dewr.gov.au/workplace-relations-australia/resources/closing-loopholes-review-draft-report>, p.101.

<sup>2</sup> <https://www.dewr.gov.au/workplace-relations-australia/resources/closing-loopholes-review-draft-report>, p.102.

<sup>3</sup> <https://www.alrc.gov.au/publication/jrsv-report-143/>, p.199.

Wesnet also reiterates our ***recommendation that the Fairwork Commission consults with the specialist sexual violence sector and other practice experts in responding to violence against women on the implementation of these reforms.***

Thank you for the opportunity to contribute to this review.

Karen Bentley  
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