

Digital Evidence Review

Consultation paper

September 2026

**Sexual Violence
Review Board**

Digital Evidence Review: Technical Paper

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<http://www.victimscommissioner.qld.gov.au/about/sexual-violence-review-board>

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The content of this detailed paper is for information only. If you have a legal problem, you should seek legal advice from a lawyer. The guide should not be relied upon as legal advice.

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This detailed paper reflects the law as at September 2026.

Preface

Thank you for considering this consultation paper on digital evidence.

Digital evidence is any information stored or sent on an electronic device like a phone or computer.

We are interested in clarifying and improving the process for collecting digital evidence. We are interested in how digital evidence is collected in sexual offence cases and how it may be used in court.

There are a number of questions asked in this document. You don't have to answer them all, just those you are interested in.

By submitting your thoughts and/or experience on digital evidence you can help shape future improvements.

You can choose whether your submission is made public or kept private.

We can use information supplied as part of our formal report to the government.

Thank you.

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Introduction

Message from the Chair

The Sexual Violence Review Board is responsible for reviewing systemic issues relating to the reporting, investigation and prosecution of sexual offences. It was established under the *Victims' Commissioner and Sexual Violence Review Board Act 2024* and is independent to government.

The Board is made up of nine members who are experts from justice institutions, the health sector and sexual violence support services, and includes a First Nations representative and a member with lived experience of sexual violence.

For many victim-survivors of sexual violence, reporting an offence and engaging with the justice system takes immense courage. Increasingly, this process can involve requests for access to personal digital information, such as messages, photos, social media content and other data stored on electronic devices.

Digital evidence can play an important role in investigating and prosecuting sexual offences. However, concerns have been raised about how these processes affect victim-survivors, including their privacy, dignity, safety and willingness to engage with the justice system.

This review provides an opportunity to better understand those experiences and to consider whether current laws, policies and practices are keeping pace with technological change. It will review how digital evidence is collected, disclosed and used, and whether existing approaches appropriately balance the rights and interests of victim-survivors with the right to a fair trial.

At the heart of this review are the voices and experiences of victim-survivors. We look forward to hearing from those who have been affected by these processes, as well as from professionals, advocates and organisations who support them. Your insights will help inform recommendations to ensure Queensland's response to sexual violence is fair, effective and respectful.

Thank you for your contribution to this important work.

Acknowledgement of victims of crime

The Sexual Violence Review Board respectfully acknowledges all victims of crime. We see you; we believe you; and we acknowledge the harm you have suffered. We respect your choices in whichever path you may take. Your emotions and reactions are valid. We see your strength, courage, resilience, and vulnerabilities and support your right to self-determination, and to lead lives free from fear.

We recognise the important role of people supporting and advocating for victims of crime, both personally and professionally. We value the experiences you have shared with us as they shape our work.

Aboriginal and Torres Strait Islander acknowledgement

The Sexual Violence Review Board pays respect to the Aboriginal and Torres Strait Islander ancestors of this land, their spirits, and their legacy. The foundation laid by these ancestors – the First Nations people – give strength, inspiration, and courage to current and future generations towards creating a better Queensland.

We pay our deepest respects to Elders past and present, and to emerging leaders, and their continuing connection to lands, waters, and communities.

Note on language

The Sexual Violence Review Board uses both the terms victim and victim-survivor. We know that different people use different words to describe their experiences.

Some use victim because it recognises the harm done to them. Others use victim-survivor because it shows strength and recovery.

We use both terms to respect everyone's choice and experience.

We use the term 'sexual offence' to include any offence of a sexual nature committed against a person.

In some parts of this document, we will be referring to legal processes. In those instances, we may use the term complainant or victim-complainant to refer to the victim of the sexual violence, and defendant to refer to the person accused of perpetrating the sexual violence. This is because we are often specifically referring to the role a victim plays in a criminal proceeding.

Content warning

This document contains discussions of sexual violence and sexual crimes, which some readers may find distressing.

If this topic raises concerns for you, consider contacting 1800RESPECT (1800 737 732), Lifeline (13 11 14), your local sexual assault service, or another trusted support service.

Have your say

We invite you to make a submission based on the questions in this Consultation Paper. You are also welcome to comment on any issues arising from the Terms of Reference (see **Annex A: Terms of Reference** on page 47).

Submission deadline: 5pm, Friday 6 November 2026

You are invited to respond to any or all the questions. Please identify the relevant question number/s in your submission to help us analyse your submission.

How we will use your submission

All submissions to this Consultation Paper, as well as additional consultation conducted with key stakeholders and victim-survivors, will inform the Sexual Violence Review Board's response to the Terms of Reference.

The Board will provide a final report to the Minister for Youth Justice and Victim Support and Minister for Corrective Services by June 2027.

If you make a submission, let us know if your submission is:

- **Confidential** – for the information of the Sexual Violence Review Board only, or
- **Public** – meaning we may publish it, and we may refer to it in our final report.

If your submission does not include this information, we will contact you to seek your agreement before we publish the submission.

If you are happy for us to publish and refer to your submission, but you want us to remove your personal information, including your name, and any other identifying information before we do this, please let us know. We call this an anonymised public submission.

If you do not include any information that allows us to verify your identity when making a submission, we call this an anonymous submission. We treat these as confidential submissions.

In some cases, we may decide not to publish a public submission or remove some content prior to publication. For more information, please read our [Privacy policy](#).

How to send your submission

Email

We prefer to receive submissions by email. Email your submission to SVRBsecretariat@victimscommissioner.qld.gov.au including 'Digital evidence review' in the subject line.

Post

Post your submission to: SVRB Secretariat, GPO Box 149, Brisbane Qld 4001

If you require any assistance to participate in this public consultation process, please contact the Secretariat on 0475 933 936 or use the following services:

- ***Translating and Interpreting Service***

If you need an interpreter, contact the Translating and Interpreting Service on 131 450 and tell them:

- The language you speak
- The Board's name – Sexual Violence Review Board
- The Board's phone number – 0475 933 936

Translating and Interpreting Service will arrange an interpreter so you can talk with us. This is a free service.

- ***National Relay Service***

The National Relay Service is a free phone service for people who are deaf or have a hearing or speech impairment. If you need help contacting us, the National Relay Service can assist. To contact the National Relay Service you can:

- TTY/voice call — 133 677
- Speak and Listen — 1300 555 727
- SMS relay — 0423 677 767

List of questions

1.1 Right to privacy

- At what stage of digital evidence collection, disclosure, and use are victim-survivors informed about any limitations on their privacy rights? How are they informed? Who informs them?
- How is a victim-survivor's consent for the collection of digital evidence obtained and recorded?
- What types of information from their device (for example, apps, photos, health information, financial information, location data or other personal content) are victim-survivors particularly concerned about sharing with police, prosecutors and/or the defence?

1.2 Safety and wellbeing

- How long are victim-survivors without their device during the digital evidence collection process? How does this differ by location?
- What are the impacts of being without a device on a victim-survivor's wellbeing, safety and access to support networks?
- How is a victim-survivor's safety and wellbeing addressed in digital evidence collection and other processes, particularly where the defendant may come to know that the evidence is being collected?

1.3 Support to victim-survivors

- What support and guidance is available to victim-survivors in the criminal justice system during the process of digital evidence collection?
- What support and guidance is available to victims from external support service providers during the process of digital evidence collection?
- If a victim-survivor has had to wait to access support services, has this impacted their decision to provide digital evidence or move forward with the case?

1.4 Particularly impacted victim-survivors

- Which cohorts of victims are particularly impacted by digital evidence collection practices?
- What are those impacts?
- Do barriers to accessing support services impact the decisions some victims make about providing digital evidence?

1.5 Case attrition

- Why do some victim-survivors choose not to proceed after being asked to provide digital evidence?
- Where a victim-survivor is unwilling to provide digital evidence through one collection method (e.g. a full file download), how often are alternatives given (e.g. partial download or secondary capture)? Does that influence a victim-survivor's willingness to proceed?

2.1 Volume of digital evidence

- To what extent has the use of digital evidence in sexual offence cases increased over the past 10 years? Roughly what proportion of sexual offence cases now involve digital evidence?
- What delays are caused by digital evidence processes in sexual offence cases?
- Do delays in data collection and analysis place the victim-survivor at further risk of harm? If so, what mechanisms are in place to mitigate further harm occurring?
- What adjustments, improvements, investments or developments have been required to assist prosecution and defence stakeholders to manage increasing volumes of digital evidence? What more could be done to improve things?

2.2.1 Collection processes

- How are decisions made about the scope of digital evidence extracted from a victim-survivor's device to ensure that the collection is necessary, proportionate and appropriate to the needs of the investigation? What factors influence these decisions?
- What are the policies or procedures that guide digital evidence collection in different circumstances and locations? For example, where is the download done? Who does it? What software is used?
- In what circumstances, if any, should full device downloads be used?
- How long is the victim without their phone? What support is given in the meantime?
- What information is given to victims about how their data will be stored, handled and disclosed, and how is their consent sought and recorded?
- What options and actions are taken if a victim-survivor is unwilling to consent to a file download or otherwise supply digital evidence?
- In what circumstances can digital evidence be provided in other ways? (Such as victim-survivors voluntarily uploading evidence, defence requesting digital

evidence through a subpoena, or information being provided by social media companies)

2.2.2 Disclosure practices

- How are decisions by police made about what digital evidence to share with prosecutors from a victim's device?
- How do prosecutors decide whether to disclose all or part of the digital evidence to the defence?
- What are the policies or procedures that guide disclosure in different circumstances, including the format in which evidence is shared, and how is sensitive material redacted?
- How are decisions made by defence lawyers about what digital evidence to request as part of prosecution disclosure?
- What occurs, including in court processes, if the defence requests more digital evidence from the victim-survivor's device than has been previously disclosed or captured during the investigation?
- What information is given to victim-survivors about what and how digital evidence will be disclosed to the defence?
- Should the rules of disclosure be amended to require that the evidence relates to a 'reasonable line of inquiry', similar to the rules in the UK?
- Should the rules of disclosure about digital evidence be amended to require judicial oversight, similar to the protected counselling communications process?

2.2.3 Defence requests

- In what circumstances do defence lawyers issue a summons or subpoena requesting digital evidence from a victim-survivor in a sexual offence case?
- How do court registries evaluate and process summons or subpoenas requesting digital evidence from victim-survivors in sexual offence cases?
- What information or support is given to victim-survivors about their options in responding to a summons or subpoena for digital evidence?
- Should the rules about summons and subpoenas be tightened to ensure there is a rational connection between the request and the relevance of the evidence to the facts of the case?

2.2.4 Case outcomes

- How does digital evidence help with the prosecution of sexual offence cases?

- How does digital evidence assist the defence to test the prosecution case or contest allegations of sexual offences?
- How does digital evidence dismantle or reinforce rape myths in sexual violence cases?
- Will digital evidence be less relevant due to the requirement of affirmative consent?
- Should there be special rules to allow expert evidence on the particular nature of digital communications?

Should specific jury directions be available to help juries understand the particular nature and context of digital communications?

2.3 Capabilities to manage digital evidence

- Are police and prosecutors sufficiently trained and equipped to provide consistent processes for victim-survivors and defendants in the collection, disclosure and use of digital evidence in sexual offence cases?
- Are there enough police and prosecution personnel with the right skills to manage the volume and complexity of digital evidence in sexual offence cases?
- How do police and prosecutors work together to manage, analyse and use digital evidence in cases?
- How do defence lawyers and firms build and maintain capacity and capability to manage, analyse and use digital evidence?

2.4 Technological capabilities to manage digital evidence

- What technologies are used in the collection, disclosure and use of digital evidence in sexual offence matters? What are the limitations of those technologies?
- What emerging issues have arisen for digital evidence practices due to the rate of technological change?
- Are prosecution and defence on an equal footing when it comes to access to updated tools to collect and analyse digital evidence?
- What role can AI play in supporting targeted digital evidence extraction and analysis? What verification processes are needed to authenticate digital evidence, given the increasing prevalence of AI-generated content?

About this review

This review will identify whether improvements are needed to policies and practices relating to the collection, disclosure and use of digital evidence in relation to sexual offences.

The review will also seek to highlight ways to improve the experiences of victim-survivors of sexual violence in the use of digital evidence during the reporting, investigation and prosecution stages of the criminal justice process, while also protecting a defendant's right to a fair trial.

This review has Terms of Reference, which we have attached in Annex A. Terms of Reference outline the scope of the review, including what will be considered. This includes:

- the current legislation, policy, guidance and practice related to the collection, disclosure and use of digital evidence and whether this adequately reflects the contemporary digital environment
- any guidance or training available for investigating officers, prosecutors and judicial officers about digital evidence collection and disclosure
- the impact of the current legislation, policies, and practices on the experience of victims during reporting, investigation and prosecution of sexual offences and whether it appropriately balances the rights of victims in the context of a right to a fair trial
- innovative approaches for the collection, disclosure and use of digital evidence.

This review will consider the collection, disclosure and use of digital evidence as a system-wide issue. It will not review or assess the merits of specific decisions by police, prosecutors and courts in individual cases.

As well as this paper, this review is being informed by other consultation processes and data collection exercises with justice institutions, legal service providers, sexual violence support services and victim-survivors of sexual violence.

About this paper

The purpose of this consultation paper is to gather the views of anyone in Queensland who has had experience with the criminal justice system, sexual violence and digital evidence.

You may be:

- the victim or the accused person in a sexual violence criminal proceeding
- the family or friend of such a person
- a professional in the justice system, health system or sexual violence support services sector.

This consultation paper outlines the key matters we are considering for the review. Each section includes questions relating to the key issues that we want to explore. You can respond to as many questions as you want to.

The review also welcomes feedback about any issues you think are relevant, even if we have not raised them in this consultation paper.

The review has undertaken initial research to inform this Consultation Paper. This includes:

- A preliminary literature review which analysed academic articles and research reports from 2005 to 2025. Given the limited literature in Australia, much of the research was from the UK, Canada and the USA.
- A review of laws, policies and guidance relating to digital evidence collection, disclosure and use in Queensland.
- An analysis of initial insights through a preliminary submission process into the scope of the review. Stakeholders included justice institutions, legal service providers, peak bodies and sexual assault service providers.
- Anecdotal insights from justice system stakeholders and victim-survivors who have taken part in the consultation process for the review up to the date of publishing.

Background information

What is digital evidence?

For this review, digital evidence means any information stored or sent on an electronic device, such as a phone or computer. This may include:

- phone call logs
- text messages
- emails
- social media interactions
- photos and videos
- internet browsing history
- location data.

Digital evidence may be collected directly from:

- a victim's personal device or devices
- service providers (i.e., telecommunication companies or social media platforms).
- devices of the suspect/ defendant or third parties.

This review focuses on digital evidence obtained from electronic devices owned or controlled by victim-survivors.

Why is digital evidence important in sexual offence cases?

Digital evidence now plays a significant role in the reporting, investigation and prosecution of sexual offences.

As technology's role in our lives increases, so does the likelihood that digital evidence will be used in criminal proceedings. In sexual offence cases, digital evidence may be collected from phones, laptops or other devices or from other sources, such as CCTV footage. It can be collected from victim-complainants, witnesses and suspects/ defendants. This evidence may be used by the prosecution to corroborate the accounts of victim-survivors or show there was no consent. It can also be used by the defence to suggest that there may have been consent or to challenge the reliability of a complainant's account.¹

Why review digital evidence rules and practices?

The growing use of digital evidence raises important questions about how to balance:

¹ Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025), 4 <https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

- the privacy, safety and wellbeing of victim-survivors
- the need for thorough police investigations
- defendants' rights to a fair trial.

The collection, disclosure and use of digital evidence in sexual violence cases can significantly impact victim-survivors' privacy, safety and well-being. It can also create operational challenges for justice institutions. The increasing volume, scale and permanence of digital data has challenged how legal frameworks and investigatory practices operate. For example, some sources indicate that the typical smartphone user stores approximately 2,795 photos on their phone² alongside years of private messages, emails and other records.

Challenges can occur during investigations when police officers must determine the appropriate scope of digital evidence that needs to be collected to investigate and prosecute a case, while also recognising the complainant's privacy interests. They can also arise throughout cases, where the defence may seek further disclosure of digital evidence, and at trial, when the prosecution and defence might use digital evidence to support their case.

In 2022, the Women's Safety and Justice Taskforce released its report, *Hear Her Voice – Report 2 – Women and girls' experiences across the criminal justice system*. The Taskforce highlighted the need to reform digital evidence practices in Queensland.³ The Taskforce heard that the practices and technology used to download evidence from mobile phones and other personal devices had not kept pace with rapid changes to the volume, nature, and sensitivity of information stored on a victim's mobile phone. It also heard that victim-survivors were experiencing confusion and upset due to a lack of transparency about what was being downloaded and how it would be used.

The Taskforce made recommendations about this. One recommendation was that the Office of the Director of Public Prosecutions include specific information on digital evidence collection and disclosure within its guidelines. Another was that the Queensland Police Service ensure it has a mechanism to enable partial (rather than full) downloads of a victim-survivor's phone and other devices to protect their privacy. These recommendations are set out in full in Annex B.

While some progress has been made towards these recommendations, challenges remain, and there has been little research on the practices and impacts of digital evidence collection, disclosure and use in sexual offence cases in Queensland. A comprehensive review is required to build a deeper understanding of these issues and develop evidence-based, practical recommendations to improve practices.

² Grant Scott, *How Many Images are Stored on your Phone?* (The United Nations of Photography, 2026) <<https://unitednationsofphotography.com/2026/03/18/how-many-images-are-stored-on-your-phone>>

³ Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022), 235 <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsjt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>>

What are the rules about digital evidence?

There are no specific laws or regulations that deal exclusively with the collection, handling, disclosure and use of digital evidence in criminal investigations and proceedings in Queensland. Both the police and prosecutors have recently developed (or are developing) new operational policies to guide their practices.

Criminal procedure rules apply to how evidence, including digital evidence, is collected, used and disclosed. These rules are contained in evidence law (the *Evidence Act 1977* and common law) and the *Criminal Code Act 1899*, along with operational manuals of the Queensland Police Service (QPS) and the guidelines of the Office of the Director of Public Prosecutions (ODPP).

Human rights and privacy laws protect individuals' right to privacy and personal information against unlawful or arbitrary interference or limitation by government departments and entities. Human rights law also protects the right to a fair trial and protects certain rights of an accused person in criminal proceedings.

Because there are no specific rules that apply to digital evidence, justice system stakeholders may have differing interpretations of how existing legal frameworks apply to digital evidence. This has led to a range of different practices developing, meaning victims and defendants have different experiences depending on where they are and who is managing their case.

Digital evidence collection during police investigations

The QPS investigates sexual offence cases. The QPS Operational Procedures Manual (the Manual) provides guidance for police about how to conduct investigations. The Manual includes general guidance relevant to digital evidence, as well as specific guidance for investigating sexual offences.

Police officers are required to complete thorough investigations using a trauma-informed approach. This means supporting victims, understanding the effects of trauma on a person's thoughts, beliefs and behaviour, and responding with care, safety, and respect.⁴ Police investigations should be carried out as completely as possible.⁵ In order to get the evidence to prove that the crime has been committed, police can seize and safeguard evidence including photographs, recordings (audio or video) or film. This includes digital evidence from a phone or computer.

There are special procedures for the investigation of sexual offences.⁶ Some of these procedures are to support victims, and include, for example, referral to sexual assault services.

⁴ Queensland Police Service, *Operational Procedures Manual* (Issue 112.2 Public Edition, Effective 2 September 2026), para. 2.5.1 <<https://www.police.qld.gov.au/sites/default/files/2026-09/Operational-Procedures-Manual.pdf>>

⁵ Ibid.

⁶ Ibid, para. 2.6.3.

However, there is no consistent guidance on how digital evidence should be collected and managed in sexual offence cases. Various practices have been adopted across different police stations and districts in Queensland.

Breakout Box 1

How police collect digital evidence from victims in Queensland

Digital evidence can be collected from devices, like phones and computers, in a range of different ways by QPS:

- **Full file download:** The entire contents of a device are downloaded using specialised software. This means that both relevant and irrelevant information to a criminal investigation, including private or sensitive information, is obtained by police. This software collects metadata (e.g. information on locations, call or message logs, dates and times) as well as files (potentially including deleted files) which paint a full and complete picture.
- **Partial download:** Other software enables more targeted downloads that can be restricted to particular file types, folders, or date ranges. This software collects metadata as well as files, but the range can be restricted. However, it does not always capture all metadata.
- **Secondary capture:** Information on devices can be captured by taking screenshots or video footage of specific relevant messages, images or posts. This can be done using police body worn cameras, or the officer or victim taking screenshots.
- **Victims provide the evidence:** Police may direct or invite victims to upload screenshots or other digital evidence to evidence.com or email it directly to the investigation officer.

Both secondary capture and victim provision do not enable some key data, such as time stamps, location data or call log information to be recorded. The resulting evidence is selective and may give rise to arguments that it presents an incomplete picture.

Providing digital evidence to the defence

Disclosure is the process by which evidence, including digital evidence, must be shared by police and prosecutors to the defence. The rules about disclosure are contained in the Criminal Code.⁷

Disclosure rules are very important to ensure an accused person has all the information they need to be able to fairly defend themselves and get a fair trial or hearing. A fair hearing is a human right – a person charged with a criminal offence has the right to have the charge

⁷ *Criminal Code Act 1899* (Qld) (*'Criminal Code'*), Chapter 62 (Division 3 relates to disclosure by the prosecution).

decided by a competent, independent and impartial court or tribunal after a fair and public hearing.⁸ They also have the right to be informed promptly and in detail about the nature and the reason for the charge.⁹

Prosecutors are obliged to ensure that criminal cases are conducted fairly with the single aim of determining and establishing the truth.¹⁰ This means that they must give ongoing, full and early disclosure of all the evidence that they will rely on at trial – including any digital evidence. With some limited exceptions, prosecutors must disclose all things in their possession that would tend to help the case of the accused person.¹¹ This is a broader test than the test of what is relevant and therefore admissible as evidence in a trial.

If the defence requests it, the prosecution must disclose evidence in its possession that is exculpatory.¹² Exculpatory evidence is evidence that helps the case of the accused person which means it is evidence that might cause the jury to entertain a reasonable doubt about the accused person's guilt.¹³ Examples of exculpatory evidence include evidence that casts doubt on a complainant's or other witnesses' credibility or reliability.¹⁴ This could include evidence that suggests a motive to lie, mental instability or inconsistencies in statements that may indicate confusion or mistake.

There are limits on what the prosecution needs to disclose to the defence.¹⁵ Aside from general evidence rules that require evidence to be relevant to the facts of the case (either directly or indirectly), prosecutors do not have to disclose 'sensitive evidence'.¹⁶ This includes anything displaying an image of a person that is obscene or indecent and that would interfere with a person's privacy.¹⁷ This applies to some digital evidence, including for example, intimate videos and pictures. However, it may be necessary for the defence to view this evidence if it is for a legitimate purpose connected to the case.¹⁸ For example, this may occur where the alleged sexual offence was recorded and the recording may provide evidence of consent or lack of consent.

The Office of the Director of Public Prosecutions (ODPP) usually prosecutes sexual offence cases. The Director's Guidelines reiterate the principles contained in the law – that prosecutors have a duty to make full and early disclosure to the defence and must disclose exculpatory evidence.¹⁹ If the prosecution knows the complainant or a witness has made a statement inconsistent with their previous evidence, the prosecutor must tell the defence and provide them with the statement.²⁰ This is relevant to digital evidence as it means that if the

⁸ *Human Rights Act 2019*, s 31.

⁹ *Human Rights Act 2019*, s 32(2)(a).

¹⁰ *Criminal Code* (n 7), s 590AB(1).

¹¹ *Criminal Code* (n 7), s 590AB(2) ('in possession of the prosecution' is defined in s 590AE).

¹² *Criminal Code* (n 7), s 590AJ(2)(c).

¹³ *Criminal Code* (n 7), s 590AD.

¹⁴ *R v Rollason & Jenkins; ex parte Attorney-General* [2007] QCA 65 [17].

¹⁵ *Criminal Code* (n 7), Chapter 62, subdivision D.

¹⁶ Sensitive evidence is defined in *Criminal Code* (n 7), s 590AF.

¹⁷ *Criminal Code* (n 7), Section 590AO.

¹⁸ *Criminal Code* (n 7), Section 590AO(2).

¹⁹ State of Queensland, Department of Justice, *Director's Guidelines* (30 June 2024), clause 29 <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/14407a5c-e40f-4301-b64c-28ce0dc94ba5/director-public-prosecutions-guidelines.pdf?ETag=2d672b29db01aedd0791fc9b5dcce02b>>

²⁰ *Ibid*, clause 29(4).

prosecution finds messages or other evidence on a victim's phone that are inconsistent with what they have said, it will need to be provided to the defence.

The Guidelines also state that, in sexual offence cases, prosecutors have a duty to "assist in protecting a victim's privacy as far as possible and to take into account the victim's welfare at all appropriate stages".²¹

In some circumstances, a victim may be issued with a legal document requesting that they produce their phone or device or appear before the court. These documents are called summonses or subpoenas.²² In these circumstances, the prosecutor may not always be aware of the request, and the victim will be required to seek their own legal advice about how to respond. This can be difficult for victims of sexual violence offences, as they may not have the support and advice readily available to them to navigate this process.

Public entities, including QPS and the ODPP, are required to act and make decisions in a way that is compatible with human rights. Privacy is a human right. A person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.²³ There are also safeguards for the handling of personal information in the public sector contained in privacy laws. Government agencies must comply with a series of privacy principles.²⁴

There is a tension between the right to a fair trial, which requires disclosure for procedural fairness, versus protecting the privacy of victim-survivors and others. To complicate things further, current disclosure rules to manage this tension were developed before digital evidence became a feature of many sexual offence cases. Applying current disclosure rules to the volume and type of data contained on personal devices, along with technical limitations in extracting only selective information, has created challenges for police, prosecutors and victim-survivors.

²¹ Ibid, clause 25(e).

²² In the Magistrates Court this is a summons and in the District or Supreme Court, this is a subpoena. For the Magistrates Court, see *Justices Act 1889* (Qld), s 78 and s 86. For the District and Supreme Courts, see *Practice Rules 1999* (Qld), see s 29.

²³ *Human Rights Act 2019* (Qld), s 25(a).

²⁴ *Information Privacy Act 2009* (Qld), s 27.

Breakout Box 2

Protected Counselling Communications – an exception to disclosure rules

In Queensland, there are laws that protect some forms of sensitive evidence being disclosed to the defence. These laws are an exception to the general disclosure obligations.

In 2017, changes were made to the *Evidence Act 1977* to protect counselling communications from being disclosed to the defence in criminal cases involving sexual assaults.²⁵ Counselling communications are oral or written communications made in confidence between a victim-survivor and a counsellor. The provisions provide absolute privilege in preliminary proceedings and a qualified privilege in other proceedings. This means that a court order is needed to subpoena the counselling records and a separate court order is needed later in the process to use the counselling records as evidence at a trial.²⁶ In making its decision, the court should consider whether the communications have substantial probative value (which means the evidence is useful to the case); what other evidence is available; and the public interest in protecting the confidentiality of the communications and the victim-survivor from harm.²⁷ The counsellor and counselled person can oppose the release of counselling notes at these court hearings.²⁸

These provisions aim to balance a victim-survivor's right to privacy with a defendant's right to a fair trial. They also aim to ensure victim-survivors are not discouraged from seeking help through fear of having their counselling sessions disclosed in court. There are mixed views about how these protections work. Some victim-survivor advocates argue that the rules do not provide enough protection, that legal arguments are traumatising for victims, and that applications lengthen cases. Some defence lawyers agree that the rules lengthen cases because of legal argument and argue that they prevent access to justice due to the potential to block the defence from relevant information.

How digital evidence can be used in court proceedings

Digital evidence can be used to support the prosecution of sexual offences by showing consistency with the complainant's account, for example the complainant told a friend about the offending after it occurred. It can also be used by the defence to challenge the

²⁵ *Evidence Act 1977* (Qld) ('*Evidence Act*'), Division 2A.

²⁶ *Evidence Act* (n 25), s 14G.

²⁷ *Evidence Act* (n 25), s 14H.

²⁸ *Evidence Act* (n 25), s 14L.

complainant's account or credibility to establish reasonable doubt. For example, this could include making them appear unsure, inconsistent, untrustworthy, vindictive, or unstable.

Digital evidence may come up in court proceedings. This can occur:

- at a criminal trial
- at a committal hearing (this occurs before the trial to examine whether the prosecution has enough of a case to go to trial)
- at procedural hearings along the way (these may involve arguments between the prosecution and the defence about what digital evidence should be collected and disclosed).²⁹

Arguments about whether digital evidence should be disclosed are heard at directions hearings.³⁰ Victims don't need to go to these hearings. However, the decisions made at them can affect victims. For example, a decision might be made to disclose more evidence from a victim's device to the defence, or a decision might be made to request further digital evidence from a victim, like a more comprehensive download of their phone.

If there are serious failures of the police to collect or retain relevant evidence, the defence can apply to the court to have the prosecution discontinued or 'stayed'.³¹ This has happened where police have failed to take downloads of phones³² or where they have deleted downloads of phones because they did not think the contents were relevant.³³ This is why it is important that digital evidence collection and disclosure is done correctly and fairly.

The *Evidence Act 1977* sets out rules of evidence in Queensland.³⁴ These rules govern how facts are proved in a legal proceeding when a case goes to court and regulate how evidence is gathered and presented at a trial. The *Evidence Act 1977* does not include provisions explicitly related to digital evidence.

For (digital) evidence to be allowed in a criminal proceeding, it must be relevant to the facts. Evidence will be admissible if it either directly or indirectly affects the assessment of a fact.³⁵ However, there are rules that exclude certain types of evidence in criminal cases. Special rules apply to limit the use of evidence relating to a complainant's prior sexual experiences (see **Breakout Box 3: Restrictions on prior sexual experience evidence** on page 23).

Special rules were also introduced in 2024³⁶ to counter the influence of rape myths and stereotypes about victim-survivors in sexual offence trials. Experts can now be called to give general evidence to help courts understand complainant behaviours that may seem unusual or contradict common assumptions, such as staying in touch with an offender, or delayed reporting. Judges can also give directions to juries about counterintuitive responses to

²⁹ *Criminal Code* (n 7), s 590AA.

³⁰ *Justices Act 1886* (Qld), s 83(5)(aa), for directions hearings in the Magistrates Court and *Criminal Code* (n 7), s 83(5)(aa), for pre-trial directions and rulings in the District and Supreme Courts.

³¹ *Criminal Code* (n 7), s 590AA(2)(a).

³² *R v KM* [2026] QDC 150.

³³ *R v Ansell & Bradbury* [2022] WDC 148.

³⁴ Common law also applies.

³⁵ *R v LBE* [2024] QCA 53.

³⁶ *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld), amending the *Evidence Act* (n 25).

sexual violence in recognition that there is no single "typical" victim response to sexual violence³⁷ (see **Breakout Box 4: Countering myths and stereotypes about sexual violence - Jury directions and expert evidence in sexual violence cases** on page 24).

Breakout Box 3

Restrictions on prior sexual experience evidence

In sexual offence trials, there are restrictions on admitting evidence of a complainant's sexual experience with the defendant or with other persons. Admitting evidence or questioning a complainant on their 'sexual reputation' is prohibited.³⁸ Asking the complainant questions about their prior sexual history with the defendant can only be done with the permission of the court.³⁹ In deciding whether to grant permission, the court must consider:

- whether the probative value of the evidence outweighs the distress, humiliation and embarrassment that the complainant may feel⁴⁰
- the risk of the evidence arousing discrimination or bias among the jury
- the complainant's privacy and dignity
- the right of the defendant to fully defend against the charge.⁴¹

Despite this rule, it is often the case that evidence that suggests a sexual interest between the victim and the defendant is not typically subject to this rule. This is due to the expansive conception of relevant evidence.⁴²

³⁷ *Evidence Act 1977* (n 25), Part 6B.

³⁸ *Criminal Code* (n 7), s 103ZG.

³⁹ *Criminal Code* (n 7), s 103ZH.

⁴⁰ *Criminal Code* (n 7), s 103ZM(a).

⁴¹ *Criminal Code* (n 7), s 103ZM(b) – (d).

⁴² Julia Quilter, Luke McNamara, Melissa Porter and Grace Bowles 'Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?' (2026) *Crime, Media, Culture: An International Journal*, 1 – 20, 11.

Breakout Box 4

Countering myths and stereotypes about sexual violence - Jury directions and expert evidence in sexual violence cases

New laws were introduced in 2024 to reduce the influence of rape myths and damaging stereotypes about victim-survivors in sexual offence trials.⁴³

Expert evidence: Experts can be called to give general evidence in sexual offence cases to help courts understand complainant behaviours that may seem unusual or contradict common assumptions. For example, they can explain how social, psychological, and cultural factors may affect the behaviours of a complainant, like delayed reporting or staying in contact with the alleged offender.⁴⁴ In February 2025, a pilot Sexual Offence Expert Evidence Panel was introduced in Brisbane and Townsville. The Panel provides free expert evidence in relevant sexual offence cases.

Jury directions: In criminal trials before a jury, the trial judge is responsible for directing the jury on the law and summarising the evidence where necessary. The jury is responsible for deciding the facts and reaching a verdict based only on the evidence admitted at trial. Judges are allowed to make certain directions to juries in cases that involve a sexual offence⁴⁵ to limit the influence of rape myths and stereotypes about victim-survivors in jury deliberations. This includes directions:

- that people respond to non-consensual sexual activity in many ways and that there is no 'normal' way to respond
- that trauma affects people differently and some may not show obvious signs of distress or trauma
- the behaviour or appearance of a person (for example, what they wore, whether they had consumed alcohol, or whether they are a sex worker) does not mean that they consented to sexual activity
- that people may remember different details of a sexual offence and trauma may affect memory
- delay in reporting a sexual offence does not, in itself, indicate that the allegation is false
- that carrying out a relationship with or otherwise communicating with a defendant after a sexual offence does not mean that the allegation is false.⁴⁶

⁴³ *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld).

⁴⁴ *Evidence Act 1977* (n 25), s 103ZZGB.

⁴⁵ *Evidence Act 1977* (n 25), Part 6B.

⁴⁶ *Evidence Act 1977* (n 25), Part 6B, Division 3, Sub-division 4.

Part 1

How do digital evidence practices impact victim-survivors in sexual offence cases?

This section may be particularly relevant for victim-survivors and the people who support them. However, anyone can comment on these questions with their perspectives.

The way digital evidence is collected, disclosed and used in sexual offence cases can have significant impacts on victim-survivors' right to privacy and on their safety and wellbeing. Some victim-survivors may be so concerned about the intrusiveness of digital evidence collection and disclosure that they choose not to report sexual violence to police, or to withdraw from the criminal justice process. This is particularly concerning, given the generally low reporting rates in sexual offence cases.⁴⁷

In 2021-22, the Women's Safety and Justice Taskforce heard reports that victim-survivors of sexual violence in Queensland experience confusion and upset when their phones are downloaded, due to a lack of transparency about what is being downloaded and how it will be used. The Taskforce heard that victim-survivors were concerned about the disclosure of digital evidence to the defence, the use of digital evidence to discredit them, and suggestions that they had something to hide if they were reluctant to provide their phone or other devices.⁴⁸

Recent Australian research explored problems with access to and use of sexual assault victims' personal data, including counselling and digital communications. The report found that victims were questioned in court about their personal information, resulting in experiences of retraumatisation, violation and fear.⁴⁹

These concerns have also been identified in research in other locations. A study by the London Victims' Commissioner in 2021 found that the majority of victims who responded to a survey had concerns about the police request for technology. 37 out of 57 respondents reported that the police had made a formal request for their digital evidence, and 31

⁴⁷ The Australian Bureau of Statistics' Personal Safety Survey carried out in 2021/22 found that only 7.7% of women who experienced sexual assault by a male in the 10 years prior to the survey contacted the police about the most recent incident: Australian Bureau of Statistics, *Personal Safety Australia 2021/22* (15 March 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>

⁴⁸ Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022), 235 <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsijt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>>

⁴⁹ Mary Iliadis, Andi Brown, Zarina Vakhitova, Jessica Woolley, Delanie Woodlock and Michael Salter, *Protecting Sexual Assault Victims' Private Records in Criminal Trials through Independent Legal Representation*, Report to the Criminology Research Advisory Council (Australian Institute of Criminology, CRF 04/22-23, July 2026, 61 – 2 <https://www.aic.gov.au/sites/default/files/2026-07/crf_04_22-23_protecting_sexual_assault_victims_private_records_in_criminal_trials.pdf>

perceived the request to be intrusive.⁵⁰ Victim-survivors' concerns were related to potential privacy breaches and fear of who may access the material, as well as questions surrounding how the content would be used during a trial.⁵¹

1.1 Impacts on victims' right to privacy

All people, including victim-survivors of sexual offences, have the right to privacy. This includes protection against unlawful or arbitrary interference with their privacy, family, home or correspondence.⁵² Privacy rights can be limited by processes to collect, disclose and use digital evidence.

Stakeholder insights indicate that victim-survivors may experience significant distress and trauma when they fear that police or defendants may be able to access unrelated personal information during an investigation. This is exacerbated when limits to the evidence collection are not clearly communicated to victim-survivors.

Victim-survivors may have information on their phones that they do not wish to be shared with police, prosecutors or the defence. They may be particularly concerned about sensitive information being exposed, including information about healthcare and reproductive health decisions, financial information, drug use and sex work. Victim-survivors may also be concerned that intimate images or videos may be downloaded and viewed by an unknown number of people. Victim-survivors may also fear that police could access information that may expose them to investigation for unrelated offences.

The prospect that this information will be viewed by others can result in decisions not to report sexual violence or to disengage from criminal processes.

The UK has grappled with how to balance the right to privacy of victim-survivors in sexual offence cases with the requirement to obtain digital evidence. In 2022, the UK government introduced specific legal provisions on the extraction of evidence from digital devices. These provisions aim to ensure that evidence is only obtained when it is necessary and proportionate to detecting and investigating a crime.⁵³ The UK also introduced information notices and consent forms intended to support informed decision-making about the extraction of information from digital devices.⁵⁴ However, the process has attracted criticism on the basis that consent may not always be freely given and may be difficult to reconcile

⁵⁰ Daniela Wunsch, Dr Tom Davies and Barry Charleton, *The London Rape Review 2021: An examination of cases from 2017 to 2019 with a focus on victim technology* (Mayor of London, Office for Policing and Crime Evidence and Insight, December 2021) 28 <https://www.london.gov.uk/sites/default/files/final_rr_victimtech_61221.pdf>

⁵¹ Ibid.

⁵² See *Human Rights Act 2019* (Qld), s 25 for the right to privacy. Information collection and handling processes for personal and sensitive information should be considered in the review in terms of compliance with the Queensland Privacy Principles contained in the *Information Privacy Act 2009* (Qld).

⁵³ *Policing, Crime, Sentencing and Courts Act 2022* (England and Wales), Chapter 3: 'Extraction of information from electronic devices.'

⁵⁴ *Policing, Crime, Sentencing and Courts Act 2022* (England and Wales), s 39, and Government of the United Kingdom, Home Office, *Extraction of Information from Electronic Devices: Code of Practice* (October 2022), Part 4 <<https://www.gov.uk/government/consultations/extraction-of-information-from-electronic-devices-code-of-practice/extraction-of-information-from-electronic-devices-code-of-practice-accessible>>

with privacy rights, due to the coercive factor that an investigation may not occur if the victim does not 'consent' to the collection of the digital information.⁵⁵

Question prompts – Right to privacy

- At what stage of digital evidence collection, disclosure, and use are victim-survivors informed about any limitations on their privacy rights? How are they informed? Who informs them?
- How is a victim-survivor's consent for the collection of digital evidence obtained and recorded?
- What types of information from their device (for example, apps, photos, health information, financial information, location data or other personal content) are victim-survivors particularly concerned about sharing with police, prosecutors and/or the defence?

1.2 Impacts on victim-survivors' safety and wellbeing

Stakeholders indicate that the collection of digital evidence can affect a victim-survivor's safety and wellbeing. This can occur in at least three ways:

- Providing a phone or device to police and being without it for a period of time can affect a victim-survivor's safety and wellbeing. In a practical sense, their phone may be needed to stay in touch with contacts and access support networks.
- The prospect of deeply personal information being viewed by justice system stakeholders can create feelings of fear, distress and shame, noting that it is increasingly common for people to have intimate images of themselves and others on their device. This is exacerbated where there is distrust of police.
- Providing digital evidence can exacerbate or escalate violence if the perpetrator becomes aware that digital evidence is being collected (for example, snapchat messages being screen-shotted). There are also concerns that disclosing digital evidence to the defence may lead to it being misused by perpetrators to continue their abuse or harassment of a victim-survivor.

Research conducted in the UK and Canada identified some of these challenges. In a study by the London Victims' Commissioner involving a survey of victim-survivors, the majority felt that handing over their device to police would cause them practical difficulties.⁵⁶ These

⁵⁵ Big Brother Watch, *Digital Strip Searches: The Police's Data Investigations of Victims* (July 2019), 24 – 29 <<https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>>

⁵⁶ Daniela Wunsch, Dr Tom Davies and Barry Charleton, *The London Rape Review 2021: An examination of cases from 2017 to 2019 with a focus on victim technology* (Mayor of London, Office for Policing and Crime Evidence and Insight, December 2021) 28 <https://www.london.gov.uk/sites/default/files/final_rr_victimtech_61221.pdf>

practical difficulties were exacerbated when devices were held for lengthy periods.⁵⁷ Some reported feeling unsafe handing over their phones, and concerns were expressed about how the evidence would be used in later stages of the criminal justice process.⁵⁸ Police officers involved in research in a Canadian study reported that victim-survivors are typically very reluctant to give up their phones for long periods of time – it is a challenging time, and phones are a lifeline to connect victim-survivors to friends and family.⁵⁹ This was reportedly a more acute matter for teenage girls, some of whom did not want to go through with the case if it meant giving up their phones.⁶⁰

QPS officers are often aware of the safety and practical implications of victims being without their phones. Practices have evolved to minimise the time victims are without their phone, however the available processes and technologies will depend on a range of factors, including regional or metro location. The review has heard that in some cases, victims' phones need to be sent away for download and analysis and this can take weeks depending on the demand for services.

Question prompts – Safety and wellbeing

- How long are victim-survivors without their device during the digital evidence collection process? How does this differ by location?
- What are the impacts of being without a device on a victim-survivor's wellbeing, safety and access to support networks?
- How is a victim-survivor's safety and wellbeing addressed in digital evidence collection and other processes, particularly where the defendant may come to know that the evidence is being collected?

1.3 Access to support for victim-survivors

Early insights indicate that victim-survivors in Queensland are not always offered the right support to navigate the digital evidence collection process. Gaps have been identified in:

- early connection to sexual assault support services providers
- availability of specialist or well-informed police officers
- guidance and written information about digital evidence processes, including how victims' rights will be protected

⁵⁷ Ibid, 29.

⁵⁸ Ibid, 28.

⁵⁹ Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 13.

⁶⁰ Ibid.

- provision of independent legal advice, so that victim-survivors understand the potential ramifications of providing digital evidence, including evidence that may implicate them in unrelated crimes.

Some sexual assault support services have described the range of support they may provide to victim-survivors including:

- assisting them to gather and retain digital evidence to provide to police
- assistance to obtain a new phone where needed
- providing trauma-informed guidance about digital evidence collection to:
 - help victim-survivors make decisions about whether and how to provide digital evidence
 - help them navigate concerns around scope, necessity and intrusiveness of digital evidence requests.

The Australian Institute of Criminology recently published a study examining the protection of private information of sexual assault victim-survivors in criminal prosecutions (digital communications, counselling and medical records and information relating to prior sexual experiences).⁶¹ The study found that trauma-informed, independent legal representation can help enforce protections and empower victim-survivors by challenging applications to access private information, including digital evidence. Access to independent legal representatives can also help at the police reporting stage, as the victim-survivor can access legal advice about reporting options and consequences of certain disclosures.⁶²

Question prompts – Support to victims

- What support and guidance is available to victim-survivors in the criminal justice system during the process of digital evidence collection?
- What support and guidance is available to victims from external support service providers during the process of digital evidence collection?
- If a victim-survivor has had to wait to access support services, has this impacted their decision to provide digital evidence or move forward with the case?

⁶¹ Mary Iliadis, Andi Brown, Zarina Vakhitova, Jessica Woolley, Delanie Woodlock and Michael Salter, *Protecting Sexual Assault Victims' Private Records in Criminal Trials through Independent Legal Representation*, Report to the Criminology Research Advisory Council (Australian Institute of Criminology, CRF 04/22-23, July 2026, 61 – 2 <https://www.aic.gov.au/sites/default/files/2026-07/crf_04_22-23_protecting_sexual_assault_victims_private_records_in_criminal_trials.pdf>

⁶² Ibid.

1.4 Particularly impacted groups of victims

Stakeholders have raised concerns about the particular impacts of digital evidence practices on victim-survivors who are:

- young people
- older people
- Aboriginal and/ or Torres Strait Islander people
- people with a disability
- sex workers
- from culturally and linguistically diverse backgrounds
- in domestic or family violence situations
- in remote communities
- seeking abortion or sexual and reproductive healthcare (particularly where pregnancy is the result of sexual violence and/or reproductive coercion and abuse).

Question prompts – Particularly impacted victim-survivors

- Which cohorts of victims are particularly impacted by digital evidence collection practices?
- What are those impacts?
- Do barriers to accessing support services impact the decisions some victims make about providing digital evidence?

1.5 Impacts on the victim-survivor's willingness to proceed

Stakeholders have told the review that broad or intrusive digital evidence requests can significantly deter victim-survivors from reporting sexual offences or continuing to participate in prosecutions.

This is particularly the case where a full file download is requested and where the scope and purpose of the evidence are not clearly communicated to victim-survivors. These concerns may be exacerbated when requests for digital evidence are presented as mandatory or as 'not a choice'. Conversely, when victim-survivors have a support worker present to talk through alternative options (e.g. taking screenshots), they may have more assurance that only relevant information will be accessed, increasing their confidence to report to police.

Studies indicate that concerns about providing digital evidence can create barriers to reporting sexual offences,⁶³ and that a refusal to provide digital evidence may affect whether some matters proceed.⁶⁴ However, robust evidence linking the collection and use of digital evidence to case outcomes is lacking.⁶⁵

The Australian Law Reform Commission, in its 2025 report *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*, notes that delays (which can be caused in investigations involving large volumes of digital evidence) are a driver of attrition in sexual offence matters.⁶⁶

Question prompts – Case attrition

- Why do some victim-survivors choose not to proceed after being asked to provide digital evidence?
- Where a victim-survivor is unwilling to provide digital evidence through one collection method (e.g. a full file download), how often are alternatives given (e.g. partial download or secondary capture)? Does that influence a victim-survivor's willingness to proceed?

⁶³ Big Brother Watch, *Digital Strip Searches: The Police's Data Investigations of Victims* (July 2019), 41 – 45 <<https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>>

⁶⁴ Silk (2023), in Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025), 8 <https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

⁶⁵ The London Victims' Commissioner's review found that the seizure of the suspect's technology and existence of other digital evidence made victim withdrawal less likely, though a victim's refusal to hand over technology made victim withdrawal significantly more likely. However, it notes that victim technology requests are best seen as an indicator of the overall evidential strength of a case. See Daniela Wunsch, Dr Tom Davies and Barry Charleton, *The London Rape Review 2021: An examination of cases from 2017 to 2019 with a focus on victim technology* (Mayor of London, Office for Policing and Crime Evidence and Insight, December 2021) 35 <https://www.london.gov.uk/sites/default/files/final_rr_victimtech_61221.pdf>

⁶⁶ Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143, January 2025), 156 <<https://www.alrc.gov.au/wp-content/uploads/2025/02/JRSV-Final-Report-Book-for-Web-final-20250211.pdf>>

Part 2

How does digital evidence impact legal processes in sexual offence cases?

The use of digital evidence has increased substantially in recent years.⁶⁷ Stakeholders indicate that digital evidence is a feature of most sexual offence cases in Queensland, particularly where the victim and defendant know one another.

This review seeks to understand the laws, practices, processes, systems and technologies used by police, prosecutors, courts and defence lawyers to collect, disclose and use digital evidence in sexual offence cases.

The review also seeks to understand how the growing use of digital evidence is affecting justice system processes and institutional capacity. The Australian Law Reform Commission found in 2025 that inadequate resourcing, combined with the demands associated with digital evidence, can cause delays during police investigations (for example, due to backlogs in the examination of electronic devices); and during committal and trial processes (due to ongoing and at times, late, disclosure of large volumes of evidence).⁶⁸

There are several reasons for this:

- There is more digital evidence available than ever before, and reviewing and assessing that evidence requires significant time and resources.
- Ongoing disclosure obligations and rules governing summonses and subpoenas may increase disputes about the scope of disclosure and other requests for evidence, contributing to pre-trial delays.

⁶⁷ Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022), 238 – 239 <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsjt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>>; Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 47.

<<https://library.bsl.org.au/jspui/bitstream/1/4080/1/The%20role%20of%20emerging%20communication%20technologies...Bluett-Boyd,%20Nicole.pdf>> See also, Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology* (This study involved 70 qualitative interviews and two focus group discussions with police officers in 10 sexual crimes units across Canada); Colin Watson and Laura Huey, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427 (This study involved in-depth interviews with 14 police officers in Canada).

⁶⁸ Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143, January 2025), 157 <<https://www.alrc.gov.au/wp-content/uploads/2025/02/JRSV-Final-Report-Book-for-Web-final-20250211.pdf>>

- The speed at which technology is evolving means that processes, tools, technologies and systems for the collection and disclosure of digital evidence require constant upgrade and investment.
- Justice system stakeholders, including police and legal practitioners, require new skills and knowledge to adapt their practices and use emerging technologies effectively.

2.1 Increase in volume of digital evidence

Justice system stakeholders have noted the challenges associated with increasing volumes of digital evidence, with large-scale digital extractions and ongoing disclosure obligations creating pressure on staff and office resources and timeframes.

While there has not been any research published in Queensland, studies in the UK and Canada have found that digital evidence is an element in many, if not most, sexual offence cases.⁶⁹ Two studies involving interviews with police officers in Canada heard that digital evidence is now an element in almost all sexual offence matters.⁷⁰ One of these studies heard that not only has the volume of digital evidence increased, the forms of technology from which evidence can be captured had also expanded.⁷¹

Research in the UK and Canada has found that the need to collect and analyse digital evidence is having a significant impact on police workload.⁷² One UK study from 2021 found there was a large backlog of digital devices (20,000 devices) awaiting examination in England.⁷³ Another UK report from 2019 estimated that ‘excessive’ digital data collection can add up to 18 months to the lifecycle of a criminal case.⁷⁴

Initial insights from Queensland justice system stakeholders indicate that the volume of digital evidence has led to the need to triage cases to ensure a more immediate response to

⁶⁹ In 2020 the Victims’ Commissioner for England and Wales conducted a survey with 491 victim-survivors of sexual offences. Police requested access to digital devices from two thirds of the survey respondents. It should be noted that, because the survey respondents elected to do the survey, the sample may not be representative of all victim-survivors and their cases: Victims’ Commissioner for England and Wales, *Rape Survivors and the Criminal Justice System* (October 2020), 27 <https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/6/2021/12/Rape-Survivors-and-the-CJS_FINAL-v2.pdf>

⁷⁰ Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, ‘This Isn’t Your Father’s Police Force: Digital Evidence in Sexual Assault Investigations’ (2019) 52(4) *Australian & New Zealand Journal of Criminology*; Colin Watson and Laura Huey, ‘Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)’ (2020) 22(4) *International Journal of Police Science & Management*, 419–427.

⁷¹ Colin Watson and Laura Huey, ‘Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)’ (2020) 22(4) *International Journal of Police Science & Management*, 419–427, 421.

⁷² Ibid, 421 – 422; Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025) <https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

⁷³ George and Ferguson (2021), in Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025) 5 <https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

⁷⁴ Big Brother Watch, *Digital Strip Searches: The Police’s Data Investigations of Victims* (July 2019), 18 – 19 <<https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>>

cases where there are risks of further offending and harm. Some prosecutors indicate that digital evidence is often one of the last additions to a complete brief of evidence, due to the time taken to collect, identify and analyse it.

Question prompts – Volume of digital evidence

- To what extent has the use of digital evidence in sexual offence cases increased over the past 10 years? Roughly what proportion of sexual offence cases now involve digital evidence?
- What delays are caused by digital evidence processes in sexual offence cases?
- Do delays in data collection and analysis place the victim-survivor at further risk of harm? If so, what mechanisms are in place to mitigate further harm occurring?
- What adjustments, improvements, investments or developments have been required to assist prosecution and defence stakeholders to manage increasing volumes of digital evidence? What more could be done to improve things?

2.2 Challenges in investigation, prosecution and defence practices

Given the substantial increase in the use of digital evidence in sexual offence cases, this review seeks to understand how practices in the investigation, prosecution and defence of sexual offence cases have adapted. This includes whether laws, policies, processes and practices relating to evidence collection, disclosure and use remain fit for purpose, and what adaptations have been made, if any, to these practices.

While general criminal and evidence laws govern the collection, disclosure and use of digital evidence in sexual offence cases the lack of tailored laws or policies that apply specifically to digital evidence has resulted in variations and inconsistencies in practices across different locations, institutions and professionals. This is summarised in the **Background section, What are the rules about digital evidence?** at page 17. The review seeks to understand variations in practice across Queensland, between agencies and over time.

2.2.1 Digital evidence collection

Stakeholders indicate that QPS collects digital evidence from devices such as phones and computers in a range of ways (see **Breakout Box 1: How police collect digital evidence from victims in Queensland** on page 18 for more information):

- Full device extraction using forensic software
- Partial extraction using forensic software
- Secondary capture through screenshots or video footage using police body-worn cameras

- Provision of evidence by victims.

The type of download done or capture taken depends on various factors, including:

- the process understood by the police officer investigating the case
- the technology that is available locally
- the type of technology that will work on a particular phone or device
- the evidentiary needs of the case.

Some police districts in Queensland have moved to a centralised system for digital evidence collection from victims' phones. In these districts, resources are centralised in specialised hubs, with the aim of creating a more efficient process. These districts have also adopted an approval process for full phone extractions to ensure that partial extractions are the preferred option, with full extractions only done when necessary.

Digital evidence can also be collected from social media companies, but it has been noted that this process is lengthy and complicated, as these companies are not based in Australia, may not always be able or willing to respond promptly, and some do not keep good records.⁷⁵

⁷⁵ Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 47. See also, Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 12 – 13.

Question prompts – Collection processes

- How are decisions made about the scope of digital evidence extracted from a victim-survivor's device to ensure that the collection is necessary, proportionate and appropriate to the needs of the investigation? What factors influence these decisions?
- What are the policies or procedures that guide digital evidence collection in different circumstances and locations? For example, where is the download done? Who does it? What software is used?
- In what circumstances, if any, should full device downloads be used?
- How long is the victim without their phone? What support is given in the meantime?
- What information is given to victims about how their data will be stored, handled and disclosed, and how is their consent sought and recorded?
- What options and actions are taken if a victim-survivor is unwilling to consent to a file download or otherwise supply digital evidence?
- In what circumstances can digital evidence be provided in other ways? (Such as victim-survivors voluntarily uploading evidence, defence requesting digital evidence through a subpoena, or information being provided by social media companies)

2.2.2 Digital evidence disclosure

In criminal matters, disclosure rules require the prosecution to share all relevant information and evidence with the defence. The purpose of these rules is to ensure fairness and transparency in the legal process, allowing the accused person to prepare their defence properly. This would generally include digital evidence gathered during the investigation. Prosecution disclosure is a critical part of ensuring a fair trial and upholding the principles of justice.⁷⁶

For detailed information on disclosure rules, see **Background section, What are the rules about digital evidence? Providing digital evidence to the defence** on page 18.

The prosecution must provide ongoing, full and early disclosure of all evidence it intends to rely on at trial, including digital evidence. Prosecutors must disclose evidence that would help the case of the accused person.⁷⁷ The evidence must be relevant to the facts in issue and may include material that is both directly and indirectly relevant. Evidence that is

⁷⁶ *Human Rights Act 2019* (Qld), s 31.

⁷⁷ *Criminal Code* (n 7), s 590AB.

indirectly relevant can include material that undermines the credibility of victims and witnesses. This could potentially encompass a broad range of digital material.⁷⁸

Prosecutors do not have to disclose 'sensitive evidence'. This includes anything displaying an image of a person that is obscene or indecent and that would interfere with a person's privacy.⁷⁹ The prosecution is not required to give the accused person the contact details of witnesses unless those details are materially relevant.⁸⁰ However, identifying and redacting this information from large volumes of digital evidence can be challenging. In addition, it may be necessary for the defence to access sensitive evidence where there is a legitimate forensic purpose connected to the case.⁸¹

Stakeholders have raised concerns about how disclosure rules and practices are working given so much digital evidence can now be collected in the course of an investigation. The laws governing disclosure were developed in a pre-digital era, and the scale and permanence of contemporary digital evidence have challenged the operation of that framework.

Defence lawyers may request prosecutors to provide the full digital download from the victim's phone or device, sometimes without specific parameters or date ranges, to uncover messages, pictures or content that might be helpful to their client's case. Defence lawyers may look for information to undermine a victim's credibility and reliability, including evidence that might suggest mental instability, a motive to lie and inconsistencies in statements.⁸²

Prosecutors may consider that they are required to disclose all information obtained through a device extraction that is in their possession, to avoid later challenges by the defence. Alternatively, they may refuse to provide the full digital download and instead provide a report of relevant evidence, arguing that the majority of the content of the device is not relevant to the charge.

Some may view defence requests as 'fishing expeditions' of digital communications, where it is not clear what information they are looking for. These broad requests for information may also intimidate a victim into withdrawing their complaint. Others may see broad access to information about the victim-survivor as necessary to ensure procedural fairness, particularly where the prosecution's case relies on evidence extracted from the victim-survivor's phone or other device.

This review seeks to understand whether amendments are needed to the laws and practices governing disclosure in Queensland, and how the interests of justice can be better balanced with the right to privacy of victim-survivors in the context of digital evidence.

Legal provisions have been introduced in Queensland to protect another form of sensitive information – counselling communications. This includes oral or written communications

⁷⁸ *Criminal Code* (n 7), s 590AJ (2)(c).

⁷⁹ *Criminal Code* (n 7), s 590AO.

⁸⁰ *Criminal Code* (n 7), s 590AP.

⁸¹ *Criminal Code* (n 7), s 590AO(2).

⁸² Mary Iliadis, Andi Brown, Zarina Vakhitova, Jessica Woolley, Delanie Woodlock and Michael Salter, *Protecting Sexual Assault Victims' Private Records in Criminal Trials through Independent Legal Representation*, Report to the Criminology Research Advisory Council (Australian Institute of Criminology, CRF 04/22-23, July 2026 <https://www.aic.gov.au/sites/default/files/2026-07/crf_04_22-23_protecting_sexual_assault_victims_private_records_in_criminal_trials.pdf>

made in confidence between a victim-survivor of sexual violence and a counsellor.⁸³ Counselling communications are protected from disclosure, with absolute privilege in preliminary proceedings and a qualified privilege in other proceedings.⁸⁴ These provisions aim to balance a victim-survivor's right to privacy with the right of a defendant to a fair trial (see **Breakout Box 2: Protected Counselling Communications – an exception to disclosure rules** on page 21 for more information).

In the UK, a different disclosure test applies in criminal cases that centres on whether evidence relates to a 'reasonable line of inquiry'.⁸⁵ Based on this test, specific legal provisions and guidance have been developed on how this test applies in the context of digital evidence collection and disclosure. A police officer may only extract digital information where it is 'relevant to a reasonable line of inquiry' and where it is 'necessary and proportionate' to achieve 'the prevention, detection, investigation or prosecution of a crime'.⁸⁶

Guidance on disclosure has recently been developed for investigators, prosecutors and defence practitioners in England and Wales. This guidance includes specific provisions relating to digital evidence.⁸⁷ According to this guidance, prosecutors and investigators must ensure that any line of inquiry pursued in relation to the digital devices of victim-survivors and witnesses is 'reasonable in the context of the likely issues in the case'.⁸⁸ It states that digital devices should not be obtained as a matter of course, and the decision to obtain and examine a digital device will be a fact-specific decision to be made in each case.⁸⁹

⁸³ *Evidence Act* (n 25), Division 2A.

⁸⁴ *Evidence Act* (n 25), s 14G.

⁸⁵ The Code of Practice issued under section 23(1) of the *Criminal Procedure and Investigations Act 1996* (United Kingdom) identifies the general responsibilities relevant to the disclosure duty: 'the investigator should pursue all reasonable lines of inquiry, whether these point towards or away from the suspect' para. 3.5). Crown Prosecution Guidelines in England and Wales defines a 'reasonable line of inquiry' as 'that which points either towards or away from the suspect. What is reasonable will depend on the circumstances of the case': Attorney General's Office, *Guidelines on Disclosure for Investigators, Prosecutors and Defence Practitioners* (2024), para. 18
<https://assets.publishing.service.gov.uk/media/65e1ab9d2f2b3b00117cd803/Attorney_General_s_Guidelines_on_Disclosure_-_2024.pdf>

⁸⁶ Government of the United Kingdom, Home Office, *Extraction of Information from Electronic Devices: Code of Practice* (October 2022), para. 82
<<https://www.gov.uk/government/consultations/extraction-of-information-from-electronic-devices-code-of-practice/extraction-of-information-from-electronic-devices-code-of-practice-accessible>>

⁸⁷ Attorney General's Office, *Guidelines on Disclosure for Investigators, Prosecutors and Defence Practitioners* (2024), paras. 55 – 58 and Annex A
<https://assets.publishing.service.gov.uk/media/65e1ab9d2f2b3b00117cd803/Attorney_General_s_Guidelines_on_Disclosure_-_2024.pdf>

⁸⁸ *Ibid*, para. 57.

⁸⁹ *Ibid*.

Breakout Box 5

The Queensland Law Reform Commission's Evidence Law Review

The Queensland Law Reform Commission is currently undertaking an Evidence Law Review, which will focus on modernising and simplifying Queensland's *Evidence Act 1977*. While not focused specifically on the rules of disclosure (which are contained in the Criminal Code), the Review is broad in scope. It will consider the relationship of the *Evidence Act 1977* to other applicable evidence laws and the desirability of streamlining evidence law. This provides an opportunity to consider the continued relevance and efficacy of current disclosure rules as they relate to digital evidence within this broader review.

Question prompts – Disclosure practices

- How do police decide what digital evidence from a victim's device is shared with prosecutors?
- How do prosecutors decide whether to disclose all or part of the digital evidence to the defence?
- What are the policies or procedures that guide disclosure in different circumstances, including the format in which evidence is shared, and how is sensitive material redacted?
- How are decisions made by defence lawyers about what digital evidence to request as part of prosecution disclosure?
- What occurs, including in court processes, if the defence requests more digital evidence from the victim-survivor's device than has been previously disclosed or captured during the investigation?
- What information is given to victim-survivors about what and how digital evidence will be disclosed to the defence?
- Should the rules of disclosure be amended to require that the evidence relates to a 'reasonable line of inquiry', similar to the rules in the UK?
- Should the rules of disclosure about digital evidence be amended to require judicial oversight, similar to the protected counselling communications process?

2.2.3 Other defence requests for digital evidence

Defence lawyers may seek access to evidence, including digital evidence, from a victim-survivor without going through disclosure processes. Early insights from stakeholders indicate that attempting to acquire evidence this way is becoming increasingly common.

This may be done by issuing a summons or subpoena requiring the victim-survivor to produce their phone or device, or to appear before the court.⁹⁰ In such circumstances, the application may be made directly to the court registry, and the prosecutor may not initially be aware of the request.

The victim-survivor will be required to seek their own legal advice about how to respond, as the prosecution lawyers will not be able to advise them. They can object to providing the device or evidence only if the information is not relevant to the court proceedings, legal professional privilege applies or it would be against the public interest.

Having to seek additional legal advice and argue against providing evidence can be traumatic and difficult for victim-survivors and means they are then required to defend their interests. They may not understand whether they have grounds to object to the request or have access to the support and advice needed to navigate the process.

Question prompts – Defence requests

- In what circumstances do defence lawyers issue a summons or subpoena requesting digital evidence from a victim-survivor in a sexual offence case?
- How do court registries evaluate and process summons or subpoenas requesting digital evidence from victim-survivors in sexual offence cases?
- What information or support is given to victim-survivors about their options in responding to a summons or subpoena for digital evidence?
- Should the rules about summons and subpoenas be tightened to ensure there is a rational connection between the request and the relevance of the evidence to the facts of the case?

2.2.4 Use of digital evidence by prosecution and defence

Digital evidence can be used to support the prosecution of sexual offences. It can also be used by the defence, typically to challenge the complainant's account or credibility.

On the one hand, digital evidence can increase the likelihood of prosecution and conviction by providing a seemingly 'ideal and unbiased digital witness' to corroborate the victim's

⁹⁰ In the Magistrates Court this is a summons and in the District or Supreme Court, this is a subpoena. For the Magistrates Court, see *Justices Act 1889* (Qld), ss 78 and 86. For the District and Supreme Courts, see *Criminal Practice Rules 1999* (Qld), s 29.

account,⁹¹ and to establish digital association and relational ties between victims and defendants.⁹²

On the other hand, it can be used by the defence to discredit the victim's account by presenting seemingly inconsistent information. It can also be used to undermine the credibility of the victim (for example, by suggesting that their pre- or post-assault behaviour did not align with dominant myths about how a victim of sexual violence 'should' act).⁹³

Special rules apply to limit the use of evidence of a victim-complainant's sexual experience with the defendant. However, it has been suggested that definitions of 'relevance' are quite expansive, and this can allow some evidence of prior sexual interest to be used in trials.⁹⁴ For example, it can allow the defence to use digital evidence such as flirtatious texts, 'sexting' and communications through dating apps to suggest prior sexual interest in the defendant (see **Breakout Box 3: Restrictions on prior sexual experience evidence** on page 23 for more information.) In 2024, Queensland introduced 'affirmative consent' reforms, which arguably make this evidence less relevant.⁹⁵ These reforms mean consent is free and voluntary agreement, by a person with the cognitive capacity to make the agreement.

Some research has raised concerns about digital communications being used in sexual offence cases in ways that are not sensitive to the uniqueness of this form of communication.⁹⁶ These communications can be presented in ways that do not align to their original context, potentially creating a false impression. For example, in 2013, research by the Australian Institute of Family Studies found that information on social media sites may be used against victim-survivors in court without recognition that people often present 'fake' or alternative personas on social media.⁹⁷ Challenges can arise in court proceedings when online personas are presented as objective or factual without considering context.⁹⁸

⁹¹Alexa Dodge, 'The Digital Witness: The Role of Digital Evidence in Criminal Justice Responses to Sexual Violence' (2018) 19(3) *Feminist Theory*, 2.

⁹²Fanny Ramirez and Vincent Denault, 'He Posted / She Posted: Unpacking the Affordances of Social Media Evidence in Sexual Assault Cases' (2025) *Crime, Media, Culture*, 1 – 22.

⁹³Julia Quilter, Luke McNamara, Melissa Porter and Grace Bowles 'Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?' (2026) *Crime, Media, Culture: An International Journal*, 1 – 20, 11; Alexa Dodge, 'The Digital Witness: The Role of Digital Evidence in Criminal Justice Responses to Sexual Violence' (2018) 19(3) *Feminist Theory*, 2. See also Fanny Ramirez and Vincent Denault, 'He Posted / She Posted: Unpacking the Affordances of Social Media Evidence in Sexual Assault Cases' (2025) *Crime, Media, Culture*, 1 – 22; Ellen Daly, 'Making new meanings: The entextualisation of digital communications evidence in English sexual offences trials' (2022) *Crime, Media, Culture*.

⁹⁴Julia Quilter, Luke McNamara, Melissa Porter and Grace Bowles 'Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?' (2026) *Crime, Media, Culture: An International Journal*, 1 – 20, 11.

⁹⁵*Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024*, amending section 348 'Consent' of the *Criminal Code* and inserting section 348AA 'Circumstances in which there is no consent' of the *Criminal Code*.

⁹⁶Julia Quilter, Luke McNamara, Melissa Porter and Grace Bowles 'Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?' (2026) *Crime, Media, Culture: An International Journal*, 1 – 20.

⁹⁷Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 47.

⁹⁸*Ibid.*

In addition, a recent study analysing rape and sexual offence trials in Victoria and New South Wales between 2013 and 2020 considered whether the deployment of digital communications evidence is impeding the long-term effort to transform rape trials and decrease the prevalence and influence of ‘rape myths’. The term ‘rape myths’ refers to “empirically inaccurate ‘facts’ and gender stereotypical values, attitudes and assumptions that impede justice for victim-survivors of sexual violence and which have been engaged by persons accused of rape (or lawyers acting for them) to deny and avoid criminal responsibility”.⁹⁹ Overall, the study found that such evidence can perpetuate rape myths through the misreading of texts and the attribution of ‘meaning’ in ways that undermine complainant credibility.¹⁰⁰

A report recently published by the Australian Institute of Criminology found that defence counsel commonly sought access to the private information of victim-survivors to undermine their credibility and reliability, with questions put to victim-survivors in cross-examination based on rape myths and stereotypes.¹⁰¹ The report found that the use of digital evidence and other personal information during court proceedings can contribute to the traumatising of victim-survivors.¹⁰²

By way of contrast, early insights indicate that defence lawyers and other justice system stakeholders may be wary of digital evidence when it is provided selectively. The concern is that additional evidence will emerge which will paint a different picture or provide more context. Early discovery of evidence that allows police and prosecutors to find facts and assess the strength of a case facilitates the case being resolved quicker. This is often in the interests of both victim-survivors and people accused of sexual offences.

Legal reforms were introduced in 2024¹⁰³ to counter the influence of rape myths and stereotypes about victim-survivors in sexual offence trials. These reforms allow experts to give general evidence to help courts understand complainant behaviours that may seem unusual or contradict common assumptions. Judges can also give directions to juries about counterintuitive responses to sexual violence (see **Breakout Box 4: Countering myths and stereotypes about sexual violence - Jury directions and expert evidence in sexual violence cases** on page 24).¹⁰⁴

⁹⁹ Julia Quilter, Luke McNamara, Melissa Porter and Grace Bowles ‘Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?’ (2026) *Crime, Media, Culture: An International Journal*, 1 – 20, 2.

¹⁰⁰ Ibid, 7.

¹⁰¹ Mary Iliadis, Andi Brown, Zarina Vakhitova, Jessica Woolley, Delanie Woodlock and Michael Salter, *Protecting Sexual Assault Victims’ Private Records in Criminal Trials through Independent Legal Representation*, Report to the Criminology Research Advisory Council (Australian Institute of Criminology, CRF 04/22-23, July 2026, 61 – 2 <https://www.aic.gov.au/sites/default/files/2026-07/crf_04_22-23_protecting_sexual_assault_victims_private_records_in_criminal_trials.pdf>

¹⁰² Ibid.

¹⁰³ *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (Qld), amending the *Evidence Act 1977* (Qld).

¹⁰⁴ *Evidence Act 1977* (n 25), Part 6B.

Question prompts – Case outcomes

- How does digital evidence help with the prosecution of sexual offence cases?
- How does digital evidence assist the defence to test the prosecution case or contest allegations of sexual offences?
- How does digital evidence dismantle or reinforce rape myths in sexual violence cases?
- Will digital evidence be less relevant due to the requirement of affirmative consent?
- Should there be special rules to allow expert evidence on the particular nature of digital communications?
- Should specific jury directions be available to help juries understand the particular nature and context of digital communications?

2.3 Institutional capacities to manage digital evidence

Literature from across jurisdictions indicates a common concern – that because of the substantial increase in digital evidence in sexual offence cases, it is difficult to keep up with the pace of change. There is constant need for increases in institutional capacities within police and prosecution services.¹⁰⁵

These studies have identified a range of policy and institutional capacity gaps, limiting the ability for the justice system to effectively and efficiently use digital evidence in sexual offence cases:

- **Limited human resources to meet demand:** The increasing volume of digital evidence in sexual offence cases may not have been matched by a corresponding increase in resources and staffing for digital forensic and tech crime units.¹⁰⁶

¹⁰⁵ Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies); Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025), 4 < https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>; Colin Watson and Laura Huey, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427; Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 13.

¹⁰⁶ Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 47.; Michele Burman, Olivia Smith, Oona

- **Limited skills in investigations involving technology among police officers:** Police must stay knowledgeable about the increasing array of hardware, software and social media platforms, and on current and future uses for technology. Finding qualified individuals with policing skills and technical knowledge and skills in collecting and analysing digital evidence can be difficult.¹⁰⁷
- **Insufficient investment in training and skills development:** There has not been sufficient investment in regular training and skills development for police officers and lawyers to keep up to date with rapidly changing technologies (devices, encryption and methods of extraction).¹⁰⁸ The time cost of officers attending comprehensive training sessions to support knowledge and skills development in this area also creates challenges.¹⁰⁹
- **Resistance among longer-serving staff:** Some longer-serving investigators may resist the use of digital evidence in cases or rely excessively on younger staff who are presumed to possess the necessary knowledge, leaving these staff at risk of being overwhelmed.¹¹⁰ Alternatively, there may be resistance to moving to new practices: for example, collecting only partial downloads of victims' devices when historically full downloads were seen as better practice.
- **Limited coordination:** Inadequate cooperation among policing units with different specialisations (e.g. sexual offence investigations and cybercrime) can create barriers to the efficient collection and use of digital evidence.¹¹¹

In Queensland, initial stakeholder insights indicate that there has been investment in improving capability among justice system stakeholders in terms of specialist personnel and training. However, these improvements have occurred in the context of competing priorities and constraints.

Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025), 4 < https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>; Colin Watson and Laura Huey, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427; Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 13.

¹⁰⁷ Colin Watson and Laura Huey, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427; Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 7 – 10.

¹⁰⁸ Colin Watson and Laura Huey, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427, 423 – 424; Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 8 - 10.

¹⁰⁹ Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 9.

¹¹⁰ Ibid, 9 – 10.

¹¹¹ Ibid, 10.

Question prompts – Capabilities to manage digital evidence

- Are police and prosecutors sufficiently trained and equipped to provide consistent processes for victim-survivors and defendants in the collection, disclosure and use of digital evidence in sexual offence cases?
- Are there enough police and prosecution personnel with the right skills to manage the volume and complexity of digital evidence in sexual offence cases?
- How do police and prosecutors work together to manage, analyse and use digital evidence in cases?
- How do defence lawyers and firms build and maintain capacity and capability to manage, analyse and use digital evidence?

2.4 Evolving technologies, systems, tools, hardware, software, and equipment

Police have access to several systems and technologies to extract evidence from digital devices. However, the speed at which technology used in personal devices becomes obsolete and is replaced by newer hardware and software means that the programs used by police are continually playing ‘catch-up’.¹¹² Even when systems and trained police are available, the rate of technological change means that systems and training quickly become outdated.¹¹³

Because some sexual offence cases can take years to get to trial, it may be the case that the technology and systems used to collect digital evidence at the time of the investigation are not aligned to current practice. This can lead to further requests for digital evidence close to trial, which can further delay matters.

In 2022, the Women’s Safety and Justice Taskforce recommended that:

*“The Queensland Police Service establish a mechanism to enable the partial download of information from the mobile phones and other devices of victim-survivors and to protect and promote a victim-survivor’s right to privacy (Recommendation 48)”.*¹¹⁴

¹¹² Colin Watson and Laura Huey, ‘Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)’ (2020) 22(4) *International Journal of Police Science & Management*, 419–427, 423.

¹¹³ Ibid; Alexa Dodge, Dale Spencer, Rose Ricciardelli and Dale Ballucci, ‘This Isn’t Your Father’s Police Force: Digital Evidence in Sexual Assault Investigations’ (2019) 52(4) *Australian & New Zealand Journal of Criminology*, 9.

¹¹⁴ Women’s Safety and Justice Taskforce, *Hear Her Voice: Women and Girls’ Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022), 235 <<https://www.publications.qld.gov.au/ckan->

Police have indicated that substantial work has gone into fulfilling that recommendation; however, system and technological constraints make it impossible for partial downloads to be done in every case.

Technological limitations can be carried through to matters that progress to trial. Courtrooms may lack adequate technology to enable digital evidence (such as text messages and chat logs) to be displayed easily during hearings, which can hinder its effective use.¹¹⁵

An emerging issue is the use of artificial intelligence (AI) in the collection, identification and analysis of digital evidence. AI may be able to assist both prosecutors and defence lawyers to manage and analyse digital evidence more efficiently, although there may be risks associated with these practices. However, the use of generative AI may require greater scrutiny of the authenticity of digital evidence, given how easy it is to create realistic but fabricated images. This may require additional processes and safeguards to authenticate digital evidence.

Question prompts – Technological capabilities to manage digital evidence

- What technologies are used in the collection, disclosure and use of digital evidence in sexual offence matters? What are the limitations of those technologies?
- What emerging issues have arisen for digital evidence practices due to the rate of technological change?
- Are prosecution and defence on an equal footing when it comes to access to updated tools to collect and analyse digital evidence?
- What role can AI play in supporting targeted digital evidence extraction and analysis? What verification processes are needed to authenticate digital evidence, given the increasing prevalence of AI-generated content?

publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsjt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>

¹¹⁵ Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 58.; Michele Burman, Olivia Smith, Oona Brooks-Hay and Yassin Brunder, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025), 8 < https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

Annex A: Terms of Reference

The Sexual Violence Review Board is undertaking a systemic review of the collection, disclosure and use of digital evidence in criminal sexual offence trials to understand the impact on the reporting, investigation and prosecution of sexual offences in Queensland. The review is guided by the Terms of Reference.

Scope

For the purposes of this review, digital evidence refers to any information stored or transmitted on an electronic device and may include communications (such as phone call logs, text messages, or emails), social media interactions, photos and/or videos, internet browsing history, and location data.

In undertaking this review, the Sexual Violence Review Board will consider:

- the current legislation, policy, and practice related to the collection, disclosure and use of digital evidence
- any guidance or training available for investigating officers, prosecutors and judicial officers about digital evidence collection and disclosure, and how any such guidance is being applied
- whether legislative frameworks adequately reflect the contemporary digital environment
- the impact of current legislation, policies, and practices on investigations and prosecutorial decisions
- the impact of the current legislation, policies, and practices on the experience of victims during reporting, investigation and prosecution of sexual offences
- whether current legislation, policy and practice appropriately balance the rights of victims in the context of a right to a fair trial
- any accountability mechanisms with respect to the appropriate collection, disclosure and use of digital evidence
- innovative approaches for the collection, disclosure and use of digital evidence.

In undertaking this review, the following are out of scope and will be excluded:

- work which duplicates the functions of other bodies or, to the extent possible, duplicates the work of recent reviews or inquiries
- review or assessment of the merits of specific investigative, prosecutorial, or judicial decisions with respect to individual matters involving digital evidence
- advocacy or intervention on individual matters
- consideration of non-sexual offence matters, except where it is relevant for the purposes of comparison.

Approach

In undertaking the review, the Board will identify and consult with the community and relevant stakeholders across Queensland, including (but not limited to):

- people with lived and living experience as victims of crime
- Aboriginal and Torres Strait Islander peoples and community-controlled organisations
- legal stakeholders, including the judiciary
- non-government service providers that interact with victims (e.g. sexual assault support services, domestic and family violence support services, victim support services, disability support services, community and social support services)
- relevant government agencies (e.g. Queensland Police Service, Office of the Director of Public Prosecutions, Department of Youth Justice and Victim Support)
- relevant peak bodies or organisations
- academics and research organisations.

In conducting the review, the Board will consider relevant findings from other completed or ongoing reviews or inquiries, including (but not limited to):

- the report of the Women's Safety and Justice Taskforce, *Hear her voice: Report two - Women and girls' experiences across the criminal justice system*, including recommendations 47 and 48
- the Australian Law Reform Commission's inquiry into justice responses to sexual violence.

Timeframe

The Board will provide a report to the Minister for Youth Justice and Victim Support and Minister for Corrective Services by June 2027.

The Board may provide interim briefing, reporting and papers as required.

Annex B: Recent reviews and recommendations

Women's Safety and Justice Taskforce – *Hear Her Voice Report Two, Volume One – Women and girls experiences in the criminal justice system (2022)*

In 2022, the Women's Safety and Justice Taskforce (the Taskforce) released its report *Hear her voice- Report two - Women and girls' experiences across the criminal justice system* (Report 2).

The Taskforce made 188 recommendations to the Queensland Government regarding changes to law, criminal justice responses, community education and prison and sentencing reform, including two specifically relating to digital evidence.

Taskforce recommendation	Queensland Government response
Recommendation 47: The Director of Public Prosecutions review the Queensland Director's Guidelines and include additional guidance about the prosecution of sexual violence related cases and the treatment of victim-survivors in these cases. The review will include incorporating legislative and systemic reforms progressed in response to this report. The ODPP should work with the QPS to implement the revised Director's Guidelines to ensure staff and police are aware and understand how to use them. This review should consider and incorporate necessary changes that: • guide prosecutors, people acting on behalf of the Director and police to treat victims of sexual violence in a trauma-informed and culturally capable way that recognises the diverse and complex needs of individual victim-survivors • review and update information about downloading information from a mobile phone or other device of a victim of sexual violence and the disclosure of relevant information, in accordance with legislative obligations and the process for defence lawyers to obtain additional information they consider to be relevant	Support: The Queensland Director's Guidelines will be reviewed to include additional guidance in relation to the prosecution of sexual violence matters and the treatment of victim-survivors in these matters. The review will include consideration of any legislative reforms progressed in response to this Report. In the government's latest Annual Report setting out implementation of the recommendations, it was reported that the ODPP has commenced a review of the Director's Guidelines, which will prioritise the creation of supplementary guidelines on prosecuting sexual offence matters, domestic and family violence

Taskforce recommendation	Queensland Government response
incorporate guidance either in the Director's Guidelines or other supporting guidance documents.	matters and the treatment of victim-survivors. ¹¹⁶
Recommendation 48: The Queensland Police Service work with relevant technology companies to explore the feasibility of establishing a mechanism to enable the partial download of information from the mobile phones and other devices of victim-survivors to enable only relevant information to be obtained and to protect and promote a victim-survivor's right to privacy, irrespective of the brand or type of phone.	Support: The Queensland Police Service will explore technological options to enable the partial download of information from the mobile phones and other devices to protect and promote the right to privacy of victim-survivors. In the government's latest Annual Report setting out implementation of the recommendations, it was reported the QPS is continuing to explore options for partial downloads of victim-survivors' devices to protect and promote their right to privacy.¹¹⁷

As noted in the table above, the 2023-24 WSJT Annual Report indicated these recommendations were "in progress" during the reporting period. As of September 2025, there has been no further update.¹¹⁸

¹¹⁶ Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022), 65 <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsjt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>>

¹¹⁷ Ibid, 66.

¹¹⁸ Ibid, 65 – 66.

Australian Law Reform Commission – *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence Report (2025)*

The report: *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence*, found there are systemic barriers that victims face to reporting sexual violence and engaging with the justice system. When victims and survivors do engage in the justice system the system itself can cause further harm or re-traumatisation.

This report was delivered in 2025, and the Federal Government announced \$21.4 million over three years from 2025-26 to address barriers to access to justice for victims and survivors of sexual violence.

ALRC recommendation	Government response
Recommendation 1 In the context of the significant under-reporting of sexual violence, and to ensure people who have experienced sexual violence are able to engage with the justice system in a safe, informed, and supported way, the Australian Government, together with state and territory governments, should fund relevant organisations (including sexual violence services, community legal centres, Aboriginal Community Controlled Organisations, Legal Aid Commissions, and participating legal firms) to provide the following three services (Safe, Informed, and Supported Services, or SIS Services): Independent Legal Services — for every person who has experienced sexual violence, the provision of a free and confidential legal advice session that enables informed decision-making about whether or not to engage with the justice system and, if so, which justice pathways best suit their needs, including referral to any chosen pathway. For ongoing legal advice and representation in the criminal justice context, see Recommendation 9. Justice System Navigators — for every person who has experienced sexual violence, support to access any chosen justice pathway; and for people who choose to pursue a criminal justice pathway, the provision of a trained support person to advocate and provide support in initial and ongoing interactions with police, prosecutors, the court, and related systems.	The Federal governments announced funding to extend specialist trauma-informed sexual assault legal services.¹¹⁹ In March 2026, the Federal Government announced that the pilot in Queensland would be delivered by Caxton Legal Centre and will have a particular focus on supporting young people who are impacted by sexual violence.¹²⁰

¹¹⁹ The Hon Amanda Rishworth MP, Senator the Hon Katy Gallagher, The Hon Mark Dreyfus KC MP, ‘Albanese Government Strengthening Support for Victims and Survivors in the Justice System’, 6 March 2025, Media Release <<https://ministers.dss.gov.au/media-releases/17856>>

¹²⁰ Tanya Plibersek MP, The Hon Ged Kearney, The Hon Michelle Rowland MP, ‘Expanded Access to Specialised Trauma-Informed Sexual Violence Legal Services Pilots in NSW and Qld’, 8 March 2026, Media Release <<https://ministers.dss.gov.au/media-releases/18801>>

ALRC recommendation	Government response
c. Safe Places to Disclose — for every person who has experienced sexual violence, the ability to disclose the harm to trauma-informed professional staff, receive support and assistance to access relevant health and social services, and be referred to the Independent Legal Services. To diminish barriers to engagement, increase accessibility and address diverse needs, SIS Services should be provided through a network or other form of coordination, and be available when and where they are needed, including in-person, via telephone, online, and through outreach services.	
Recommendation 9 As a component of the Independent Legal Services recommended in Recommendation 1, the Australian Government, together with state and territory governments, should fund and support independent legal advisers who will be available to: a. provide complainants of sexual violence with legal advice as required during the criminal justice process; and b. represent complainants in court when applications are made to subpoena or inspect materials which may contain a complainant's personal, sensitive, or confidential information (including sexual assault counselling communications).	See above.
Recommendation 10 The Commonwealth, states, and territories should amend relevant legislation to provide that independent legal advisers have standing to appear in court on behalf of complainants of sexual violence in applications to subpoena or inspect materials directed to third parties which may contain a complainant's personal, sensitive, or confidential information, including sexual assault counselling communications. The legislative changes should include a mechanism which ensures the complainant is notified that a subpoena has been sent to a third party to produce personal, sensitive, or confidential information, including sexual assault counselling communications, relating to the complainant.	No formal response.
Recommendation 18	No formal response.

ALRC recommendation	Government response
Federal, state, and territory police agencies should prepare or review and update their guidelines on responding to complainants of sexual violence to ensure that their guidelines address, at a minimum, the following matters: a. a requirement to log all complaints of sexual violence; b. processes for responding to complainants of sexual violence, including complainants who are within groups that are disproportionately reflected in sexual violence statistics; c. advising complainants prior to a formal interview of their right to seek independent legal advice and the availability of supports, including referrals to the Independent Legal Services, a Justice System Navigator, and support services; d. criteria for making decisions regarding investigations or laying charges; e. processes for interviewing complainants, including processes for taking a written statement or making an audiovisual recording; f. communicating with complainants, including keeping complainants informed and updated; g. timeframes; h. the use of communication assistance, including interpreters and intermediaries; i. the intersection between family violence and sexual violence; and j. review and complaint processes. The police guidelines (which are not operationally sensitive) should be made publicly available, published online and subject to ongoing review.	
Recommendation 19 Offices of the Directors of Public Prosecutions should review and update their guidelines on responding to complainants of sexual violence to ensure their guidelines address, at a minimum, the following matters: a. the decision to prosecute or not prosecute;	No formal response.

ALRC recommendation	Government response
b. communicating with complainants, including keeping complainants informed and updated; c. processes for responding to complainants of sexual offences, including complainants who are within groups that are disproportionately reflected in sexual violence statistics; d. advising complainants of their right to seek independent legal advice and the availability of supports, including referrals to (where applicable) Independent Legal Services, a Justice System Navigator, witness assistance services, and support services; e. meeting with complainants before trial; f. preparation for trial, including the process of proofing complainants and court familiarisation; g. the trial process generally; h. the option of a pre-recorded evidence hearing; i. the availability of flexible evidence measures; j. the use of communication assistance, including interpreters and intermediaries; k. applications for access to a complainant's personal, sensitive or confidential information, including sexual assault counselling communications; l. sentencing and victim impact statements; m. appeals; n. timeframes; o. resolving charges before trial; p. decisions to discontinue the prosecution; and q. review and complaint processes. The prosecution guidelines should be made publicly available, published online, and subject to ongoing review.	
Recommendation 30 The Australian, state and territory governments should ensure that adequate technology, suitable for recording and playing evidence, is available to police agencies and courts, including in regional and remote areas.	No formal response. However, there has recently been investment in court technology across Queensland.

Bibliography

A: Articles, books and reports

Australian Bureau of Statistics, *Personal Safety Australia 2021/22* (15 March 2023) <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>

Australian Law Reform Commission, *Safe, Informed, Supported: Reforming Justice Responses to Sexual Violence* (ALRC Report 143, January 2025) <<https://www.alrc.gov.au/wp-content/uploads/2025/02/JRSV-Final-Report-Book-for-Web-final-20250211.pdf>>

Big Brother Watch, *Digital Strip Searches: The Police's Data Investigations of Victims* (July 2019) <<https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>>

Bluett-Boyd, Nicole, Fileborn, Bianca, Quadara, Antonia and Moore, Sharnee, *The Role of Emerging Communication Technologies in Experiences of Sexual Violence: A New Legal Frontier?* (Research Report No. 23, 2013, Australian Institute of Family Studies), 47 <<https://library.bsl.org.au/jspui/bitstream/1/4080/1/The%20role%20of%20emerging%20communication%20technologies...Bluett-Boyd,%20Nicole.pdf>>

Burman, Michele, Smith, Olivia, Brooks-Hay, Oona and Brunder, Yassin, *Digital Communications as Evidence (DCE) in Sexual Offence Applications to the Criminal Cases Review Commission* (Scottish Centre for Crime and Justice, 2025). <https://www.sccjr.ac.uk/wp-content/uploads/2025/06/CCRC-Final-Report_April-2025.pdf>

Casey, Kyle et. al. (eds) 'Rape and Sexual Assault' (2024) 25(2) *The Georgetown Journal Of Gender And The Law*, 872 – 939.

Daly, Ellen, 'Making new meanings: The entextualisation of digital communications evidence in English sexual offences trials' (2021) *Crime Media, Culture*.

Dodge, Alexa, Spencer, Dale, Ricciardelli, Rose and Ballucci, Dale, 'This Isn't Your Father's Police Force: Digital Evidence in Sexual Assault Investigations' (2019) 52(4) *Australian & New Zealand Journal of Criminology*.

Dodge, Alexa, 'The Digital Witness: The Role of Digital Evidence in Criminal Justice Responses to Sexual Violence' (2018) 19(3) *Feminist Theory*.

Iliadis, Mary, Brown, Andi, Vakhitova, Zarina, Woolley, Jessica, Woodlock, Delanie and Salter, Michael, *Protecting Sexual Assault Victims' Private Records in Criminal Trials through Independent Legal Representation*, Report to the Criminology Research Advisory Council (Australian Institute of Criminology, CRF 04/22-23, July 2026).

Levy, Ariel, 'Trial by Twitter', *The New Yorker*, 29 July 2013 (USA) <<https://www.newyorker.com/magazine/2013/08/05/trial-by-twitter>>

Murphy, Erin, 'The Mismatch Between Twenty-First-Century Forensic Evidence and Our Antiquated Criminal Justice System' (2014) 87(3) *Southern California Law Review*, 633 – 672.

Quilter, Julia, McNamara, Luke, Porter, Melissa and Bowles, Grace, 'Text messages and social media posts as evidence in rape trials: A new entry point for rape myths?' (2026) *Crime, Media, Culture: An International Journal*, 1 – 20.

Ramirez, Fanny and Denault, Vincent, 'He Posted / She Posted: Unpacking the Affordances of Social Media Evidence in Sexual Assault Cases' (2025) *Crime, Media, Culture*, 1 – 22.

Rumney, Phil and McPhee, Duncan, 'The Evidential Value of Electronic Communications Data in Rape and Sexual Offence Cases' (2021) 1 *Criminal Law Review*.

Segal, Murray, *Independent Review of the Police and Prosecution Response to the Rehtaeh Parsons Case* (2015: Department of Justice, Province of Nova Scotia)
<<https://novascotia.ca/segalreport/Parsons-Independent-Review.pdf>>

Scott, Grant, *How Many Images are Stored on your Phone?* (The United Nations of Photography, 2026) <<https://unitednationsofphotography.com/2026/03/18/how-many-images-are-stored-on-your-phone>>

Stoykova, Radina, 'Digital evidence: Unaddressed threats to fairness and the presumption of innocence' (2021) 42 *Computer Law and Security Review*, 10557.

Tang, Aaron '#Sext, roll, troll and lol: Social Media Crimes and Evidence', *NSW Aboriginal Legal Service, Western Region Conference* (12 March 2014) <https://criminalcpd.net.au/wp-content/uploads/2016/09/sext_roll_troll_and_lol.pdf>

Victims' Commissioner for England and Wales, *Rape Survivors and the Criminal Justice System* (October 2020)
<https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/6/2021/12/Rape-Survivors-and-the-CJS_FINAL-v2.pdf>

Watson, Colin and Huey, Laura, 'Technology as a Source of Complexity and Challenge for Special Victims Unit (SVU)' (2020) 22(4) *International Journal of Police Science & Management*, 419–427.

Women's Safety and Justice Taskforce, *Hear Her Voice: Women and Girls' Experiences Across the Criminal Justice System* (Report 2, Volume 1, 2022)
<<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/5b70727a-cc0e-4e08-8eda-e1434e6e0814/wsjt-hear-her-voice-report-2-volume-1.pdf?ETag=e7ff438db3d61317be5d683ce05e7023>>

Wunsch, Daniela, Davies, Tom and Charleton, Barry, *The London Rape Review 2021: An examination of cases from 2017 to 2019 with a focus on victim technology* (Mayor of London, Office for Policing and Crime Evidence and Insight, December 2021)
<https://www.london.gov.uk/sites/default/files/final_rr_victimtech_61221.pdf>

His Majesty's Inspectorate of Constabulary and Fire and Rescue Services, *Evaluation of Rape Survivors' Experience of the Police and other Criminal Justice Agencies, Criminal Justice Joint Inspection* (HMICFRS, July 2021)
<<https://hmicfrs.justiceinspectorates.gov.uk/publication-html/evaluation-of-rape-survivors-experience-of-police-and-other-criminal-justice-agencies/>>

B: Cases

R v Ansell & Bradbury [2022] WDC 148

R v Ernst [2020] QCA 150

R v KM [2026] QDC 150

R v LBE [2024] QCA 53

R v Rollason & Jenkins; ex parte Attorney-General [2007] QCA 65

C: Legislation

Criminal Code Act 1899 (Qld)

Criminal Practice Rules 1999 (Qld)

Evidence Act 1977 (Qld)

Human Rights Act 2019 (Qld)

Information Privacy Act 2009 (Qld)

Justices Act 1889 (Qld)

Practice Rules 1999 (Qld)

Criminal Procedure and Investigations Act 1996 (England and Wales)

Policing, Crime, Sentencing and Courts Act 2022 (England and Wales)

Manuals and guidance

Queensland

Queensland Police Service, *Operational Procedures Manual* (Issue 112.2 Public Edition, Effective 2 September 2026) <<https://www.police.qld.gov.au/sites/default/files/2026-09/Operational-Procedures-Manual.pdf>>

State of Queensland, Department of Justice, *Director's Guidelines* (30 June 2024) [under review] <<https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/14407a5c-e40f-4301-b64c-28ce0dc94ba5/director-public-prosecutions-guidelines.pdf?ETag=2d672b29db01aedd0791fc9b5dcce02b>>

Other jurisdictions

Attorney General's Office, *Guidelines on Disclosure for Investigators, Prosecutors and Defence Practitioners* (2024)
<https://assets.publishing.service.gov.uk/media/65e1ab9d2f2b3b00117cd803/Attorney_General_s_Guidelines_on_Disclosure_-_2024.pdf>

Government of the United Kingdom, Home Office, *Extraction of Information from Electronic Devices: Code of Practice* (October 2022)
<<https://www.gov.uk/government/consultations/extraction-of-information-from-electronic-devices-code-of-practice/extraction-of-information-from-electronic-devices-code-of-practice-accessible>>

