
Chapter 2

Improving Police Responses

INTRODUCTION

2.1 In Chapter 1 we referred to the substantial underreporting of sexual offences in Victoria and elsewhere in Australia.⁶⁶ It is possible that the reporting rate, rather than increasing—which is what might be expected after the major reforms to the law of sexual assault in Victoria in the last 13 years—is actually diminishing.⁶⁷ It is also disturbing that over the eight-year period from 1994–5 to 2001–2, there has been a significant increase in the number of complainants withdrawing their complaints of sexual assault.⁶⁸ Withdrawn complaints of rape increased from 14% of reported cases in 1994–5 to 24.8% in 2001–2. In the case of other penetrative offences, the increase in withdrawals was threefold: from 3.2% of reported offences in 1994–5 to 9.9% in 2001–2. The reasons for this increase in withdrawn reports are unknown.

2.2 This Chapter focuses on the vital role which police play in responding to sexual assault. Because police are, in effect, the ‘gatekeepers’ to the criminal justice system, Victoria Police is in an ideal position to take a leadership role in increasing the reporting of sexual assault. While there are a range of reasons why people may not report sexual assault, the police are often the first port of call for those victims of sexual assault who choose to ‘speak the unspeakable’⁶⁹ and it is the police who investigate alleged offences. How the police are perceived by people who report an assault and the quality and consistency of their investigative and decision-making

66 See para 1.5. See also Victorian Law Reform Commission, *Sexual Offences*, Interim Report (2003) (hereafter Interim Report), Chapters 2 and 3. See also para 2.1 below.

67 Australian Bureau of Statistics, *Recorded Crime: Australia 2001* Catalogue 4510.0 (2002) 19. Victoria has the third lowest per capita rate of reported sexual assault in Australia, see p 8.

68 See Interim Report above n 66, para 2.43 and Graph 5.

69 Marg D'Arcy, *Speaking the Unspeakable: Nature, Incidence & Prevalence of Sexual Assault in Victoria* (1999).

practices will have a major impact on reporting and prosecution patterns. Police are also in a position to establish relationships with other agencies which provide services to people who report they have been sexually assaulted.

POLICE PROCESSES IN HANDLING SEXUAL ASSAULT

SOCAU UNITS, CIUS AND THE SEXUAL CRIMES SQUAD

2.3 Sexual assaults are generally dealt with by specialist Sexual Offence and Child Abuse Units (SOCAUs) and Criminal Investigation Units (CIUs). Some are dealt with by the Sexual Crimes Squad. Members of SOCAUs have received training about sexual assault and in metropolitan areas deal almost exclusively with this issue. Members of CIUs are detectives who investigate many different types of crime and do not generally have any special training in the area of sexual assault (although some material on sexual assault is included in detective training courses).⁷⁰ In regional areas, due to lower staffing levels, SOCAUs may not always be available at the time of a reported sexual offence.

2.4 The Sexual Crimes Squad is a specialist squad within Victoria Police which provides assistance and advice to the SOCAUs and CIUs on a daily basis, as well as conducting proactive investigations into recidivist paedophiles and sex offenders. Members wishing to join the Sexual Crimes Squad must be at the level of Detective Senior Constable (or Senior Constables eligible to so qualify). The Squad has approximately 45–50 members attached to it at any time—an Inspector, two Senior Sergeants and six crews managed by one Sergeant and four to six Detective Senior Constables. The Squad runs a Sexual Assault Seminar once every two years which is available to members and non-members.⁷¹

THE CODE OF PRACTICE FOR THE INVESTIGATION OF SEXUAL ASSAULT

2.5 Procedures for handling sexual assaults are governed by the *Victoria Police Code of Practice for the Investigation of Sexual Assault Cases (Code of Practice)*⁷²

70 CIU members only receive ‘refresher’ training in sexual assault if they choose to complete an additional qualification, for example a VATE course, or if they are transferring to the Sexual Crimes Squad.

71 Some Sexual Assault Squad members complete the VATE and SOCA courses but this is not compulsory.

72 Victoria Police, *Code of Practice for the Investigation of Sexual Assault* (1999) (hereafter *Code of Practice*) is discussed in detail in the Interim Report above n 66, at paras 3.48–57.

which was introduced in 1992 and the Victoria Police Operating Procedures.⁷³ A working party was convened in June 1992 to review the operation of the *Code of Practice* and a revised version was completed in 1994. The Code was independently reviewed in 1993.⁷⁴ Since that time, there has been no independent review of its operation. Victoria Police is currently conducting a major review of the *Code of Practice*.⁷⁵

2.6 The aims of the *Code of Practice* are to:

- provide a coordinated approach to the handling of sexual assault cases (regardless of the age or gender of the victim) by Victoria Police, Centres Against Sexual Assault (CASAs) and other victim assistance programs;
- increase the confidence of sexual assault victims and the public in police management of sexual assault cases so as to increase the reporting of sexual offences;
- increase the apprehension of offenders;
- maximise successful prosecutions; and
- minimise trauma experienced by sexual assault victims during the investigative process.

2.7 The Code states that ‘the first priority in sexual assault cases is to care for the victim’.⁷⁶ The central mechanism that drives the police response is a requirement that complainants receive immediate crisis care⁷⁷ after reporting sexual assault to the police, or at the very least within two hours after the arrival of the first police member.⁷⁸ The significance of crisis care in the context of recent

73 The Operating Procedures state that where they relate to sexual assault cases, they are to be read in conjunction with the *Code of Practice*, 5.2

74 See Melanie Heenan and Stuart Ross, *Police Code of Practice For Sexual Assault Cases: An Evaluation Report* (c1995).

75 See discussion below para 2.12.

76 *Code of Practice*, above n 72, 3. See also above n 66.

77 Crisis care is provided by counsellor/advocates working at CASAs. Specially designed crisis care facilities were established by the CASAs at specific hospitals to allow for a coordinated approach for responding to the needs of complainants of recent sexual assault that is both private and non-clinical. At the crisis care unit, victim/survivors are offered crisis counselling, advocacy support, and medical care or a forensic medical examination. A separate room is also available for the attending police. (See Kate Gilmore, Lise Pittman, June Baker et al, *Breaking the Silence—To Report or Not to Report a Study of Victims/Survivors of Sexual Assault & Their Experiences of Making an Initial Report to the Police* (1993) 16.

78 See *Code of Practice*, above n 72, Guidelines 5, 43, 65.

sexual assault is widely recognised in the field. According to CASAs ‘it is often the quality of care provided to the victim at the point of crisis [that] will have a critical influence on her long term well being’.⁷⁹ It almost certainly will also affect the person’s willingness to proceed with making a police report.⁸⁰

KEY FEATURES

2.8 In an operational sense, the Code distinguishes the steps that ought to be taken by police members when responding to reports of sexual assault, that includes (in chronological order) guidelines for:

- members who receive the initial reports;
- procedures to follow for victims who decide against any further police action;
- members who are first on the scene;
- community policing squad members (now SOCAUs);
- members who are interviewing sexual assault victims; and
- investigators.

2.9 The key features of the Code attempt to ensure that all police members remain conscious of their obligation to treat victims of sexual assault with sensitivity and respect. In particular, they emphasise how important it is for police to:

- allow the victim as much control as possible over the situation⁸¹ [the expression ‘victim’ is used throughout this Chapter and is in the Police Code];
- ‘never presume an allegation of rape is false until it is thoroughly investigated’;⁸²
- consider the range of emotional responses that victims may have following an experience of sexual assault;⁸³

79 CASA House, *The Counsellor/Advocate’s Role in the Provision of Crisis Care to Victims of Sexual Assault* Rationale Paper No. 3 (1987) 4.

80 Law Reform Commission of Victoria, *Rape: Reform of Law and Procedure* Appendixes to Interim Report No 42 (1991) 17.

81 See for example *Code of Practice*, above n 72, 12.

82 Ibid 33.

83 Ibid 66.

- provide victims with copies of their statements as soon as possible; and
- keep victims informed about the progress of the investigation and any decisions made.⁸⁴

2.10 Revisions to the Code in 1999 included:

- specifying the importance of police providing an interpreter of the same sex as the victim to assist in cross-cultural communication from the time of the initial report through to the conclusion of the investigation; and
- clarifying the roles and responsibilities for personnel providing support to victims who have intellectual disabilities or who are ‘mentally impaired’.

2.11 The Code also requires the establishment of Victoria Police and CASA liaison committees to ‘monitor, document and report adherence to the *Code of Practice*’. Such committees are intended to encourage cooperation between police and CASAs, identify and resolve problems at local level and provide a framework for managing breaches of its guidelines.⁸⁵ In the Interim Report we indicated that nine of fourteen CASAs who participated in the Commission’s focus groups with CASAs had established regional liaison committees. There were no committees in four large regional areas, where CASA representatives and police would have had to travel considerable distances to attend meetings. One metropolitan service which did not have a liaison committee felt that less formal methods for handling concerns with the police had been effective.⁸⁶

CURRENT PROJECTS—VICTORIA POLICE INVOLVEMENT

2.12 Throughout this inquiry the Victorian Law Reform Commission has worked closely with senior members of Victoria Police, who have shown a strong commitment to improving police responses to sexual assault. Under the auspices of the Statewide Steering Committee to Reduce Sexual Assault, Victoria Police in December 2003 began a formal wide-ranging evaluation of the *Code of Practice for the Investigation of Sexual Assault*.⁸⁷ A two month consultation period with major

84 Ibid 68–73.

85 Ibid 7 and 8.

86 Interim Report paras 3.60–64.

87 The review is being undertaken by the Sexual Offences and Child Abuse Co-ordination Unit within Victoria Police.

external stakeholders is now nearing completion.⁸⁸ It is intended that the review will result in an improved *Code of Practice*, the design and development of training packages on sexual assault to Victoria Police members and the development of a *Code of Conduct* relating to sexual assault.

2.13 Some of the areas the review is looking at include:

- adding a Victims' Charter of Rights to the *Code of Practice*;
- issues surrounding crisis counselling, for example, the criteria for the decision whether or not to convey a victim to a CASA and the necessary emphasis on the victim's best interests;
- issues relating to Indigenous complainants, complainants from of non-English speaking backgrounds (NESB), intellectual disability/impairment and mental illness, and in particular the need to improve services for these victims via appropriate and timely referrals to specialist agencies and through training packages for police.
- communication with victims, in particular the need to provide written reasons to victims where no charges are to be laid or no further investigation is to proceed;
- issues surrounding drug or alcohol facilitated sexual assault;
- the special needs of child victims of sexual assault;
- issues surrounding forensic medical officer (FMO) examinations and victim medical needs generally; and
- dispute resolution procedures.

2.14 Victoria Police is also currently preparing a pilot evaluation project for the establishment of Sexual Assault Investigation Sections⁸⁹ (SAISs) in three metropolitan areas.⁹⁰ It is envisaged that each SAIS will comprise at least two detectives and two SOCAU members. These units will work exclusively on investigating both historical and recent sexual offences. The Commission has been

88 The organisations that have been or will be consulted include: various CASAs, the Gatehouse Centre, Office of Women's Policy, Victorian Institute of Forensic Medicine, Aboriginal Family Violence & Legal Service, Victim Referral and Assistance Service, Department of Human Services, Advocacy and Guardianship Board, Elizabeth Hoffman House, Islamic Women's Welfare Council and the Horn of Africa Community.

89 See discussion below paras 2.95–97.

90 Dandenong, Sunshine and Broadmeadows have been identified as appropriate pilot sites, due to the high incidence of sexual assault.

informed that the evaluation framework and Standard Operating Procedures for the pilot units are in the design stage (but shortly to be finalised) and that the pilot units should be up and running by the end of 2004. The Commission strongly supports this project and makes recommendations about the establishment of SAISs below.

2.15 The Commission has also been advised by Victoria Police that a new 'ready reckoner'⁹¹ for sexual assault cases is shortly to be finalised and distributed to all police. This is a pocket-sized 'flip chart' for dealing with reports of sexual assault and will contain a brief summary of the Code of Practice: what to do, when to do it and how. This is another commendable initiative by Victoria Police.

ISSUES IDENTIFIED IN INTERIM REPORT

2.16 Chapter 3 of the Interim Report reported on issues about the police response to sexual assault that were identified in focus groups,⁹² which the Commission held with CASAs. Some of the main views expressed in focus groups were as follows.

- Complainants withdraw complaints for a range of reasons, including their treatment by police, their fears about the implications of pursuing a criminal justice response or the lengthy delays which are experienced in bringing matters to court.
- The *Code of Practice* continues to provide the basis for an efficient, professional and appropriate response to the majority of complainants, but there are some problems about its interpretation and application that need to be addressed.
- The complainant's initial contact with police has an important effect on whether the person will decide to proceed. Concerns were expressed about police attitudes to complainants. It was suggested that police would benefit from additional training on sexual assault. CASAs generally expressed positive views about SOCAUs, but said that some general duties police and members of CIUs did not respond sensitively to complainants.

91 'Ready reckoners' are already used by Victoria Police for several different types of offence.

92 For the Interim Report several focus groups were run with Centres Against Sexual Assault (CASAs). See discussion in Interim Report above n 66, Chapter 3.

- Complainants often felt they were not informed about the progress of investigations, or about a decision that there was insufficient evidence to prosecute.
 - There was some inconsistency in the police response to reports of sexual assault, including inconsistency about when matters will be referred to the Director of Public Prosecutions (DPP) for prosecution.
 - Concern was expressed about lengthy delays in investigating complaints.
- 2.17 In late 2003 the Commission ran a series of six focus groups with members of Victoria Police to obtain information about police procedures and to obtain their views on a range of matters, including issues raised by CASAs. Focus groups discussion topics included:
- police beliefs about the level of false reporting and their attitudes and views on the factors that influence victims' decisions about reporting and withdrawal; and
 - police attitudes to the *Police Code of Practice on Sexual Assault* and procedures and attitudes that influence decisions to charge offenders and authorise or not authorise a particular matter for prosecution.
- 2.18 In the remainder of this Chapter we discuss the findings from police focus groups and make recommendations on police processes which take account of the views expressed by both police and CASAs.

FINDINGS ARISING FROM POLICE FOCUS GROUPS

- 2.19 Participation in the police focus groups was voluntary. Participants were informed that no-one would be identified in the write-up of the focus groups. The six groups were comprised as follows:
- 7 SOCAU members from Melbourne metropolitan stations
 - 12 CIU members from metropolitan stations
 - 10 SOCAU members from regional stations
 - 11 CIU members from regional stations
 - 17 Officers in Charge (OICs) o SOCAUs (metropolitan)
 - 6 Officers in Charge of CIUs (metropolitan)⁹³

93 The gender mix varied from group to group, with the CIU groups containing the largest ratio of men. All but one session was taped.

POLICE ATTITUDES AND TRAINING NEEDS

ATTITUDES ABOUT THE TRUTH AND FALSITY OF COMPLAINTS

2.20 In 2.1 we referred to the increase in withdrawal of sexual assault reports that has occurred over the past eight years. There was a prevalent belief in all groups that false reports of sexual assault were likely to be withdrawn. Views differed as to the likely proportion of withdrawn reports that were false, but the figures proffered were high. The metropolitan CIU members thought that it was *at least* half and several of the regional CIU members thought that it was ‘about 50%’. One person in the latter group also commented that a very high percentage of recently reported rapes are false or have an element of falsehood, especially alleged husband/wife rapes. The OICs of CIUs thought that the figure was 40%–50% generally, but over 50% in the CBD. There was general agreement that it was a “very high percentage”.

2.21 Interestingly, most SOCAU members had a different view and did not seem to think that many withdrawn reports were actually false reports. Although views varied on the issue, the reports most often cited by SOCAU members as being false were those from teenage girls ‘caught out’ by their parents having sex, or people with a cognitive impairment.

2.22 There appeared to be a worrying assumption on the part of many in the groups, especially the CIUs and OICs, that it is possible to ‘just tell’ when a report is false. Some of the CIU OICs stated that they can tell a complaint is false where there is, for example, no corroboration or the stories don’t ‘gel’ in some way. One metropolitan CIU member commented that ‘the false reports are quite easy to determine early on’. Another added that the detectives make it ‘easy’ for people to withdraw false reports without them having to admit to their falsity.

2.23 The apparent belief of detectives and OICs that there is a high rate of false complaints is likely to affect the way in which reports are investigated. An attitude of scepticism may also result in complainants withdrawing allegations, even though investigation might have substantiated them. Clearly this attitude is inconsistent with the Code of Practice principle that allegations of rape should never be presumed to be false until they are thoroughly investigated.⁹⁴ In consultations with CASAs for the Interim Report, counsellor/advocates described

94 *Code of Practice*, above n 72, Guideline 33 and see also Guideline 66.

how devastating it was for a person to be confronted by a detective accusing them of lying—‘Clients are just blown away by that...’⁹⁵

2.24 It would appear that either false reporting has increased dramatically in Victoria in the last 20 years, or police are today more willing to judge reports false. According to police statistics from 1986–7,⁹⁶ only 7% of reported sexual assaults were judged to be false. A study released in 1991 by the Community Council Against Violence⁹⁷ reported that 71 allegations of rape made to Victoria Police between 1987 and 1990 were categorised as ‘false’. Those cases represented only 4.8% of reported rapes during this period. South Australia reported an even lower figure of 1.4% for false reports.⁹⁸

REASONS FOR WITHDRAWAL OF COMPLAINTS

2.25 A number of other reasons were advanced by SOCAU and CIU members and OICs for complainants withdrawing their complaints, including:

- fear of the lengthy criminal justice process, especially of cross examination;
- lack of confidence in the criminal justice system—judges’ comments, for example ‘no doesn’t mean no’ do not help;⁹⁹
- feelings of guilt, especially where alcohol or drugs were involved, that they were somehow responsible;
- some just want the offence recorded but have no intention of taking it further;
- some make the report only for the purposes of applying for crimes compensation;
- pressure from boyfriends or family to report, when they didn’t really want to;

95 See Interim Report above n 66, para 3.106.

96 Police Complaints Authority of Victoria (April 1988). *Sexual Assault Victims and the Police*, cited in Ngaire Naffine, ‘Windows on the Legal Mind: The Evocation of Rape in Legal Writings’ (1992) 18 (4) *Melbourne University Law Review* 741, 753.

97 *A Profile of Rapes Reported to the Police in Victoria 1987–1990*, Melbourne, 1991, 65–9, cited in Law Reform Commission of Victoria, *Rape: Reform of Law and Procedure* Report No 43 (1991) 25.

98 Naffine, above n 96. Naffine comments that based on these stats, the ‘vast majority’ of rape complaints are genuine, and that women alleging rape are ‘mainly believed’ [by police]. She expressed the opinion that the statistics are probably conservative.

99 This was a comment by a CIU regional member.

- sometimes people report rape where ‘they’ve had sex and not really wanted to but it’s not been a rape’;¹⁰⁰
- pressure from family to withdraw reports, when the report is of intra-familial abuse; and
- where there has been a delay in reporting and it is one person’s word against the other.

2.26 It is difficult to assess the accuracy of police perceptions in this area without reliable information about the reasons why complaints are withdrawn or police decide to take no further action. The Commission believes that additional research on the reasons why complaints are withdrawn could result in improvements to police procedure and reduce the number of withdrawn complaints.

! RECOMMENDATION(S)

8. Victoria Police should consider funding a research project to obtain further information about why complaints are withdrawn and the factors that influence police decisions to take no further action on a complaint. Information derived from this research should be taken into account in police training, and considered in the review of the Code of Practice for the Investigation of Sexual Assault (Code of Practice) and the review of the brief authorisation process proposed in Recommendation 19 below. See also Recommendation 32 below.

ATTITUDES TOWARDS VULNERABLE GROUPS

2.27 In Chapter 3 of the Interim Report we referred to factors which may discourage vulnerable complainants such as children, people from a non-English speaking background, Indigenous people and people with disabilities or impairments from reporting sexual assault.¹⁰¹ Focus groups explored the extent of these barriers and the extent to which police were aware of, and sympathetic to, the problems faced by vulnerable people.

100 SOCAU rural member.

101 Interim Report above n 66, paras 3.6–55.

People from a Non-English Speaking Background

2.28 In the focus groups few participants had personally dealt with many (or indeed any) reports of sexual assault by NESB people. Most recognised that these people face additional barriers when reporting. One regional SOCAU member said:

They don't come forward. A lot of them are from countries where the police are the bad guys. You go to the police station and never come out again.

A metropolitan SOCAU member made the following comment:

There are no supports for them, being non-English speaking.

2.29 Some police expressed the belief that young women from particular cultural backgrounds were likely to make false reports.

With a number of people from Turkish and Muslim backgrounds, where virginity before marriage is a big issue, they've probably had consensual sex and come to us and report it as a rape to justify the circumstances they find themselves in, and then withdraw it... Although we don't charge them with false reporting, it's fairly obvious that the reason it's been reported to us is to get them past this cultural disgrace.

2.30 The Commission is concerned that cultural stereotyping of this kind may result in failure to investigate reports from some NESB women who may have already had to overcome considerable obstacles before deciding to make a report.

2.31 During our NESB consultations, it became clear that women from non-English speaking backgrounds often feel that their particular needs are misunderstood, not only by police¹⁰² but by CASA workers. One woman of non-English speaking background said:

CASAs can understand the impact of rape, but not how it impacts on us.

And another commented:

I went a few times [to CASA] but then I realised the way I felt was not understood.

2.32 The Commission suggests that both police and CASAs attempt to establish better links with organisations which provide assistance to people from NESBs, with a view to providing a more culturally sensitive response to women and children from these communities who report sexual assault. The review of the

102 For a discussion of this, see Interim Report above n 66, paras 3.14–23.

Code of Practice is likely to recommend changes along these lines.¹⁰³ The Commission suggests that both the police and the CASAs make information available to NESB complainants, as soon as practicable, about the culturally specific support services available to them.

! RECOMMENDATION(S)

9. Victoria Police and CASAs should ensure that NESB complainants receive written information in relevant community languages as soon as practicable after a report of sexual assault has been made, about culturally specific support services available to them.

Indigenous People

2.33 The barriers encountered by Indigenous people were canvassed in the Interim Report.¹⁰⁴ There was general agreement amongst the focus group participants that Indigenous people very rarely report sexual assaults, despite the fact that such crimes occur frequently within Indigenous communities.¹⁰⁵ Many thought this was because the communities are close knit and the accused is mostly well-known to the victim, and that the communities prefer to deal with such things themselves. Others posited lack of confidence that the criminal justice system would actually deliver justice as an important reason for low reporting:

[Indigenous women] see a lack of successful prosecution, see that complainants get ostracised [in the communities].¹⁰⁶

2.34 The findings in a recent report by Elizabeth Hoffman House and CASA House¹⁰⁷ support police perceptions of sexual assault within Indigenous communities.¹⁰⁸ The authors ran a series of focus groups with Indigenous and

103 See above paras 2.12–13.

104 See paras 3.24–28.

105 One SOCAU member commented: ‘Sexual assault amongst aboriginal communities is an epidemic. What aboriginal adolescent girl hasn’t been sexually assaulted?’

106 Metropolitan SOCAU member.

107 See Elizabeth Hoffman House and CASA House, *From Shame to Pride: Access to Sexual Assault Services for Indigenous People* Consultation Outcomes, Reports and Recommendations (2004). The recommendations from this report are reproduced in Appendix 2.

108 For a summary of recent reports relating to sexual violence in Indigenous communities, see *ibid* 16–19. For example, a recent study by the NSW Aboriginal Justice Advisory Council, *Speak Out Speak*

non-Indigenous participants¹⁰⁹ in three metropolitan and regional areas in Victoria. Indigenous workers spoke repeatedly about the ‘epidemic’ of sexual abuse:

Its [sic] just like this disease that just keeps getting stronger and stronger. Whole generations of our young people are growing up thinking that this stuff is normal behaviour.¹¹⁰

2.35 Participants also said that very few victims report sexual offences to police or seek any other assistance:

There is a perception that if you are a victim and you speak out, then you risk getting victimised all over again. There are also the repercussions from family members and the community. It can be anything from being isolated out or intimidated into silence.¹¹¹

2.36 Many participants complained of the lack of Indigenous-specific services for sexual assault victims and identified this as a ‘key barrier’ to victims seeking assistance.¹¹² Indigenous workers also reported a lack of understanding within communities of the role of CASAs. Some of the other problems identified were: institutionalised racism within the service systems and legal system, fear of reprisals from the perpetrator or family/community, victims not labelling the incident as a sexual assault and fear of police and the legal system generally. One Indigenous worker commented:

Strong: Aboriginal Women in Custody found that 69% of the Aboriginal women surveyed reported being abused as a child and 75% of those women said they were sexually assaulted as children. Over 82% did not report the abuse. Over 73% reported being abused as adults and 42% of these were sexually assaulted. A report by the Queensland Aboriginal and Torres Strait Islander Women’s Task Force on Violence in 1999/2000 estimated that about 88% of rape cases within Indigenous communities goes unreported. The report also highlighted that many sexual offences occur within families, but are not often identified by Indigenous women as such. Even if they are, the women ‘are reluctant to seek help from the legal system because they fear they will be abused further by male police and male lawyers who were considered to place them on trial, rather than the perpetrator’. (at p 18).

109 A total of 54 people participated in the focus groups and included Indigenous workers/community members, mainstream providers of services to people who have experienced sexual assault, particularly the CASAs and both Indigenous and non-Indigenous mainstream participants.

110 Elizabeth Hoffman House and CASA House, above n 107, 23.

111 Ibid 24.

112 Ibid 27.

One of our women was encouraged by the CASA to go to police, and she did. But once she got there, when she presented her story, she was faced with a lot of disbelief. She didn't go back.¹¹³

2.37 It is clear that sexual abuse within Indigenous communities is not a problem that can be dealt with in isolation. In a roundtable discussion held before publication of the Commission's Interim Report, the following priority areas were identified:

- a coordinated Indigenous-specific service response that includes legal, health and counselling services;
- community education about prevention and dealing with sexual assault;
- a holistic approach to the problem of sexual violence, that recognises interconnected kinship and family structures;
- recognition of the close relationship between domestic violence and sexual assault; and
- greater involvement by Indigenous people in developing culturally appropriate strategies for police to respond to sexual assault of Indigenous people.¹¹⁴

2.38 In terms of a specific police response, Victoria Police has made a start with its review of the Code of Practice which, amongst other things, will look at ways to improve police and CASA responses to the needs of Indigenous women who report sexual assault.¹¹⁵

2.39 The Commission considers it important for CASAs and police to ensure that information is provided to Indigenous complainants about the availability of support and counselling services from culturally specific service providers.

113 Ibid 33.

114 See Interim Report above n 66, Chapter 3.

115 See above paras 2.12–13.

! RECOMMENDATION(S)

10. Victoria Police should ensure that Indigenous complainants receive written information about Indigenous support services available to them as soon as practicable after a report of sexual assault has been made.

People with a Cognitive Impairment

2.40 The barriers which people with a cognitive impairment face in reporting sexual assault are discussed in the Interim Report.¹¹⁶ Since then the Disability Discrimination Legal Service (DDLs) has undertaken a project on the problems experienced by people with cognitive impairment in accessing the criminal justice system after sexual assault.¹¹⁷

2.41 Despite the over-representation of people with a cognitive impairment as victims of sexual assault, there are very few prosecutions under the Victorian offences designed to protect people with cognitive impairment from sexual exploitation by people with power over them.¹¹⁸ Chapter 3 of this Report makes proposals to overcome the difficulties experienced by these people in reporting offences and giving evidence.

2.42 Most participants in the focus groups had had some personal experience dealing with reports of sexual assault by people with cognitive impairments. They were generally in agreement that these matters rarely reach prosecution stage. One SOCAU metropolitan member said

They [people with cognitive impairments] are not believed... It is difficult for them to give a good account of what happened.

2.43 Another person commented that people with an intellectual disability 'don't withdraw but the briefs don't get authorised'. A CIU metropolitan member commented that people with intellectual disabilities 'can't verbalise things properly, they can't talk about things to the level we need to prosecute' and another said that unless there is physical or forensic evidence to corroborate the

116 See paras 3.29–43.

117 Disability Discrimination Legal Service, *Beyond Belief, Beyond Justice: The Difficulties for Victim/Survivors with Disabilities when Reporting Sexual Assault and Seeking Justice* Final Report of Stage One of the Sexual Offences Project (2003).

118 *Crimes Act 1958* ss 51 and 52. Confirmed by Gary Ching, Manager Sexual Offences unit in OPP in email of 23 September 2002.

complaint, then you 'don't have a complaint'. Clearly there is a need for more police training and other support to assist police in dealing with reports of sexual assault from people who have a cognitive impairment. We discuss this issue in Chapter 6.

Children

2.44 There was general agreement within several of the groups that the pressures on children reporting sex offences are often greater than those on adults.¹¹⁹ Some thought that children are often pushed into reporting and do not want to go ahead as they know the offender and are afraid of the consequences; others felt that it was the parents who often instigated withdrawals when they realise the traumatic, drawn-out process ahead of the child. One SOCAU metropolitan member commented that unless the child has good support within the family for the report, the pressures on the child were enormous and a withdrawal was likely. An Officer in Charge of a CIU thought that 'parents are unwilling for a child to go through the system... It's just too hard for them to cope'. Another said that that parents will sometimes report something a child has told them but 'parents don't want kids involved with the judicial system in any way'.

Rural Victims

2.45 Another disadvantaged group of victims are those living in rural areas. According to focus group participants, services are difficult to access, the police are often inadequately resourced¹²⁰ and the court delays can be inordinate. Some areas do not have SOCAUs and in others SOCAU members are difficult to contact after hours when sexual assaults often occur.¹²¹ CASA services are also limited in the country, so that a victim may have to wait weeks or even months to receive counselling. Several participants complained that CASAs were often difficult to contact.

119 For a discussion about the particular pressures on child victims of sexual assault see generally David Jefferies, 'Gathering Evidence from Child Witnesses: A Police Perspective' (Paper presented at the Children as Witnesses Conference, Australian Institute of Criminology, 3-5 May 2002).

120 One CIU regional member commented: 'we [Victoria Police] are now looked at as a business and we don't fund some parts of it as well as others'.

121 For sexual assault victims needing immediate assistance after hours, there is the Sexual Assault Crisis Line which is staffed by CASA workers. The number is listed in the phone book or can be obtained direct from Telstra.

2.46 Community attitudes were also identified as a problem. A SOCAU member said:

certainly with our strike rate in Ballarat with convictions in the County Court, you really have to prepare them [complainants] for the fact that if this...gets to court, it doesn't matter how much evidence you've got...I say to them it's unlikely we'll get a conviction in court [in Ballarat].

The reason suggested for this problem was that people in the area still don't think that sexual assault happens.

2.47 A CIU member commented:

Ballarat has a really bad reputation for juries... You can have a watertight case and then the jury goes 'no not guilty'.

Victims of sexual assault are no doubt well aware of this situation and may decide not to bother reporting, because of the uncertainty of outcome.

COMMUNICATION WITH COMPLAINANTS

2.48 In the Interim Report we referred to the concerns which the CASA groups had expressed about some CIU members. Counsellor advocates who had worked in the field for some years had noted positive changes in the approach of CIU detectives. However it was said that some CIU members still took an adversarial approach in dealing with complainants. It was also said that investigative processes still took precedence over the complainant's welfare.

2.49 Along similar lines, SOCAU members were frequently critical of the detectives' communication styles and attitudes. Many felt that detectives went into investigations with preconceptions, for example, that if the victim knew the offender it wasn't likely to be a rape.¹²² Others ask as their first question to the SOCAU member who has dealt with the initial report: 'is it [the claim] legitimate?' or 'is she attractive?', 'what was she wearing?'¹²³ Some SOCAU members thought that sexual offence files are a low priority for the CIUs. A metropolitan SOCAU member suggested that one reason why these cases are not a priority for CIUs is that they involve hard work and it takes a long time to lay the foundations for a solid case:

122 In this regard, a SOCAU OIC thought that the detective training was at fault in that the cases discussed are always stranger rapes, despite the reality that most victims know the offenders.

123 Comment from a SOCAU OIC.

They deal with the human element—emotions—and volatile and sensitive issues. It takes a long time to work with people and it's not a matter of ...just getting the facts... They're [CIU detectives] under the pump – 15, 20 open cases at a time, and these things [sexual assault investigations] go on for months and months.

2.50 Some SOCAU members thought that CIU members' communication techniques with complainants left much to be desired, that they were often harsh or blunt,¹²⁴ used inappropriate language¹²⁵ or were generally insensitive. One suggested frustration with the process as a reason:

Once you get your fingers bitten a few times with a huge sex brief that's gone nowhere I guess you are wanting to know whether this person is in for the long haul right from the word go and they expect the victim to say 'yes I'm in for the long haul'. And if they get the wishy washy ones...it must be very frustrating.¹²⁶

Another thought that preconceptions about 'real' rape victims play a role:

If the victim can articulate herself about the offence, then she's not acting like she's been raped. There's still a bit of a preconception of how you should behave if you've been raped...if the victim is inarticulate then they wonder what sort of witness she will make...¹²⁷

The Police Code of Practice emphasises that:

people react differently to traumatic events. A victim may appear very composed and be able to calmly discuss the incident. You should not infer from this that the victim is unaffected by the assault or is lying... Alternatively a victim may be in a very distressed state.

Training for police should ensure that these varying reactions are understood by police.

2.51 It was also suggested that police may be influenced by judgments about the behaviour of the woman reporting the offence.

124 As one metropolitan SOCAU member said: 'It's a time management issue for them, and if they can cut to the chase and get a definite answer by being a bit blunt and in your face, they'll do it'.

125 One SOCAU member had overheard a CIU member say to another officer in front of a complainant: 'apparently she's a victim of a gang bang.' (SOCAU metropolitan member).

126 SOCAU metropolitan member.

127 SOCAU metropolitan member.

Was she contributing to the offence...this old belief that she must have done something or been wearing something or said something for her to have been raped...¹²⁸

2.52 Such comments suggest that CIU members need additional training to assist them to deal with complainants. Recommendation 30, proposes the establishment of specialised Sexual Assault Investigation Sections. In these sections, a detective or CIU member would be attached to a SOCAU. This will help build up a core of detectives with expertise in investigating sexual assault.

GENERAL DUTIES POLICE

2.53 In the CASA focus groups concerns were also expressed about the response of some general duties police. Similarly, participants in the police focus groups commented that although the response of general duties police to those who report sexual offences is often good, some either do not know about the Code of Practice or are not sensitive in dealing with complainants. One OIC participant commented that the first contact is very important. The person the victim encounters at the front desk in the police station will affect her impression of the whole process. One rural SOCAU member thought that ‘a minority [of general duties police] don’t give good service’ and that if front desk members don’t have the appropriate skills and training they won’t make a good first impression.

2.54 Training of recruits includes a module on basic responses to sexual assault victims and on the Code of Practice. There are no ‘refresher’ courses aimed at general duties members who have been in the field for some time. The view expressed was that providing one module on sexual assault amongst the huge amount of information new recruits have to absorb was clearly inadequate.

2.55 The Commission believes that there is a need to develop additional training components for general duties police to keep them up-to-date on issues relating to sexual assault and enable them to respond sensitively and appropriately to victims who decide to report sexual assault. Training should include a component on the factors which may make it difficult for a person to proceed with a complaint, the particular difficulties experienced by women from some communities and the support they may need if they are to continue with a complaint. Local SOCAUs could be involved in providing training to general duties members.

128 Regional SOCAU member.

RECOMMENDATIONS

TRAINING NEEDS

2.56 In the Interim Report we said that there was a need to enhance sexual assault training, particularly training for members of CIUs and general duties police. Police focus groups expressed similar concerns. The Commission recommends that Victoria Police review and overhaul the sexual assault training programs for general duties police, and for police in SOCAUs and CIUs.

!	RECOMMENDATION(S)
11.	Victoria Police should enhance training and develop refresher courses for all general duties police on how to respond appropriately to victims of sexual offences.
12.	<p>Training on sexual assault for members of Sexual Offences and Child Abuse (SOCA) Units and Criminal Investigation Units (CIU) should address the social context of sexual offences, including:</p> <ul style="list-style-type: none"> • the characteristics of most offences, offenders and victims; • the short-term and long-term impact of sexual assault on victim/survivors; and • the barriers that victims often face in reporting offences.
13.	Training for CIU members on responding to sexual assault victims should include information on the reasons why victims may feel unable to continue with a police report, or request that the investigation be discontinued. This material could usefully be included in a training session developed by CASAs in collaboration with the SOCAU Coordination Office.
14.	<p>Police training should take account of the diversity of victims' needs and the particular barriers to reporting which are faced by some groups in the community. Training initiatives should discuss best practice models for responding to sexual assault of:</p> <ul style="list-style-type: none"> • Indigenous people; • people from non-English speaking backgrounds;

! RECOMMENDATION(S)

- people with cognitive impairments; and
 - children.
15. In developing sexual assault training packages for police, Victoria Police should:
- work collaboratively with CASAs to develop training packages that ensure police members understand the role of CASAs and can benefit from their experience of working directly with complainants;
 - engage consultants or representatives from non-English speaking background community organisations who are recognised by communities as having expertise or training experience in culturally appropriate sexual assault service responses; and
 - engage consultants or representatives from Indigenous community organisations who are recognised by Indigenous communities as having expertise or training experience in culturally appropriate sexual assault service responses.¹²⁹

PROVIDING INFORMATION TO THOSE REPORTING SEXUAL ASSAULT

2.57 Based on the results of consultations and CASA focus groups conducted for the Interim Report, the Commission believes that improvements could be made to police communication processes with people who have reported sexual assault. Written materials in a range of languages covering police processes in sexual assault cases should be made available at police stations across Victoria. This may help to demystify the process for some victims and encourage reporting.

2.58 The Commission also recommends that police provide written reasons to complainants when it has been decided that no charges will be laid or no further action will be taken. In police focus groups participants reported that written reasons for a decision not to authorise a matter for prosecution were rarely given to complainants¹³⁰ and that the normal way to inform a person about a decision

129 The SOCA Coordination Unit is already working with the Victorian Aboriginal Child Care Agency and Immigrant Women's Domestic Violence Service in providing training sessions in the current SOCAU training course.

130 Only the metropolitan CIU OICs thought that written reasons were often provided.

not to proceed was by a phone call. A few focus group participants said that they had on occasion provided written reasons, but only where the person had requested it after being informed verbally of the decision not to proceed.

2.59 Some CIU members were of the opinion that if police were honest with the complainant from the start about their chances of a successful prosecution, then non-authorisation¹³¹ should come as no surprise. Interestingly, many participants reported that complainants were often relieved to hear that their cases had not been approved for prosecution.

2.60 The Commission's recommendation that written reasons be provided is aimed at improving communication between complainants and police and at increasing the accountability and transparency of police decision-making. Such changes could make people more confident about reporting sexual assaults to the police.

!	RECOMMENDATION(S)
16.	Information on police processes should be made available to victims at police stations. Materials should outline the basic steps involved in reporting sexual assault to the police, the contact details of local CASA and SOCA Units, the principles of the Code of Practice, and the options victims have in making a statement. These materials should be provided in a range of languages.
17.	Liaison Committees (see Recommendations 27, 28, 29 below) should assist in the development of these materials and ensure the materials are kept updated and a ready supply available at police stations at all times.
18.	The Code of Practice should be amended to state that, as a matter of course, written reasons must be provided to the victim where a decision is made not to continue with an investigation or not to lay charges.

131 See discussion below para 2.61.

AUTHORISATION OF BRIEFS

2.61 The ‘authorisation’ process refers to the decision-making process where a file is examined to decide whether or not it should be referred to the Office of Public Prosecutions (OPP) for prosecution. Generally it is the senior sergeant attached to the relevant CIU who is in charge of the authorisation process for sexual offence briefs, although in country areas it is sometimes the station senior sergeant (who may or may not have specific knowledge about the law relating to sexual offences). Generally, the Officers in Charge of SOCAUs are not delegated power to authorise or not authorise briefs of evidence relating to sexual assault, even though many are CIU qualified. The Commission sees this as somewhat anomalous, given that these officers have both specialised training in sexual offences and also detective qualifications. For this reason they may be better qualified to review these briefs than those with no specific training in the area of sexual offences.

2.62 CASA focus groups reported an apparent lack of consistency in police responses to reports of sexual assault.¹³² In the police focus groups, the Commission was told that there are no formal criteria against which cases are assessed for authorisation. Some participants felt that the authorisation process was somewhat haphazard and unpredictable. A common comment was that costs are almost always a consideration in the decision—if there is any chance of losing the case and having legal costs awarded against the department, then a brief will usually not be authorised.

Particularly [in cases] where there is not a great deal of corroboration, it can come down to costs. If we lose, we get costs awarded against us, that comes out of our budget; the bosses won’t authorise it if it’s a line ball.¹³³

2.63 According to a SOCAU OIC, costs are awarded against the police in most unsuccessful prosecutions, and sometimes when only some of the charges have failed. Certainly since the High Court decision of *Latoudis v Casey*,¹³⁴ it is now easier for successful defendants to claim costs from police. In that case the High

132 Interim Report para 3.105.

133 Metropolitan CIU OIC. For the financial year 2002/3, costs were awarded against police in 0.3% of cases (the previous financial year was 0.4%), well within the police target for the year of <1% of cases: Victoria Police *Annual Report 2002–3*. The Annual Report does not give breakdowns as to the types of cases in which costs were awarded against police. Given the low conviction rate for sexual offences, it could be that they make up a higher proportion of these cases than other types of matters.

134 (1990) 170 CLR 534.

Court decided that in ordinary circumstances an order for costs should be made in favour of the person against whom a criminal prosecution has failed. Mason CJ said in relation to police:

The argument that police and other public officers charged with the enforcement of the criminal laws will be discouraged by the apprehension of adverse orders for costs from prosecuting cases which should be brought is without substance and is no longer accepted by the courts...¹³⁵

2.64 The Commission believes that the review of the brief authorisation process (see Recommendation 19 below) should examine the effect of court costs on authorisation, particularly in cases in which there is no physical or other evidence to support the complainant's allegations.

2.65 The existence of corroborating evidence such as signs of physical injury, forensic evidence or supportive witnesses was identified as an important factor in the authorisation decision. One CIU OIC commented:

If an injury is consistent with the attack then you're more likely to authorise that brief than one in which the victim has no injuries at all.

One regional SOCAU member said that if there is no supporting evidence she will tell complainants that they have little chance of success:

If it's one on one...you tell the victim almost straight away if there's no witness evidence, no medical evidence...they have 'Buckley's or none'... The percentage of authorised briefs is tiny compared to the complaints you get.

2.66 The majority of women who are sexually assaulted are not physically injured.¹³⁶ Police reluctance to authorise a brief in such cases may mean that many of those actually guilty of sexual assault are not prosecuted because there is little or no physical evidence to implicate them.

2.67 In country areas senior sergeants may also consider community attitudes when deciding whether or not to authorise a case for prosecution:

135 Ibid 543. For a brief discussion of the case see Fitzroy Legal Service, *The Law Handbook* (2004) 80.

136 Discussion Paper para 3.15.

In Ballarat the general community still don't think it [sexual assault] happens, they would still be blaming the victim and they're your jury... Your boss has to consider community perceptions as to the outcome... If more went to court, the public awareness would change.¹³⁷

2.68 Another factor which influenced brief authorisation was police perceptions about whether the complainant would be a convincing witness. If the complainant was intoxicated at the time of the offence, briefs were less likely to be authorised because it was thought that she might be perceived as having faulty recall or even as being dishonest. One regional CIU member said that if the victim was drunk and is 'sketchy' about what happened, you have to let her know that 'it [her story] will be picked apart by the defence'. If the complainant is inarticulate or lacking confidence when relating the facts to police that may count against her in authorisation. One SOCAU member expressed frustration with this situation:

There seems to be lots of pre-empting about how things will pan out in court and not giving the victim the opportunity to stand there and say what's gone on... I don't know many 'ideal' victims that you have... The reality is that there are not many 'ideal' victims of sexual offences... They make those decisions [authorisation decisions] based on the fact that people might be a little bit slow or because they didn't act a certain way.¹³⁸

2.69 Other factors put forward as influencing the authorisation decision were:

- existence of a mental impairment for either party;
- extreme youth of the complainant (under 10 years);
- if the only corroborating evidence was witness statements and those witnesses have had criminal convictions;
- the age of the allegations and whether there was any supportive evidence;
- whether or not the complainant could recall specific details; and
- the existence or otherwise of similar fact evidence or whether the accused has many prior convictions.

All of these factors except the last one apparently make it less likely that a file will be authorised.

137 Regional SOCAU member. A SOCAU OIC commented that some areas such as Bendigo are notorious for acquitting those accused of sex crimes.

138 Metropolitan SOCAU member.

2.70 There appears to be a lack of consistent and transparent process in relation to the authorisation of briefs. From the Commission's own research, and also the *ABS Women's Safety Survey*, it is clear that a large proportion of sexual assault reports never reach prosecution. In part this is due to complainants withdrawing their reports themselves, but many others are rejected as viable cases for prosecution by police. The Commission recommends that Victoria Police review the brief authorisation process to make it more consistent, accountable and transparent than appears to be the case at present. The review should consider the extent to which concern about costs affects authorisation of certain types of sexual offence briefs, for example those in which there is no physical or witness evidence to support the complainant's allegations. Guidelines should clearly specify the factors which should be considered in the authorisation process relating to sexual offences, including factors relating to costs.

2.71 As noted in the Interim Report,¹³⁹ in the *Violence Against Women Strategy—A Way Forward* Victoria Police have similarly included a recommendation for a consistent approach to be taken to the process of authorising briefs that will ensure greater accountability to victims.¹⁴⁰

!	RECOMMENDATION(S)
19.	Victoria Police should review their brief authorisation process with the aim of developing a model that is consistent, transparent and accountable. In particular, the impact of court costs on the decision-making process should be examined and appropriate strategies devised to resolve any issues which are identified.
20.	Victoria Police should consider delegating power to the Officers-in-Charge of SOCA Units to authorise sexual assault briefs.
21.	A monitoring process should be established to allow evaluation of the authorisation process on a regular basis, so that necessary amendments can be made.

139 See n 1, para 3.117.

140 See Victoria Police, *Violence Against Women Strategy: A Way Forward* (2002) 7.

! RECOMMENDATION(S)
22. All officers who are able to authorise briefs in sexual assault matters should be required to attend a sexual assault brief manager's course.
23. Where the Criminal Investigation Unit have principal carriage of the investigation, the Officer-in-Charge of the relevant SOCA Unit, or the individual SOCA Unit members, should be consulted prior to any decision being made against authorising the brief for prosecution.

POLICE CONCERNS ABOUT THE CODE OF PRACTICE

2.72 As would be expected, all police focus group participants were aware of the existence of the *Code of Practice*. The majority thought that the Code generally worked well but several said that most uniformed members were not aware of their obligations under the Code and some were not even aware of its existence.¹⁴¹ Recommendations 11–15, which proposed changes to police training, are intended to ensure that all police, including general duties police, are aware of the requirements of the Code.

2.73 In support of the Code some participants in police focus groups said that it simply codified what police were doing anyway.¹⁴² One SOCAU OIC commented that the Code 'works inasmuch as you have a set format which is a lot clearer than it was'.

2.74 There was also criticism of some aspects of the Code in the focus groups. The Code of Practice requires that:

members must consider the victims' immediate medical needs and take them to the nearest CASA or Hospital Crisis Care Unit (HCCU) as soon as possible. This is an absolute priority in cases of recent sexual assault and should occur within two hours of the arrival of the first police member.¹⁴³

A counsellor or advocate should be at the crisis care unit to provide emotional support for the victim and to explain medical and legal options available.

141 Comments were made to this effect by several participants, including a CIU metropolitan member, a SOCAU regional member, a SOCAU OIC and a CIU OIC.

142 CIU regional members were of this view.

143 *Code of Practice*, 4.

2.75 These provisions are intended to ensure that a person who reports sexual assault receives appropriate support as soon as possible. The availability of this support will affect the complainant's recovery from the event and may also affect their decision about whether to continue with the complaint.

2.76 There was much opposition among police to the requirement that the person should be conveyed to the nearest CASA or Hospital Crisis Care Unit (HCCU) within two hours before any investigations begin. Opposition was greater amongst the CIU members and OICs, many of whom thought that the rule was not only impractical but interfered with investigational requirements.

2.77 The metropolitan CIU members were particularly scathing about CASAs and the two hour rule:

It's a load of rubbish. Sometimes the CIU needs to speak to the victim straight away.

Others thought that victims should be given a say, particularly as some were willing to assist with investigative requirements such as visiting the crime scene prior to going to CASA.¹⁴⁴ Some thought it should not be mandatory to convey the victim to a CASA as the first port of call. SOCAUs and CIUs working in regional areas pointed out that it is often impossible to comply with the two hour rule, as it sometimes takes longer than that to drive to the nearest CASA, assuming the CASA is open. In some rural areas, police advised it could take up to a month before a CASA could see a victim.

2.78 The Code provides that unless the victim otherwise requests, a SOCAU member of the same sex should conduct the interview and take a full statement. It seems that this provision is not applied on a regular basis. Police said that unless the victim specifically requested a same sex officer to take the statement whoever was available attended to it. Most participants said that victims rarely requested a person of the same sex to take their statement. If they did, they would attempt to accommodate the request, although in country areas this would not always be possible due to low staffing levels. One regional CIU member commented: 'This "equal opp." stuff has gone a bit too far'.

2.79 In the CASA focus groups and in a report published by CASA House there were four main areas of the Code where problems with compliance were identified. These were summarised as follows: police placing investigatory needs

144 Here it should be noted that the Code in fact states that where the victim's wishes are contrary to the guideline (the 'two hour rule') or, in the case of children, the wishes of the parent/guardian are contrary to it, an exception can be made.

above the care of the complainant, failure to provide a police member of the same sex to take the complainant's statement, failure to maintain regular contact with the complainant about the process of the investigation, and not always referring complainants to a CASA.

2.80 Participants in the CASA focus groups said that police often interpreted the provision requiring the complainant to be taken to the nearest CASA or hospital care unit as requiring the victim to be taken to the CASA nearest the place where the report was made. The Code was intended to require the victim to be taken to the CASA nearest to where she was living, unless the victim wishes otherwise, so that she is able to receive ongoing counselling and emotional support. The Code of Practice should be interpreted in the way originally intended, and police training should emphasise the importance of this requirement.

2.81 The Commission regards the Code as a very important means of ensuring a coordinated and supportive response to women who report sexual offences. There is clearly some lack of awareness of the Code among general duties officers. Resistance to the Code among SOCAU or CIU members may stem from lack of resources to implement the Code, from lack of understanding about the purpose of the relevant provisions or from reluctance to collaborate with CASAs.¹⁴⁵ The Commission believes that areas of difficulty should be discussed by police and CASAs and resolved during the review of Code of Practice which is currently being undertaken by Victoria Police.

! RECOMMENDATION(S)

24. Police should be made aware that the *Code of Practice* applies regardless of whether medical attention or a forensic medical examination is required.
25. The meaning of the requirement that people reporting a recent sexual assault should be taken to the nearest CASA or hospital Crisis Care Unit should reflect the principles upon which the Police *Code of Practice* was first based. The Code should be interpreted to ensure that victims receive continuity of care and to optimise their future access to counselling services.

145 See paras 2.91–94.

FORENSIC ISSUES

2.82 As the Code of Practice recognises, the Forensic Medical Officer (FMO) is the only person who can decide whether a medical examination should be conducted or not. Having a victim medically examined within two hours was reported to be nearly impossible in country areas. Several focus group participants from these areas complained that there were not enough FMOs or local doctors available to conduct the examinations. One CIU regional member stated that the whole of Latrobe Valley does not have a police surgeon as there is no doctor who wants to take on the task. As a result, victims must be conveyed to one of the Melbourne crisis centres. Another participant commented that there is no FMO callout procedure in East Gippsland and victims end up sitting for hours in police stations or cars. Sometimes victims have to wait until 5 pm to be examined by an FMO as the doctor insists on finishing with her private patients first. Child victims in regional areas often had to be driven to the Gatehouse Centre in Melbourne for medical examinations due to a lack of available local doctors to conduct paediatric sexual assault examinations.

2.83 Overall, the participants appeared to be saying that lack of sufficient FMOs in country areas disadvantages not only victims, but also police investigative requirements.

2.84 In metropolitan areas, some SOCAU participants reported often having to wait several hours for an FMO to attend, even where a victim had physical injuries.¹⁴⁶ The metropolitan CIU members were generally very positive about the FMOs they had contact with, saying they were helpful and usually very prompt. Some CIU OICs were of the opinion that there should be no time limits specified for the medical examination. One said that it's 'constraining' and that it could be the end of the victim's report if she was not up to an immediate medical examination.¹⁴⁷ Another made the suggestion that if there is no FMO available or if the victim feels more comfortable being examined by her own GP, then that should be allowed. Someone else made the comment that the GP would need to have some kind of sexual assault kit available, otherwise any evidence collected

146 Comment from a SOCAU metropolitan member.

147 In this regard it should be noted that the *Code of Practice* specifically allows an exception to the guideline that a victim should be transferred to the nearest CASA or HCCU within two hours: where the victim's wishes are contrary to the guideline, or in the case of children, the wishes of the parent or guardian are contrary to the guideline.

could be challenged later in court as unreliable. These issues should be considered in the review of the Code of Practice.

2.85 The Commission spoke with representatives from the Victorian Institute of Forensic Medicine (VIFM), which is responsible for recruiting, training and supervising¹⁴⁸ FMOs and sexual assault doctors throughout Victoria. Doctors in rural areas wishing to be registered as FMOs (to perform all kinds of forensic duties, including examination of sexual assault victims) or sexual assault doctors (to perform only sexual assault examinations) must, amongst other requirements, complete a police background check. They are visited by a representative from VIFM and provided with a comprehensive Sexual Assault Manual¹⁴⁹ which sets out background material and administrative and forensic requirements for sexual assault forensic examinations.

2.86 According to VIFM, recruiting FMOs and sexual assault doctors in rural areas is proving difficult, partly due to the fact that rural doctors receive only a per case payment and no on call fee.¹⁵⁰ In many areas it has not been possible for VIFM to recruit sufficient female FMOs and sexual assault doctors, which is problematic as many sexual assault victims request medical examination by a female doctor. Due also to funding issues, it is difficult for VIFM to conduct frequent enough visits to regional areas to support the existing FMOs.

2.87 The Commission suggests that the government consider allocating increased funding to VIFM to ensure that appropriate numbers of FMOs are recruited and trained in areas reporting chronic shortage.

2.88 Further, the Commission believes that all FMOs should be well versed in the guidelines of the Code of Practice on Sexual Assault. Appropriate strategies for ensuring this occurs could be considered by the recently established Sexual Assault Liaison Committee. The Sexual Assault Liaison Committee includes representatives from CASAs, VIFM, the Victorian Forensic Science Centre, the

148 VIFM conducts meetings every two months at its offices in Melbourne with doctors who conduct sexual offence forensic examinations. This is an opportunity for the exchange of information (guest speakers are often invited) and the discussion of problems. VIFM also publishes a quarterly newsletter with updates and educational material and conducts regular conferences for members, as well as training sessions. There is no formal performance monitoring procedure as such, however the majority of FMOs send their reports into VIFM prior to them going to the police.

149 Victorian Institute of Forensic Medicine, *Sexual Assault Examiners Manual* (2003).

150 Their city counterparts receive both a per case payment and on call fee, due to the much higher number of reported sexual assaults in metropolitan areas.

Sexual Crimes Squad, the Office of Public Prosecutions, the SOCA Unit Coordination Office, and other key stakeholders.

! RECOMMENDATION(S)

26. The government should consider allocating additional funding to the Victorian Institute of Forensic Medicine (VIFM) to ensure that appropriate numbers of Forensic Medical Officers (FMOs) and sexual assault doctors can be recruited and trained, particularly in regional areas reporting chronic shortages.
27. The Sexual Assault Liaison Committee should consider the most appropriate means of ensuring that forensic medical officers are familiar with accurate interpretation of the Code of Practice guidelines. This could be achieved through the inclusion of material in training manuals and sessions, redistributing copies of the Code, and issuing 'refresher' documents that clearly state the position on relevant issues.

INVESTIGATIVE DELAYS

2.89 In CASA focus groups concerns were expressed about the long delays which often occurred between the report of a rape and the charging of an offender. Where an alleged offender cannot be found delay is unavoidable. However, police expressed concerns about the extraordinarily long delay in obtaining the results of DNA testing. One CIU member complained that the wait was sometimes longer than a year.¹⁵¹ Obviously such a situation is highly unsatisfactory from the point of view of both complainants and investigating detectives.

2.90 Victoria currently has a large backlog of cases awaiting analysis, which the Victorian Forensic Science Centre (VFSC) estimates would take about four years to eliminate with a lead time of 12 months from the appointment of extra staff.¹⁵²

151 CIU regional member.

152 See Law Reform Committee, Victorian Parliament, *Forensic Sampling and DNA Databases in Criminal Investigations* (2004) VFSC Submission 23S4, at p 469. Some legal organisations which participated in this review perceived the VFSC to be aligned with the interests of Victoria Police and the prosecution. For example, the Law Institute of Victoria commented that the VFSC was perceived

The Victorian government allocated additional funding for 2003/2004 for the purchase of necessary equipment and it has recently announced a four-year package commencing 1 July 2004 for the appointment of an additional 23 staff to work on the DNA backlog. The Commission commends this move, which should improve the current difficult situation regarding DNA testing.

IMPROVING WORKING RELATIONSHIPS BETWEEN KEY PLAYERS

2.91 Under the Victoria Police Strategic Plan 2003–2008,¹⁵³ one of the listed aims is ‘Partnership Policing’. The plan states that under ‘partnership policing’, the effectiveness of the police approach will be reflected in ‘a greater number and diversity of partnerships with government departments, research institutions, industry groups, other social agencies, community groups and experts’.¹⁵⁴

2.92 The Code of Practice can only achieve its purpose if there is co-operation between CASA, the local Crisis Care Unit, SOCAU members, detectives and any Forensic Medical Officer working in the particular area. It was evident from the focus groups that there is room for improvement in the relationships between police and various key stakeholders and in particular between CIUs and CASAs. In the police focus groups, resentment towards CASAs came mostly from the CIU members, who felt that CASA counsellors sometimes talked victims out of proceeding with their complaints by giving them advice they are not qualified to give about police and criminal justice processes. One person said: ‘It’s us and them. They treat the victim as their own property’. The attitudes of the SOCAU members towards cooperating with CASAs varied widely and tended to depend on their own particular experience in their regions.

2.93 Training of police and more constructive dialogue between CASAs and police could ensure that police understand the reasons for these provisions and could contribute to police and CASAs working together effectively in supporting people who report sexual assault.

2.94 Greater use of police/CASA liaison committees could contribute to an improvement in relationships. CIU representatives should regularly attend and contribute to such committee meetings. Sexual assault liaison committees do not exist in all areas. Consideration should be given to establishing liaison committees

to be ‘an organ or a command of the police’: D. Laschko, Minutes of Evidence, 22 July 2002, 91, cited in the Committee Report, 362.

153 Victoria Police, Strategic Plan 2003–2008 <<http://www.police.vic.gov.au>>.

154 Ibid 17.

in all metropolitan areas. In country areas where it would be impractical to establish a Committee, a Criminal Investigation Unit member should be nominated to contact the local CASA and FMOs on a quarterly basis to discuss any problems or issues that have emerged. Formalised methods for resolution of issues and reporting back should be put in place.

!	RECOMMENDATION(S)
28.	Where Regional Liaison Committees have been established, a CIU member from the appropriate division should be nominated to regularly attend the meetings. FMOs should be invited to attend the meeting when needed.
29.	Where no Regional Liaison Committee currently exists, a CIU member should be nominated to contact the local CASA and FMOs on a quarterly basis to discuss any problems or issues that have emerged. These contacts should be formalised to the extent that there is agreement by the parties in how to respond to the issues raised, and to report back to the CASA, VIFM and Victoria Police on what action was taken.

ADDITIONAL STRUCTURAL ISSUES

2.95 The option of establishing specialised Sexual Assault Investigation Sections (SAISs) was discussed in detail in the Interim Report.¹⁵⁵ The model involves attaching one or more detectives to the existing SOCA Unit to work exclusively on investigating sexual offences reported to SOCA and preparing briefs of evidence.¹⁵⁶ As noted above, Victoria Police are currently preparing a SAIS pilot evaluation program, and three pilot SAISs should be in operation in Dandenong, Sunshine and Broadmeadows by the end of the year. The Commission is of the opinion that the detectives recruited for SAISs should complete the SOCAU and VATE training courses as soon as possible after commencing with the SAIS.

2.96 The Commission remains of the view that the SAIS model would improve police response to sexual offences by ensuring that:

155 Interim Report paras 3.118–25.

156 The model has been successfully piloted in a number of metropolitan divisions throughout the 1990s. In particular, reviews of the model have highlighted the benefits to victims in dealing with a single office or station.

- there is continuity for victims in providing one point of contact with police;
- detectives are trained on how to more appropriately respond to victims of sexual assault;
- there is continuity across the investigation;
- the length of investigations are significantly reduced;
- detectives develop specialist expertise which can improve the prosecutorial success in certain cases (for example, where the offences being investigated relate to assaults that occurred many years ago);
- briefs of evidence are of a higher quality which can result in a better quality of evidence in court;
- admissions by alleged offenders may be higher; and
- fewer victims withdraw their complaints.

2.97 The Commission also recommends that Victoria Police review the current Operating Procedures with a view to improving police response to sexual assault. The police should also consider developing a comprehensive performance monitoring procedure in the area of sexual assault response.

! RECOMMENDATION(S)

30. The Commission recommends that Victoria Police establish Sexual Assault Investigation Sections in all metropolitan divisions where the caseload reaches a pre-determined threshold. The processes of selection for CIU members, tenure, and lines of accountability should be clearly established by Police Command.
31. Victoria Police should review the current Operating Procedures relating to sexual assault with a view to:
 - determining appropriate time frames for the investigation of sexual offences;
 - ensuring increased supervision regarding investigation time frames and appropriate victim contact/follow-up.

! RECOMMENDATION(S)

32. Victoria Police should consider devising a comprehensive performance standards process (perhaps to be included in the Operating Procedures) whereby there is ongoing monitoring of the police response to sexual assault, including the monitoring of:
- the delays between initial report and initiation of the prosecution process;
 - the number and type of cases authorised and why;
 - the number and type of cases not authorised and why; and
 - the number and type of cases that do not reach the brief authorisation stage.

IT AND DATA COLLECTION

2.98 In the Victoria Police Strategic Plan 2003–2008, one of the priorities is ‘Intelligent Policing’. This is defined as a ‘proactive, problem-orientated response to crime and community safety...driven by data and other information that demonstrates needs and priorities for policing services’.¹⁵⁷ To achieve this goal it is planned to introduce integrated information systems and to expand the capacity of the police IT and communications network and ‘introduce processes so that information, ideas and experience are easily accessible throughout the organisation’.¹⁵⁸

2.99 The Commission supports this plan to expand the IT and communications network. It is clear that the current data collection capacity is insufficient to enable proper evaluation and monitoring of police processes in relation to sexual assault. The Commission had originally intended to undertake empirical research on the reasons that complainants withdraw complaints and the factors which affect police decisions to take no further action. Our initial project assessment revealed that existing and readily accessible police data does not allow reliable conclusions to be drawn about why particular cases do not reach prosecution stage, nor is it possible—without an extensive undertaking—to evaluate the consistency or otherwise of the process under which police authorise a

157 Ibid 10.

158 Ibid 11.

summary prosecution, or to decide to refer an indictable offence to the Office of Public Prosecutions for prosecution.¹⁵⁹ Due to time and cost constraints, we have not undertaken this research.¹⁶⁰ However in the view of the Commission there is a clear need for better information technology systems and data collection/evaluation within Victoria Police.

2.100 If police response to sexual assault is to be appropriately evaluated on an ongoing basis, IT systems which enable differences in policing patterns to be identified will be essential. The police should be in a position to easily and effectively monitor delays between crime and prosecution, to compare the ‘performance’ of various units responding to sexual assault—both metropolitan and regional—and to monitor the consistency or otherwise of the decisions to authorise a prosecution or refer the matter to the OPP. Any new police data collection and evaluation systems should be designed so as to be compatible with the broader Department of Justice systems.

! RECOMMENDATION(S)

33. Victoria Police should establish appropriate IT systems to enable the effective monitoring and evaluation of sexual assault reporting patterns and of police procedures relating to authorisation of briefs for prosecution of sexual assault matters. Such systems should be compatible with broader Department of Justice systems.
34. Any new IT system should be evaluated for efficacy approximately two years after implementation.

159 See also paras 2.61–71.

160 The Commission had planned to analyse these cases closely by examining the casebook narratives completed by individual SOCAU and CIU members following a report of sexual assault.