

Improving the Response of the Justice System to Sexual Offences: Victorian Law Reform Commission

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AASW

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Australian Association
of Social Workers

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The Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, discrimination, and matters that influence people's quality of life.

The social work profession

Social work is a tertiary qualified profession recognised internationally that pursues social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

Our submission

The AASW welcomes the opportunity to submit to the Inquiry into Improving the Response of the Justice System to Sexual Offences. Social workers are seeing every day the impact that inadequate responses to disclosures of sexual assault are having on the people they work with. From mental health, drug and alcohol, family violence, and housing and homelessness services, the trauma that remains from inadequate responses to sexual assault can be difficult to overcome and leaves lasting impacts on those affected. Social workers present in the justice and all inter-relating systems are trying to work through that trauma and support vulnerable people as best they can, a change in

the overall system's approach to responding to sexual assault however could lessen the incidence of this trauma resulting from sexual assault.

Our submission addresses the terms of reference pertinent to social work practice and is informed by contributions from members working with survivors of sexual assault.

Recommendations:

- That all workers within justice systems complete mandatory and ongoing training on responding to victim-survivors of sexual assault within the context of family violence
- That services, including mental health support, are increased to help people report their assault and be supported throughout the process
- That funding is increased for supports for survivors from migrant and refugee backgrounds
- That childcare is made available to survivors who need to attend court

The Victorian Royal Commission into Family Violence Report (2016) in so far as it relates to sexual offences within intimate partner relationships

Whilst commending the overall changes made in the family violence system since the conclusion of the Victorian Royal Commission into Family Violence, AASW members have reported seeing limited improvement in responses to sexual offences within intimate partner relationships. Members stated that they continue to see gaps in the system particularly as it pertains to women who have added vulnerability, including those on partner visas whose access to support and justice is limited. Many women are still reluctant to come forward to report and/or seek support for family violence, more so when it pertains to sexual violence; this is despite research showing that out of the family violence workers surveyed almost all believed their clients had experienced sexual violence at some point.¹ Sexual assault is considered a high-risk indicator for escalating severity of physical violence and death when it occurs within an intimate partner relationship.² AASW members stated that despite changes following implementation of the Royal Commission's recommendations it is still difficult to get action taken by police and the courts on sexual offences within intimate partner relationships. One member stated that even with evidence of a sexual assault occurring and despite the courage of the victim-survivor to go to police in the first place, police did not arrest the offender. This leads to entrenchment of an overall culture where survivors of sexual assault are not believed, and reporting of this offence continues to be under-reported.

Recommendation

- That all workers within justice systems complete mandatory and ongoing training on responding to victim-survivors of sexual assault within the context of family violence

¹ <https://www.anrows.org.au/research-program/national-risk-assessment-principles/>

² <https://www.anrows.org.au/publication/intimate-partner-sexual-violence-research-synthesis/>

Actual or perceived barriers which contribute to the low reporting of sexual offences, and the high attrition throughout the formal legal process of those who do report

Despite gains in the understanding of sexual assault, how and why it occurs, and its impacts, we still live in a society where reports of this kind are viewed with suspicion. For the financial year ending June 2020 there were 8382 charges of sexual offences in Victoria, of these the majority of offenders were male.³ Despite this well-known statistic, and despite the fact that women are more likely to experience sexual assault, with men more likely to be the perpetrators, the dominant narrative in our community is that women make up reports. Women with intersecting identities are also less likely to be believed while also more likely to experience sexual assault. For example, women with a disability are twice as likely to be sexually assaulted than women without disability⁴; for sex workers the likelihood doubles again.⁵

AASW members indicated there are many reasons that survivors are not reporting their assault, including:

- They will not be believed by police if they do,
- Fear of providing evidence or being cross-examined in court,
- The process of going to court hasn't been explained to them properly, particularly in the case of women from migrant or refugee backgrounds,
- Concern for their safety and privacy if they do make a report,
- Potential for being shunned by family and friends,
- The time it takes to go through police and court processes,
- Perceived lack of understanding from the overall justice system of the trauma survivors have been through and exacerbation of this trauma through legal processes.

One social worker provided the case study of a woman she was working with who contacted police four times for assistance due to sexual assault within an intimate partner relationship. The social worker stated this woman was threatened with charges of making a false report as police did not believe her. Another social worker told us that when their client did report her assault, the offender then used the justice system to make his own claims about her, tying this survivor up in an exhausting legal battle where the systems which are meant to protect victims were then used against her.

Many AASW members reported "hit and miss" experiences within the court system for survivors of sexual assault. In the first instance, many survivors have not had the process explained to them, what they can expect in court, and the supports that are available to them. This is particularly true in the case of women from migrant and refugee backgrounds who are already dealing with cultural and language barriers. This results in a lack of transparency, clarity, and dignity for survivors.

Additionally, the amount of evidence required to proceed with a court case is overwhelming and this can be re-traumatising in itself for survivors, especially where they need to re-tell their story in court

³ <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/alleged-offender-incidents>

⁴ <https://www.afdo.org.au/about-australians-with-disability/abuse-of-people-with-disability/>

⁵ https://aifs.gov.au/sites/default/files/publication-documents/acssa_issues8.pdf

and be cross-examined, and where they need to hear the offender's 'side' of what happened to them. Women who have experienced sexual offences have their whole lives laid bare during the trial period. Their having to prove that what happened to them was assault can be extremely traumatic. Some women cannot cope with the trauma of having to relive everything in court, others are fearful for their safety and privacy.

An AASW member cited the case of a woman she was supporting through Victims of Crime; this social worker wrote a lengthy report detailing her client's situation and how her sexual assault had impacted on her. The magistrate however didn't believe the survivor's account or the social worker's report, and to gain clarity wanted to notify the other party. The woman stopped her case after this for fear of retaliation.

The amount of time it takes to go to court can be off-putting to survivors, generally women, who are already time-poor with other responsibilities. The court process can be lengthy, stopping and starting, and oftentimes survivors are kept in limbo while the process goes on around them. There are no provisions for child-care, and it can be difficult for women to attend court when there is no one to look after their children.

Recommendations:

- That services, including mental health support, are increased to help people report their assault and be supported throughout the process,
- That funding is increased for supports for survivors from migrant and refugee backgrounds,
- That childcare is made available to survivors who need to attend court.

Best practice for supporting sexual offence complainants and witnesses in the justice system more broadly

Ideally, the Victorian justice system would operate with a trauma-informed lens. Some studies of female prisoners have shown up to 89% of women had been sexually assaulted at some point in their lifetime, many as children, and even higher rates amongst Aboriginal and Torres Strait Islander women.⁶ Social workers report however that there is no evidence that the concept of victim survivor exists in the prison system and few ways to take a woman's previous trauma into account of her offending.

AASW members did provide some ways that make it easier for sexual assault survivors to gain justice and protection, particularly by applying for intervention orders in the case of sexual assault within intimate partner violence, where survivors do not need to provide as much evidence as they would in a criminal case. Members suggested if all levels of the courts communicated with each other better that it would be easier for survivors to get justice and reduce the need to retell their story.

⁶ <https://njca.com.au/wp-content/uploads/2017/12/Kilroy-Debbie-Women-in-Prison-in-Australia-paper.pdf>

Recommendation

- That court communication systems are improved to reduce the need for survivors to retell their story

Conclusion

The AASW thanks the Victorian Law Reform Commission for the opportunity to submit to this inquiry. We would welcome the opportunity to discuss any of the points raised.



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