

Victorian Law Reform Commission
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To the Victorian Law Reform Commission,

As the Victorian Disability Worker Commissioner, I support the Victorian Law Reform Commission's (VLRC) inquiry into improving the response of the justice system to sexual offences. I acknowledge the real and perceived barriers that victim survivors experience in reporting sexual harm and participating in the legal process. These barriers may be amplified for people with disability, who may experience physical and communication barriers to reporting sexual harm and participating in the criminal justice system. I take very seriously the need to address the problem of sexual assault of people with disability. As acknowledged in the VLRC Issues Papers, women with disability experience sexual harm at much higher rates than others in the broader community.

People with disability find it more difficult to report their experiences, to be heard and believed, and to obtain a just outcome. Police Officers or Court Officials may not have sufficient training or tools to interview people with complex communication needs or cognitive impairment and may not consider the person to be a credible witness or complainant. Police may subsequently decide not to investigate or proceed with a charge. Since the Commission commenced its role on 1 July 2020, this appears to have occurred in some assault matters.

The Disability Worker Regulation Scheme (the Scheme) is a regulatory regime which protects against and provides measures to respond to sexual harm of people with disability and intersects with the response of the criminal justice system to sexual offences. The *Disability Service Safeguards Act 2018* (the Act) was introduced as a result of the *Victorian Inquiry into Abuse in Disability Services 2016* (the Disability Inquiry) which found a long history of widespread abuse and neglect of people with disability, including sexual assault which was found to be common across the disability sector. The Disability Inquiry determined that more effective safeguards and oversight measures were needed to ensure disability workers deliver safe and high-quality care. The Act established the Scheme which was introduced to regulate all disability workers in Victoria, either as unregistered workers, or as workers who voluntarily choose to register. The Scheme commenced on 1 July 2020 and is administered by two independent, statutory regulators: myself as the Victorian Disability Worker Commissioner who regulates unregistered workers and the Disability Worker Registration Board of Victoria (the Board) which will register and regulate registered workers from 1 July 2021. Both the Board and myself are supported by the Victorian Disability Worker Commission (the Commission).

The Scheme provides various measures to respond to abuse and harm of people with disability, including sexual harm. Employers and disability workers are required to make mandatory notifications about certain conduct of disability workers, including engaging in sexual misconduct while practicing as a disability worker. The Disability Service Safeguards Code of Conduct imposes a duty on disability workers to take all reasonable steps to prevent and respond to sexual misconduct. As Commissioner, I have the power to act as a result of a complaint or notification including counselling, settling a matter by agreement, conciliation, referring to another entity, investigating, or issuing publicly available prohibition orders. The Commission has also developed processes for referring matters involving a complaint or investigation relating to sexual assault to Victoria Police and supporting complainants who may wish to access sexual assault services.

The Commission has undertaken a communications campaign to raise awareness of the Scheme, in particular, its safeguarding mechanisms such as an independent complaints process and mandatory reporting requirements. By raising awareness with people with disability, the disability workforce as well as the broader community, we hope that any allegation of abuse or harm will be appropriately dealt with. The Commission has however received anecdotal feedback that some people with disability are reluctant or unwilling to make a complaint. The Commission is committed to making it easier for people with disability to make a complaint about a disability worker, without them having to negotiate with their disability service provider or repeat their story several times. We offer a 'no wrong door' approach so that complainants are supported through each step of the process.

The Commission has implemented the following measures for people with disability to improve the process of reporting abuse and harm which could inform the way the criminal justice system may respond to a person with disability reporting sexual harm:

- providing assistance in a person-centred way to prepare and submit their complaint.
- option of an independent third person is offered to support the person with disability.
- ensuring all documents and communication materials are in an accessible format, and an Easy English version is available.
- frontline staff are trained in disability awareness to understand what reasonable adjustments are required for a person with disability, such as making available translating and interpreting services, explaining concepts and processes in plain English and allowing more time for appointments and interviews.
- office is accessible to ensure a person with disability can use and navigate the facilities as easily as any person in the broader community can.

I look forward to reading the VLRC's final report and recommendations which could further reduce the trauma experienced by complainants and witnesses and improve the ability of the justice system to respond to sexual offences, particularly for people with disability. I am available to discuss any of the matters raised in this letter further. [REDACTED]

Yours sincerely

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Dan Stubbs
Victorian Disability Worker Commissioner
22/01/2021