



Improving the Response of the Justice System to Sexual Offences - PartnerSPEAK Submission

Executive Summary

PartnerSPEAK provides advocacy and support for the non-offending partner (NOP) and family of a perpetrator of child sexual abuse and child sexual abuse material (CSAM).

Fifty per cent of CSAM perpetrators have an intimate partner and children. These affected family members (AFM) are not recognised as victims or secondary victims in Victoria and it is not uncommon for them to be labelled and treated as an extension of the perpetrator as is evidenced in the case studies that we present.

Within institutions, especially within the criminal justice system, there is an enormous lack of awareness about the trauma experienced by AFM of CSAM perpetrators. They are denied access to critical support services and often have to face the entire justice process alone. The treatment they face from the justice system often compounds their trauma.

We note for this review, the VLRC is asked to *'recommend any changes which could further reduce the trauma experienced by complainants and witnesses and improve the ability of the justice system to respond to sexual offences.'*

PartnerSPEAK believes that the most urgent law reform required for our community is adjusting the *Victims of Crime Act 1996* to classify affected family members and non-offending partners of CSAM perpetrators as secondary victims. Further education or clarification on the application of the *Victims Charter 2006* is also required. This will grant AFMs access to necessary support within the justice system, and will also reduce the trauma they face throughout their experiences of the legal proceedings. It could also lessen the social stigma forced upon them in the aftermath of an arrest.

We believe that by providing AFMs and NOPs with proper support, the justice system will improve their ability to respond to and prosecute these crimes. The lack of appropriate engagement with NOPs and AFMs throughout any criminal investigation has a deleterious effect on the pursuit of justice.



PartnerSPEAK works every day with the AFM of CSAM perpetrators. Based on our extensive knowledge base, which we have developed drawing on the experiences of the hundreds of families that we have supported, we present:

- The evidence that AFMs and NOPs of these perpetrators are secondary victims of the crimes
- Key examples of the systemic and institutional gaps created by the current lack of victim status
- The impact of these gaps on NOPs and AFMS that we support

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Secondary victims of crime in Victoria

In New South Wales, the partners of perpetrators of CSAM perpetrators are considered 'secondary victims' for the purposes of its victims of crime financial assistance scheme.

Although the definition of 'secondary victim' in the New South Wales legislation is not substantially different to that in the Victorian legislation, in New South Wales the definition has been interpreted to include this cohort of victims. The Victorian Act may not even need amending to ensure that NOP/AFM of CSAM perpetrators become eligible for the support and protections under the Act. An education piece about the interpretation of the definitions in the Act, may suffice.

The Act currently defines a secondary victim as *"...a person who is present at the scene of an act of violence and who is injured as a direct result of witnessing that act."*

The introduction of child abuse material into the home is often considered an act of family violence. The trauma suffered by partners and affected family members is incredible. The injury caused by the crime is evidenced by the many people we support with formal post traumatic stress disorder diagnoses, or ongoing treatment for depression and anxiety.

Whether the Act requires a change to the definition, or further education on the existing coverage of the secondary victim status, it is imperative that the AFMs and NOPs of these perpetrators receive the protection and support they need from this legislation.



Support services available to victims - institutional gaps

PartnerSPEAK believes that the most critical improvement required to support services is to allow our community access to these services. Under the current definitions in the *Victims of Crime Act 1996*, the non-offending partners (NOP) and affected family members (AFM) of a perpetrator of child sex abuse material crimes are not considered 'secondary victims' by law enforcement, justice institutions and service delivery providers. This exclusion causes severe legal, financial, and emotional complications for AFMs.

People that PartnerSPEAK support are denied access to programs that would encourage their full participation in the investigation and/or prosecution of perpetrators. They are then also denied access to personal supports such as compensated counselling and financial support for victims. Below we have outlined the impacts of these institutional gaps.

Legal/Justice Institutional Support

The Victims Charter includes the key objective to *“recognise that a victim of crime has an inherent interest in the response by the criminal justice system to that crime, giving rise to the rights and entitlements set out in the Victims’ Charter, and to acknowledge the victim’s role as a participant, but not a party, in proceedings for criminal offences”*.

The family and partners of a perpetrator of child abuse material are not considered victims of this crime under Victorian legislation. The right for a victim to be kept informed of the status of a criminal investigation is critical for AFMs, and too often they are denied this right due to their lack of status under law. The privacy of the perpetrator is considered more important than the rights of non-offending partners and affected family members, due to their lack of victim status.

Many women we support have been faced with negotiating divorce, including child custody arrangements, with a perpetrator whilst not knowing the status of the criminal investigation. Others are forced to cohabit with a perpetrator due to legal or financial constraints, but with no information about the crimes of the perpetrator.

“I rang the police, I had to know who I could talk to. The female police officer said you’re not allowed to talk to anyone about it, we can give you CASA number. I couldn’t believe it, how do I tell people why I’m separating my husband. We just looked like a normal couple. I couldn’t tell anyone until November. I called CASA and they said I’m sorry, we’re here for the victims not the partners of the offender. That just destroyed me. My daughter took me



to the doctor and I got antidepressants because I couldn't stop shaking. I had to keep my job, I knew I was going to lose my husband's income."

"We separated and it was a while after that when he was arrested. I wasn't told and at the time he still had access to our kids. It wasn't until the Department of Child Protection contacted me to talk to the kids that I found out but no one would tell me why or what he had done!"

This lack of communication with the AFMs continues throughout the investigation and into the court process, often to the detriment of the pursuit of justice. Non-offending partners are not given clear options to provide evidence, or kept informed of the status of the proceedings.

Many are treated like participants or conspirators in the crime, rather than victims.

"I walked in on him watching LIVE online child sexual abuse. It's been me pushing for the police to act. I don't know if the police are actually investigating him. I am just collecting the evidence. I don't know who for; just in case it is needed."

"When I asked for more justice I was told that unless I snapped (broke) the CD of child pornography that I had in my handbag, I would be at risk of being charged. I was told he was opportunistic and would most likely not harm (our) son. I was gagged to tell my story as I mentioned it for custody planning."

One Victorian person who we supported discussed their experience of the court process:

"I really struggled with the court process and the things that I was told by SOCIT was contradictory to what happened at court. I made a victim impact statement and when I got to court the prosecution said, 'We don't know why you're here, you're not a victim, there is no victim in this case'. Luckily the case was delayed that day and I did my research, but it was really challenging. I was put onto Victims of Crime, then Department of Public Prosecution and they passed me back to Victims of Crime. They put me onto a Criminal Investigations Unit and they said no way can you make a victim impact statement and they put me back to the Department of Public Prosecution. They said, 'you're not the victim'. I made a victim impact statement in court. I'd had a paedophile living in my house for two years, I am a victim. It took tenacity. There are people in trauma without these resources. He didn't go to jail, he got a \$10,000 fine."

Since NOP and AFM of perpetrators of CSAM perpetrators are not considered victims of crime in Victoria, they are often considered to be outside the coverage by the *Victims Charter Act 2006*. It is extremely rare that a NOP/AFM is permitted to make a Victim Impact Statement and nor are they covered by the other protections in



the Charter. The example above where a Victorian NOP did make a VIS is a rare case and ultimately came down to the woman's tenacity and ability to fight to be allowed to make her statement.

PartnerSPEAK believes that the ability of the justice system to respond to these crimes is severely damaged by the lack of protection and support offered to NOPs and AFMs. These people often have a critical role to play in ensuring law enforcement have all evidence and information related to the crime. Until they are provided with support to engage with the investigation and prosecution, the justice system is failing to appropriately respond to the crimes.

Financial/Personal Support Programs

Currently, Victorian AFMs are not given access to many victims support services such as funded specialist counselling or financial compensation. The trauma they suffer from the crime, and the fall out it may have on their personal circumstances, is something they are left to face alone.

It is exceedingly difficult for AFM to access appropriate therapeutic interventions in part due to generic therapists not having any understanding of the crime of CSAM. It is critical that the AFM of CSAM perpetrators are classified as victims of crime so that they can access specialised and subsidised psychological assistance. In NSW, this cohort of affected partners are provided with specialist counselling, in recognition of the trauma they have experienced from the crime.

"There is one thing that saved Leah Mouatt (The Age newspaper, 6/10/2016) from giving up. This was a counsellor provided to her for free under Victims Services and Support. NSW is the only state to allow affected partners to apply for therapeutic help. She commented "I wouldn't be here without it."

However in Victoria AFMs are not provided with this service, or most other programs through the Victims Assistance Program.

"When I was younger, my step-dad did some bad things to me and I was able to access help as a victim of crime but for this experience there is no help for me. Why can't we get help?"

"I can't get counselling or help because I rely on him for money."

"The impact on mine and my family's health and emotional wellbeing can be seen in our medical bills. I sleep tensed up and grind my teeth in my sleep, I have migraines. I work full time hours under a casual contract, I do not get paid for sick days. I am ineligible for subsidies to help with medication or the



chiropractor. There is no funding assistance for my 22-year-old daughter to access counselling and I drive an hour to access an experienced psychologist. I have to find money for the divorce of a marriage I didn't ask to end this way. I have to find funds for new computers after the federal police took all the computers in the house. We are victims of crime. We should be compensated."

Many people outlined that the response of the justice system created more trauma, rather than resolving or improving it.

"Bullying and intimidation tactics that I experienced by the Joint Anti Child Exploitation Team are incomprehensible, deeply traumatising and forever scarring. It shattered me into 1000 pieces. My privacy was violated, and I was made to feel unsafe in my own home."

"Dealing with Victoria Police has been horrific. They have emboldened him and enabled him and at times allowed him to use them as a tool for his abuse. At one point, because of Victoria Police failures and throwing me under a bus he was able to obtain an IVO against me."

"That same anger and bubbling of rage is how I wake up every, single, day of my life when I reflect on the way we have been treated by services and systems. Made to feel like we were inanimate objects of the lowest common denominator where our voice simply did not count. And to this day, it has made profound contributions to the psychological safety and wellbeing of our family under already tragic circumstances."

Formal recognition in the legislation will also reduce the shame felt by AFM, because their experience will no longer be entirely invisible and "taboo." It is likely that these victims of crime will feel more confident that they can access support if their experience is recognised in legislation.