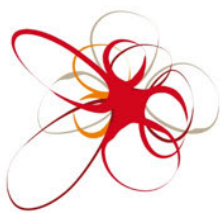


SUBMISSION

Prepared by Springvale Monash Legal Service Inc for the

**Victorian Law Reform Commission,
IMPROVING THE RESPONSE OF THE JUSTICE SYSTEM TO SEXUAL
OFFENCES REVIEW**

Date submitted: 29 January 2021



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LEGAL SERVICE Inc.**



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Our organisation

Established in 1973, Springvale Monash Legal Service ('SMLS') is a community legal centre that provides free legal advice, assistance, information, and education to people experiencing disadvantage in our community. We have been addressing the needs of marginalised community members, the majority who reside within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia.

SMLS provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, the Fair Work Commission, the Federal Circuit Court, Family Court and the Victims of Crime Assistance Tribunal. We provide several duty lawyer services for both family violence and criminal lists at the Dandenong Magistrates' court, as well as a Children's Family Violence duty lawyer at the (Dandenong) Children's Court. Our specialist family violence clinic assists clients with child protection, child support, intervention orders, parenting plans, and court representation. Through these various services, our staff are trauma informed and have significant expertise in assisting families impacted by sexual assault and family violence. We have several integrated programs that ensure clients can access holistic legal assistance, including a social work program, a financial counselling partnership with Good Shepherd ANZ, several Health Justice Partnerships and various outreach services across Melbourne and the South East.

For most of our 40 years in operation, SMLS has been running a clinical legal education program in conjunction with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree.

In addition to our legal assistance work, SMLS has a significant community development and legal education program that is developed in collaboration with our community.

SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, discrimination towards young community members in their use of public space and their interactions with the criminal justice system, as well as in highlighting the needs of refugees and people seeking asylum, particularly unaccompanied humanitarian minors and women escaping family violence.

SMLS and matters involving sexual harm.

SMLS has significant experience and expertise providing legal support for individuals who have experienced sexual assault. For over 25 years, we have been working in partnership with the South Eastern Centre Against Sexual Assault assisting victims of sexual assault to navigate the legal system. SECASA is a specialist sexual assault and family violence service assisting people in South Eastern Melbourne with therapeutic intervention, counselling, crisis response, community education and other services.

The partnership program was recently renamed 'Integrated Services for Survivor Advocacy' ('ISSA'). ISSA provides legal advice, assistance and representation to victims/survivors of sexual assault, and family members affected by the assault other than the offender. The service specializes in Applications for Assistance to the Victims of Crime Assistance Tribunal. In 2019-2020 financial year, SMLS clients were awarded over \$550,000 from VOCAT.

This specialist program has operated since 1995 and works closely with SECASA counsellors. ISSA is supported by SMLS staff, volunteers and Clinical Placement students from Monash University Faculty of Law.

The clinic operates on a referral basis from SECASA. An SMLS community lawyer is also embedded into the SECASA team at the Dandenong Multidisciplinary Centre to provide on-site advice and

legal assistance. A lawyer will soon be co-located in the SECASA Seaford office due to the high demand and success of the Dandenong MDC program model.

Although the bulk of our experience is working with victims of sexual assault, we also have experience providing legal assistance to perpetrators of sexual harm in our work in assisting respondents in family violence matters.

We have also assisted clients in sexual harassment matters through our employment law practice.

Terms of reference

These submissions seek to respond to the following terms of reference.

Issues paper A: Working Together to Respond to Sexual Offences: Systems

1. What would make it easier for people who have been sexually harmed to get the supports and services they need, so they can decide whether to report the sexual harm?
2. How can collaboration within the sexual assault system be improved, so that the justice system responds effectively to sexual harm?
3. How can we improve how other services and systems work with the sexual assault system, so that people are supported to seek justice?
4. Is there a need for a stronger focus on governance or shared outcomes in the response of the justice system to sexual harm? If so, what should this look like?
5. What are the opportunities for, and benefits of, improving data, research and evaluation in relation to sexual offending?

Issues paper B: Key Issues in the Criminal Justice System

1. Do you support introducing a specialist court for sexual offences? Why or why not?
2. How well are reforms working to avoid delays in the criminal justice process, and what other reforms could address delay?
3. How well are support programs for people who have experienced sexual harm working? How can they be improved?

Issues paper C: Defining Sexual Offences

1. Is there a need to change any of Victoria's technology-facilitated sexual offences, or their application? If so, what changes?

Issues Paper D: Sexual Offences: Report to Charge

1. How well are Sexual Offence and Child Abuse Investigation Teams (SOCITs) and Multidisciplinary Centres (MDCs) working? How can they be improved?
2. What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?
3. What other issues need to be addressed during the investigation process to support successful criminal prosecutions in sexual offence cases? How can they be addressed?
4. Do you support access to alternative ways of reporting sexual harm? Why or why not?

Issues Paper G: Sexual Offences: Restorative and Alternative Justice Models

1. Do you support adopting a restorative justice model for sexual offences? Why or why not?
2. If a restorative justice model is adopted, what should its features be?

Issues Paper H: Sexual Offences: Civil Law and Other Non-Criminal Responses

1. What aspects of other justice processes provide best practice examples for supporting people who have experienced sexual harm?
2. How can the interaction between other justice processes and the criminal justice system be improved?

Acronyms

CALD	culturally and linguistically diverse
CALD	culturally and linguistically diverse
CIJ	Centre for Innovative Justice
CLC	community legal centre
ISSA	Integrated Services for Survivor Advocacy
MDC	Multi-Disciplinary Centre
NESB	non-English speaking background
SMLS	Springvale Monash Legal Service Inc
SOCIT	Sexual offences and child abuse investigations team
VLRC	Victorian Law Reform Commission
VOCAT	Victims of Crime Assistance Tribunal

**Client names and details in these submissions have been changed to protect client confidentiality.*

Important terminology used throughout this report

Sexual harm

For the sake of consistency, we have adopted the Victorian Law Reform Commission's ('VLRC') terminology in describing sexual harm as all sexual activity that happens without consent. We understand this to include sexual offences and non-offences of a sexual nature such as sexual harassment.

Clients who have experienced sexual harm and clients who have committed a sexual harm

For the sake of consistency, we have adopted similar terminology used by the VLRC in the issues papers. Throughout these submissions we have mainly referred to 'clients experiencing sexual harm' to highlight that our perspective is limited to the overall feedback of our clients and so is not intended to be an exhaustive account. We acknowledge there is diversity in terms of the preferred terminology when referring to persons who have experienced a sexual harm. We echo the VLRC's position that our chosen terminology is not intended to downplay the seriousness of sexual offences.

SMLS recognises that sexual harm is a deeply gendered issue, rooted in structural inequalities and an imbalance of power between women and men and other genders, which is reflected in any gendered language used within this report.

SUMMARY OF RECOMMENDATIONS

1. When considering how the ‘sexual assault system’ can best respond to sexual harm, we recommend a broader understanding of what agencies fall within the definition of the ‘sexual assault system’ so that it includes any other agencies which the person may typically interact with in her recovery. This may include Centrelink, Medicare, NDIA, Office of Housing, Child Protection, and the Department of Home Affairs, and is not limited to only those agencies which specifically specialise in responding to sexual harm.
2. That the CLC sector be supported to offer an alternative referral pathway for persons who have experienced sexual harm to access the justice system through its community engagement work and direct legal assistance.
3. Persons who have experienced sexual harm must have access to independent legal assistance. The CLC sector should be resourced and supported to assist the most vulnerable and hard to reach clients within our community.
4. Integrated services enable a more holistic response to sexual harm. SMLS recommends that integrated models of service delivery in both legal and non-legal settings be prioritised in service planning and resourcing arrangements. SMLS also recommends that funding must incorporate support for partnership development, monitoring and evaluation.
5. SMLS recommends that partnerships built between agencies include ongoing maintenance and resourcing.
6. Prioritise research into what specific barriers there may be to persons from CALD or NESB to reporting sexual harm.
7. The CLC sector should be supported to explore the potential to convert its administrative data into data that could be used for research purposes, with the view of adding to the body of evidence for the ongoing evaluation of the justice system’s response to sexual harm.
8. Although the creation of new offences specific to technology facilitated sexual harm alone may play an important part in reflecting community standards and expectations, it must also be complemented with the regulation and establishment of ethical conduct of internet site management to remove and limit the distribution of the materials.
9. We recommend the expansion of SOCIT to meet the heavy workload of sexual assault matters and significantly reduce police investigation time spent, especially when dealing with historical sexual abuse.
10. We recommend that a rigorous and independent complaints process be available to persons who have experienced sexual harm if they feel their complaints are not appropriately dealt with by police.
11. We support the implementation of specialist training and accreditation for all decision makers dealing with matters regarding sexual harm in all aspects of the justice system, not just within criminal proceedings.

12. We recommend prosecution and police develop best practice in relation to communicating with persons who have experienced harm resolution decisions and decisions on non-prosecution.
13. Any restorative and alternative justice models must require that the person who experienced the sexual harm be willing and capable to participate. It also needs to be properly resourced with trained and accredited specialists; include mechanisms to monitor police referrals to restorative justice are appropriate and limited to those most matters where prosecution is not suitable; and rigorously evaluated.
14. That the criminal justice system continues to be complemented by a victim-centred crimes compensation scheme such as the VOCAT whereby the person who has experienced sexual harm has the benefit of a lower standard of proof and has the invaluable therapeutic opportunity of having their experience acknowledged.
15. To expedite the recovery of the person who has experienced sexual harm, we recommend the VOCAT make interim orders in instances where a decision on an application for compensation is deferred pending the finalisation of concurrent criminal proceedings.

INTRODUCTION

We are grateful to the VLRC for this opportunity to contribute to the review of the justice system's response to sexual offences.

We have based these submissions on our clients' experiences of the justice system. From what we have seen from our casework, we have identified the following recurring themes. These are not intended to be an exhaustive account of the immense diversity in experiences, backgrounds and wishes of persons who have experienced sexual harm or have committed a sexual offence.

Our clients are devastated when they feel that their story is not believed. Many of our clients have experienced historical sexual abuse. Many also live with a disability. We have seen that these clients are especially at risk of feeling like their story is not believed.

For the most part, many of our clients do not wish to restore relationships with the person who committed the sexual harm. Our clients largely wish to sever ties as part of their path to recovery. Our clients largely prioritise receiving acknowledgement of the harm suffered from an authoritative body within the justice system rather than seek an expression of contrition from the person committing the sexual harm.

Our clients want to regain a sense of day-to-day normality in their lives.

In a significant proportion of our matters, the person committing sexual harm has not been charged. We hear largely the experiences of those who have sought support and redress outside of the criminal justice system.

Whilst our legal practice largely assists the person who has experienced sexual harm, our work also involves assisting persons who have committed a sexual harm, through for example our work dealing with intervention order matters. Accordingly, we highlight that any reforms should not compromise an accused's right to a fair trial.

We acknowledge that though the criminal justice serves as an important response to sexual harm, its impact is limited without fundamental social change dismantling intersectional experiences of disadvantage such as racism and gender bias. We highlight that more work needs to be done to understand how race and gender create the circumstances in which sexual harm is disproportionately affecting particular cohorts within society; how these forces may affect how that person experiences and deals with sexual harm; and how the government can best respond.

Working Together to Respond to Sexual Offences: Systems

We agree that there must be a holistic, multi-disciplinary, collaborative and whole-of-system response to sexual harm. Clients who have experienced sexual harm have diverse needs and may require support from different agencies at different times. The impact of the sexual harm may have a flow on effect on many aspects of their lives so that the person experiencing sexual harm may need to interact with services such as Centrelink, Medicare, NDIA, Office of Housing, Child protection, Department of Home Affairs. (Centre for Innovative Justice 2020:13)

Persons who experience sexual harm may not necessarily differentiate between those services which specialise in dealing with sexual harm and those other government agencies. According to the Centre for Innovative Justice (CIJ), ‘...research indicates that victims of crime tend to perceive all the services and agencies with which they interact as contributing to the ‘system response’ that they receive following an experience of crime. As such, from a victim’s perspective, all these services can be understood as forming part of the victim services system.’ (Centre for Innovative Justice 2020:13)

A more person-centred response would take a broad understanding of what constitutes the ‘sexual assault system’ so that it is not limited to those agencies and services which are expressly dedicated to dealing with sexual harm. Collaboration and clear referral pathways should also exist within this broader concept of the ‘sexual assault system’.

Recommendation one:

When considering how the ‘sexual assault system’ can best respond to sexual harm, we recommend a broader understanding of what agencies fall within the definition of the ‘sexual assault system’ so that it includes any other agencies which the person may typically interact with in her recovery. This may include Centrelink, Medicare, NDIA, Office of Housing, Child Protection, and the Department of Home Affairs, and is not limited to only those agencies which specifically specialise in responding to sexual harm.

The role of Community Legal Centres

Access to independent legal assistance is a critical feature of the ‘sexual assault system’. CLCs such as SMLS are especially well placed for making an important contribution to improving the person’s experience of the justice system.

We highlight the CIJ’s findings that ‘... current access pathways are over-reliant on police referrals (VPeRs) despite clear evidence that certain cohorts and victims of specific crime types are less likely to report to police.’ (Centre for Innovative Justice 2020:43) We support the recommendation that the justice system response should focus on taking an innovative approach to developing a wider range of access pathways. CLCs such as SMLS may offer an alternative access point to the justice system, especially those clients who are unlikely to report to police.

Through our extensive community engagement, we have gained a reputation within the community as a trusted source for help to the most vulnerable and hard to reach members of the community. It is a fundamental part of our ethos to proactively enhance community access to justice through for example providing outreach legal services and offering community legal education. Through our work, we proactively seek to reach those who may not otherwise have the means, confidence or inclination to report a sexual harm. We have observed that some clients may not even realise they have experienced a sexual offence. It is not unusual for example that a client may present to our

centre with a family law matter and then make disclosures to us regarding sexual abuse in instances where the disclosure has not been made to police. Or a client may at first instance present with a wage recovery employment matter and then subsequently make disclosures regarding sexual harassment in the workplace.

Our legal practice's ethical and professional duty to maintain client confidentiality offers a reassuring incentive to clients to make disclosures to us of sexual harm. This enables our clients to weigh up their legal options and make informed choices as to how they wish to proceed with dealing with their experience of sexual harm.

Recommendation two:

That the CLC sector be supported to offer an alternative referral pathway for persons who have experienced sexual harm to access the justice system through its community engagement work and direct legal assistance.

One of the strongest themes to emerge from research is the need for dedicated and holistic legal support to persons who have experienced sexual harm. '*[A] lack of dedicated legal advice resulted in victims of crime feeling excluded from, or distrustful of, the criminal justice system*' (Centre for Innovative Justice 2020: 45). Access to independent legal advice acknowledges that although the person experiencing sexual harm is not a party to the criminal proceedings, she is nonetheless an important participant with their own interests independent of the prosecutor or defence. The lawyer may also play an important educative role for the victim, to explain the proceedings at each step, to advise the client of legal rights in relation to for example self-incrimination and victim impact statements. Furthermore, as found by the CIJ (2020:45), the person experiencing sexual harm should not only have access to independent legal advice regarding the criminal proceedings, but also other intersecting areas of law commonly relevant to persons experiencing sexual harm, including child protection, family violence, migration, workplace rights, debt recovery, rights under the Victim's Charter.

Generalist CLCs such as SMLS often provide assistance in a broad range of legal matters. CLCs are also accustomed to working in partnership to broaden the geographical reach of its services. With this broad range of expertise and experience, the CLC sector is appropriately skilled to offer holistic legal assistance to vulnerable and disadvantaged clients who have experienced sexual harm.

Persons who have experienced sexual harm should have early access to independent legal assistance, to assist them to make informed choices regarding the reporting process, including the decision whether to report the harm to police. Given the CLC sector's unique position as a trusted source for help to the most vulnerable and hard to reach members of the community, any government-funded integrated service model should incorporate the involvement of the CLC sector in its service design and delivery. With the appropriate resource and support, CLCs may be well-placed to offer dedicated and holistic legal support to persons who have experienced sexual harm in matters such as advice on participation in criminal justice system, child protection, family violence, migration, workplace rights, debt recovery, rights under the Victim's Charter.

Recommendation three:

Persons who have experienced sexual harm must have early access to independent legal assistance. The CLC sector should be resourced and supported to assist the most vulnerable and hard to reach clients within our community.

Integrated Service Delivery

With the inherent benefits to taking a holistic approach to responding to sexual harm, we see value in integrated service models such as the multi-disciplinary centres ('MDC'). Benefits to integrated service models have been demonstrated by the expansion of our SECASA partnership to the Dandenong MDC. Many of our clients have complex needs such as agoraphobia, or limited resources with parental responsibilities and benefit from a 'one-stop-shop'.

The immediate physical proximity of services provides a useful prompt for agencies to make cross-referrals; often promotes better inter-agency collaboration for efficient service delivery; and may minimise the risk of overlooking any gaps in the support offered to the person experiencing sexual harm.

A co-located model however does risk limiting the diversity in the choice of services offered to the person. We see also some clients may opt not to approach an MDC if they have pre-existing reservations about police. Young people for example may not have the means or confidence to attend an MDC to seek assistance regarding sexual harm. As mentioned, not all clients also realise that they have experienced a sexual offence.

For these reasons, we recommend the justice system response to sexual harm include the expansion of integrated services in traditionally non-justice settings, preferably at sites which clients routinely interact with such as a health or education settings. This offers another alternative referral pathway for persons who have experienced sexual harm to access the justice system.

For example, since 2017, SMLS has been delivering our *Sporting Change* program – a partnership between our centre and secondary schools within the southeast region of Melbourne. From our work in our *Sporting Change* program, staff and students report that sexting is currently a significant and widespread issue effecting young people. Young people may not necessarily feel at ease to report sexual harm at first instance to school staff due to mandatory reporting requirements. The presence of an onsite lawyer bound by professional obligations of client confidentiality offers an important opportunity to make disclosures and seek help. The close proximity to wellbeing staff also allows for easy cross referrals to again maintain a holistic response to sexual harm.

Recommendation four:

Integrated services enable a more holistic response to sexual harm. SMLS recommends that Integrated models of service delivery in both legal and non-legal settings be prioritised in service planning and resourcing arrangements. SMLS also recommends that funding must incorporate support for partnership development, monitoring and evaluation.

CLCs may also offer useful insight into building and maintaining partnerships for a collaborative inter-agency response to sexual harm. SMLS has for example a long track record of engaging with partners in delivering services. In addition to our partnerships with secondary schools, we also deliver health-justice partnerships, partnerships with secondary schools to deliver outreach legal services on school grounds; and a partnership with Good Shepherd to facilitate financial counselling referrals.

Drawing from our experience of building partnerships for collaborative service delivery, we have applied the following partnership principles:

1. A focus on client outcomes, and their families/communities

2. Delivering high quality services for the people who need them
3. Cooperation and collaboration
4. Regular and inclusive communication
5. Client confidentiality
6. Respecting each organisation's contribution and staff professional obligations
7. Integrity and accountability
8. Maintaining professionalism and ethical standards
9. A commitment to continuous improvement and outcomes measurement; and
10. Acting in good faith in support of the partnership

Better collaboration and partnerships between agencies may be achieved through identifying shared objectives; agreeing and clearly articulating the respective roles and expectations of each of the agencies; developing a clear understanding of the agreed policies and procedures in circumstances where there may be any tensions between the objectives and functions of the individual agencies; developing a shared monitoring and evaluation framework; developing a consistent message to persons who have experienced sexual harm regarding the limits of the criminal justice system so as to manage the person's expectations; and incorporating partnership management and coordination in the funding of any partnerships or collaboration between agencies.

Recommendation five

SMLS recommends that partnerships built between agencies include ongoing maintenance and resourcing.

Unmet need

Despite the increasing accessibility of services through integrated partnership and outreach models, there remains disproportionately low numbers of clients from culturally and linguistically diverse ('CALD') and non-English speaking ('NESB') backgrounds seeking assistance regarding sexual harm. We hear that this is also the common experience of other agencies within our networks, such as SECASA and CALD community groups.

We recommend further research be undertaken to comprehensively examine why this cohort appears to disproportionately under-report sexual harm; whether there are any specific barriers to reporting; and providing recommendations as to how they may be overcome.

CLCs also have the potential to contribute to the research of the justice system's response to sexual harm through its administrative data. As outlined by McDonald et al (2020:10) '*administrative data is information collected and stored as part of the everyday functions of organisations.*' It is data which is '*... not primarily collected for research purposes*' but may offer an efficient and cost-effective way to build evidence and gain insights to inform policy. (McDonald et al, 2020: 14) In 2017, the Australian Productivity Commission's *Data Availability and Use report* recommended increased use of administrative data to improve the delivery of government services and policy. (Productivity Commission, 2017:111 and 113)

Recommendations six and seven:

Prioritise research into what specific barriers there may be to persons from CALD or NESB to reporting sexual harm.

The CLC sector should be supported to explore the potential to convert its administrative data into data that could be used for research purposes, with the view of adding to the body of evidence for the ongoing evaluation of the justice system's response to sexual harm.

Case study: Mina's story*

Mina spoke English as a second language. She suffered horrific family violence from her former husband, including frequent incidents of sexual violence. He would make threats to self-harm if she left him. He made threats to kill her family if she went to the police. She received pressure from her family to remain within the marriage.

She felt isolated and hopeless.

After finally separating from her husband, with SMLS' support, she applied for a family violence intervention order when her former husband would not cease contacting her. SMLS then assisted her in family law proceedings regarding her children.

Mina was a very reluctant litigant. She just wanted it over with and to move on. She found the family law court highly distressing.

Mina was ecstatic when the family court granted her sole parental responsibility over the children.

Defining offences

In our family violence work and outreach service at secondary schools, we observe that technology-facilitated sexual harm is widespread. We agree that the creation of offences specific to technology-facilitated sexual harm may play an important symbolic role in signalling the community's intolerance of this form of sexual violence. As noted by Henry and Powell (2016:409), '*[i]ntimidation, threats, and access of information about victims aren't new tactics ... However, the use of technology as a tool ... means that the harassment and abuse can be much more invasive, intensive, and traumatising*'.

We agree that criminalisation is not the sole solution. We agree that any response to technology-facilitated sexual harm needs to include a mechanism for enforcing content removal. We acknowledge there may be jurisdictional issues that may make it difficult to remove or retract digital content. Nonetheless we recommend that attention be given to regulating digital operators and creating a greater responsibility on operators to monitor and remove sexually harmful content.

Recommendation eight:

Although the creation of new offences specific to technology facilitated sexual harm alone may play an important part in reflecting community standards and expectations, it must also be complemented with the regulation and establishment of ethical conduct of internet site management to remove and limit the distribution of the materials.

From report, to charge, to the trial process

In matters where the person who committed sexual harm is prosecuted, our clients have reported overall satisfaction with the proceedings. We have in particular heard positive feedback on the client experience of witness assistance services and the intermediary pilot program.

However, a significant proportion of our matters involve cases where the person committing the sexual harm has not been charged. For example, in our casework, in approximately 49% of VOCAT primary victim applications that were finalised in the years 2019 and 2020, the person who committed the sexual harm was not charged. In about 81% of those matters, our clients were children at the time of the offence.

Given that for many of our clients, the person committing the sexual harm is not prosecuted, the importance of procedural justice rings particularly true. We highlight the findings of the CIJ (2020:47) that *... evidence strongly indicates that procedural justice – that is, a sense that the process is fair and legitimate – can be just as important to victim satisfaction, if not more important, than substantive criminal justice outcomes. This suggests that investing in services which work to support victims of crime through criminal justice processes; manage their expectations; and ensure they are informed throughout their journey, can increase victim satisfaction and support participation in the criminal justice system.*

Based on our experience, we agree that optimising the client’s experience at every interaction with the justice system, has the therapeutic possibility of contributing to a client’s recovery. Conversely, if not done well, it can have a devastating impact on the client.

We have received positive reports from clients regarding their interaction with SOCIT. This is an indication of the value of specialist, trauma informed training when dealing with the complex nature of sexual harm. We agree with the CIJ (2014:43) that *‘[s]pecialisation is critical ... as sexual offending is markedly different to other types of offending and often involves patterns of shame and isolation; complex power dynamics; patterns of denial and repression; long-term trauma and distorted notions of appropriate behaviour.’*

Accordingly, we would support the expansion of SOCIT to meet the immense demands and workload.

We highlight our view that specialist training should exist across the justice system as a whole. SMLS has consistently recommended special training for magistrates in certain areas of law, for example in family violence, family law and VOCAT, going as far as recommending additional certificate level qualifications.

Despite the positive feedback regarding SOCIT, we do see ongoing opportunities for Victoria Police to further improve its practices.

We have encountered clients who report that they feel police are discouraging them from making a statement regarding a sexual offence or are encouraged by police to withdraw a statement.

We have also observed long delays in the police investigation of client complaints of sexual harm, particularly for our clients who have experienced historical sexual abuse. Clients report of investigations taking some 12 to 18 months with the end result being a decision not to prosecute. The delay in investigation may result in compromising the availability of evidence. For example, clients may be approached by police to give further details of an incident after a prolonged period of time, in some instances up to 2 years. Faced with the difficult task of recalling a traumatic incident which occurred so long ago not only diminishes the strength of the evidence but also places the client at risk of again feeling like she is not believed by police if unable to recall details. With the long passage of time, other witnesses may have relocated and be no longer contactable. The delays in finalising investigations may further diminish what may already be the client's fragile distrust of the criminal justice system.

For some clients, the decision that there is 'insufficient evidence to proceed' may be heard as 'I am not believed'. The client may not necessarily be supported to fully grasp the nuances of the criminal justice system. Conveying the decision not to proceed with prosecution is a critical point that needs to be navigated with care and sensitivity. We have observed that our clients have appreciated when SOCIT have taken the time to explain the reasons for the decision and clarify the nature of criminal proceedings. In some instances, the client has elected to have a SECASA counsellor present at the meeting.

We do highlight that any change to police practices needs to be complemented with the establishment of a rigorous and independent complaints system to handle police complaints. We see that this may also contribute to public confidence in the justice system. Please see our submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria for more detail on this.

Clients also report dismay when a prosecution resolution results in the withdrawal of the more serious charges. This may be perceived by the client again that her story is not believed and that her experience is not acknowledged to its full and deserving extent. We again see the possibility here of enhancing the client's sense of procedural justice if prosecution thoughtfully and sensitively communicates resolution decisions to the person experiencing sexual harm. We agree with the recommendations of the CIJ (2019:101) that prosecution develop best practice in communicating decisions such as prosecution resolutions to the person experiencing the sexual harm. We would go further and recommend that police also develop best practice guidelines in relation to communicating decisions not to refer a matter to prosecution.

We agree with the suggestion by the CIJ (2019: 106) that best practice may include:

- Early and regular contact with the person who has experienced sexual harm;
- Explain the prosecutor's role and duties, the prosecution process, possible outcomes, manage expectations, express empathy and acknowledgment of the harm experienced by the victim;
- Transparency;
- Communicate uncertainty of proceedings;
- Forewarn the person that a plea offer may be made in circumstances where a quick decision has to be made;
- Have meetings with WAS regarding the best approach to consult the person; and
- Involve police informant if necessary.

Recommendations nine, ten, eleven and twelve:

We recommend the expansion of SOCIT to meet the heavy workload of sexual assault matters and significantly reduce police investigation time spent, especially when dealing with historical sexual abuse.

We recommend that a rigorous and independent complaints process be available to persons who have experienced sexual harm if they feel their complaints are not appropriately dealt with by police.

We support the implementation of specialist training and accreditation for all decision makers dealing with matters regarding sexual harm in all aspects of the justice system, not just within criminal proceedings.

We recommend prosecution and police develop best practice in relation to communicating with persons who have experienced harm resolution decisions and decisions on non-prosecution.

Restorative and alternative justice models

As mentioned above, our clients are predominantly uninterested in restoring a relationship with the person who committed the sexual harm. Overwhelmingly, they prefer to sever ties in their journey towards recovery. What our clients report as most helpful in their recovery journey is acknowledgment from an authoritative body within the justice system rather than from the person who committed the sexual harm.

This is not necessarily to say that there is no place for restorative justice alternatives but rather that this option cannot operate without other forms of recognition, such as VOCAT. In our view, a crimes compensation scheme such as VOCAT more readily meets the needs of our clients as a victim-centric response to sexual harm. Any moves to pilot a restorative justice alternative should therefore not detract from prioritising VOCAT as the main place for clients to seek justice.

Nevertheless, in principle, we see inherent value to expanding the choice of justice system options available to persons who have experienced a sexual harm.

We acknowledge though there are risks to this model as outlined by the CIJ (2014:35) including:

- Dissipates the gains to have the criminal law respond appropriately to sexual harm
- Risks re-privatising sexual harm
- Risks minimising the public interest in prosecuting and punishing sexual offending
- The potential for restoration is overstated
- The offender may get off too leniently or at least be perceived the offender is receiving a more lenient outcome
- Offenders may manipulate the process.

For these reasons, any moves to pilot restorative or alternative justice models must have proper safeguards in place to minimise the risks. It must be properly resourced with trained and accredited specialists; include mechanisms to ensure that there is no coercion or pressure involved; an oversight body; include mechanisms to monitor police referrals to restorative justice to ensure referrals made are appropriate and limited to those most matters where prosecution is not suitable; and be rigorously evaluated.

Recommendation thirteen:

Any restorative and alternative justice models must require that the person who experienced the sexual harm be willing and capable to participate. It also needs to be properly resourced with trained and accredited specialists; include mechanisms to monitor police referrals to restorative justice are appropriate and limited to those most matters where prosecution is not suitable; and rigorously evaluated.

Interactions with civil law and non-criminal responses

Conviction rates in relation to sexual offences against children are statistically very low. In fact, charges are infrequently laid in these cases. Of those cases where charges are laid, very few result in a conviction. Hence, clients often feel extremely “let down” by the criminal justice system.

In cases such as this, being heard and believed by a verbal acknowledgement from the VOCAT can assist enormously in recovery. Clients do elect to attend the VOCAT even if their application can be determined ‘on the papers’. Often VOCAT members apologise on behalf of the state for the suffering clients have experienced. The impact of such well-measured and kind words cannot be understated in terms therapeutic effect. In many cases, this is the only recognition our clients may have received and it can be extremely powerful.

Given the often-insurmountable high standard of proof in criminal proceedings, we recommend therefore that a crimes compensation scheme such as the VOCAT continue to run alongside the criminal justice system. It may serve an important ‘truth-telling’ mechanism.

John’s story*

John was sexually abused by his father as a child from the age of 3 years. John struggled with significant psychological issues as a result of the childhood abuse and sought treatment when he was in his 30s. After years of treatment, John garnered the strength to report the abuse to the police. The police interviewed the offender and were preparing to lay charges when the offender took his life.

A coronial inquest was conducted into the death of John’s father. There was no references to John nor the accusations of abuse in the Coroner’s findings.

John was left feeling invisible and unheard by the coronial inquest.

We then assisted John to lodged a VOCAT application. John felt very strongly that he wished to appear before the Tribunal to “tell his story”. Having a chance to be heard was important to him as he felt he had been denied this opportunity through every other legal process he had encountered. He finally was to get his “day in court” which meant more to him than the monetary award he had been offered.

We do highlight we have previously made recommendations regarding proposed reforms to the *Victims of Crime Assistance Tribunal Act*.¹ Our recommendations include for example, relaxing time limits on lodging a claim. This is particularly important for cases involving historical sexual abuse. We have seen how a conservative approach to applying the test for granting an extension of time to submit an application can have the effect of retraumatising a client.

The determination of VOCAT applications is commonly suspended pending the outcome of the criminal proceedings. In 2019 and 2020 for example, only some 2.9% of our VOCAT matters

¹ See SMLS’ submissions to the Victorian Law Reform Commission: Review of the *Victims of Crimes Assistance Act 1996*

resulted in final awards being made prior to the completion of criminal proceedings. To our clients, this can be distressing and frustrating. Clients again can perceive this as the VOCAT doubting their story. Protracted delays may prolong access to funded counselling and so hinder the client's recovery.

Recommendations fourteen and fifteen:

That the criminal justice system continues to be complemented by a victim-centred crimes compensation scheme such as the VOCAT whereby the person who has experienced sexual harm has the benefit of a lower standard of proof and has the invaluable therapeutic opportunity of having their experience acknowledged.

To expedite the recovery of the person who has experienced sexual harm, we recommend the VOCAT make interim orders in instances where a decision on an application for compensation is deferred pending the finalisation of concurrent criminal proceedings.

Olivia's story*

Olivia was the victim of a violent rape by a distant relative when she was a teenager. The offender was convicted and received a prison sentence.

The sexual assault and the lack of support from her family had a devastating effect on Olivia's life. She dropped out school, left home and lived in temporary housing. Olivia suffers from a range of psychological issues including PTSD, depression, nightmares, and memory loss which are directly linked to assault. Olivia found work but has had difficulty in holding a job due to her mental health.

Olivia was referred to us by SECASA. Olivia thought that she was too late to apply for compensation as the rape had occurred more than 20 years ago, but the counsellor at SECASA told her that she may still be able to make a claim. We were able to help Olivia by lodging an application for assistance with the VOCAT as a primary victim. VOCAT granted Olivia a final award of compensation.

Whilst Olivia found the VOCAT process traumatic, it has also provided her with some closure - that her suffering has been recognised.

References list

Centre for Innovative Justice (2019) *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs*, Centre for Innovative Justice, accessed January 2021.

Centre for Innovative Justice (2014) *Innovative justice responses to sexual offending – pathways to better outcomes for victims, offenders and the community*, Centre for Innovative Justice, accessed January 2021.

Centre for Innovative Justice (2020) *Strengthening Victoria's Victim Support System: Victim Services Review Final Report*, Centre for Innovative Justice, accessed December 2020.

Henry N and Powell A (2016) 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law', *Social and Legal Studies*, 25(4): 397 – 418, <https://doi.org/10.1177/0964663915624273>

McDonald H, McRae C, Balmer N L, Hagland T and Kennedy C (2020) *Apples, Oranges and Lemons: The use and utility of administrative data in the Victorian legal assistance sector*. Victoria Law Foundation, accessed January 2021.

Productivity Commission (2017) 'Data Availability and Use', Productivity Commission, Australian Government, Canberra, accessed January 2021.